

Sarah Ng

From: Anthony Tavella on behalf of DPE PS ePlanning Exhibitions Mailbox
Sent: Friday, 9 October 2020 3:00 PM
To: DPE PS Biodiversity Mailbox
Subject: FW: Webform submission from: Draft Cumberland Plain Conservation Plan
Attachments: submission-to-dpie-mannie-091020.pdf

From: noreply@feedback.planningportal.nsw.gov.au <noreply@feedback.planningportal.nsw.gov.au>
Sent: Friday, 9 October 2020 1:16 PM
To: DPE PS ePlanning Exhibitions Mailbox <eplanning.exhibitions@planning.nsw.gov.au>
Subject: Webform submission from: Draft Cumberland Plain Conservation Plan

Submitted on Fri, 09/10/2020 - 13:14
Submitted by: Anonymous
Submitted values are:
Submission Type: I am submitting on behalf of my organisation
First Name: Nicolas
Last Name: Israel
Name Withheld: No
Email: [REDACTED]
Suburb/Town & Postcode: Badgerys Creek NSW
Submission file:
[submission-to-dpie-mannie-091020.pdf](#)

Submission: This submission is lodged on behalf of Mr Manuel Caruana for the attention of Mr Steve Hartley - Executive Director Green and Resilient Spaces Division. This submission contains several reports associated with the property located at [REDACTED]
[REDACTED] Badgerys Creek

URL: <https://pp.planningportal.nsw.gov.au/draftplans/exhibition/draft-cumberland-plain-conservation-plan>

Our Ref: 80220021:JO'G
Contact: John O'Grady

8 October 2020

Department of Planning, Industry & Environment, Green and Resilient Places Division
Locked Bag 5022

PARRAMATTA NSW 2124

VIA DPIE Submissions Portal

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SUBMISSION TO THE EXHIBITION OF THE DRAFT CUMBERLAND PLAIN CONSERVATION PLAN

We act on behalf of Langway Pty Ltd, owners of land at Lot [REDACTED] in Deposited Plan [REDACTED], Badgerys Creek (the **Subject Land**).

Our submission to the draft Cumberland Plain Conservation Plan maintains that categorisation of the Subject Land in its entirety as *Non-Certified – Avoided for Biodiversity* is inconsistent with its true biodiversity values and that the categorisation should be reviewed in order to reflect the actual biodiversity values of the land as described herein. The appropriate categorisation of the land is *Certified*. A second potentially appropriate categorisation would be *Exempt*.

We further contend that the recent zoning of the land as Environment and Recreation under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* (SEPP (Western Sydney Aerotropolis)) is inappropriate having regard to the location, the condition of the land and the existing active development approvals that apply.

1.1 The Subject Land

The Subject Land covers a total area of 101,000m² (10.1 hectares) (Table 1-1) and is regular in shape with a boundary width of approximately 180 metres and depth of 550 metres (Figures 1-1 & 1-2). It has a street boundary to [REDACTED] to its south and addresses an unmade road to its east.

Address	Legal Title	Approximate Area (Hectares)
[REDACTED]	[REDACTED] Badgerys Creek	10.1

Table 1-1 Subject Land

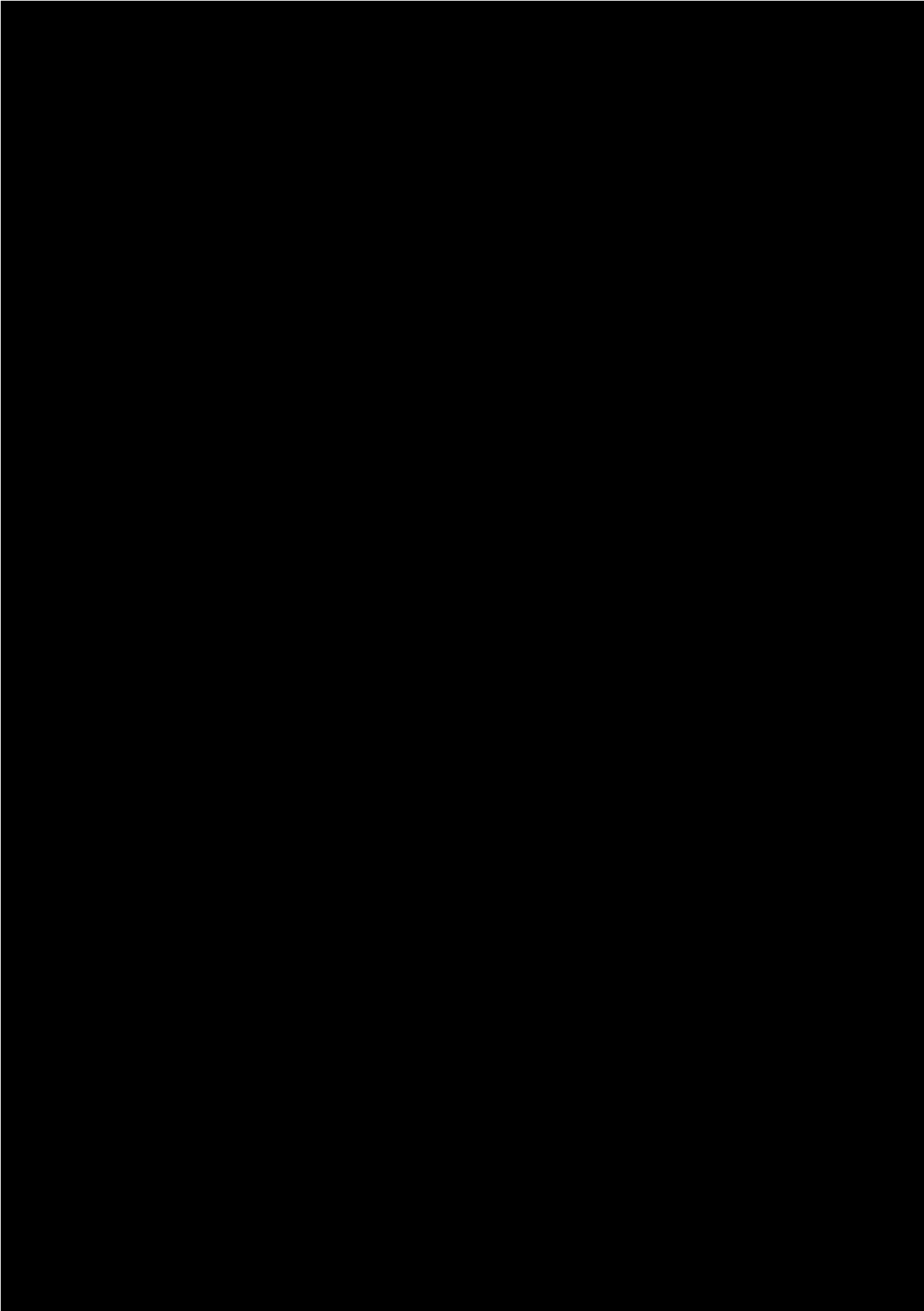


Figure 1-1 Site location (edged red). Source: Nearmap

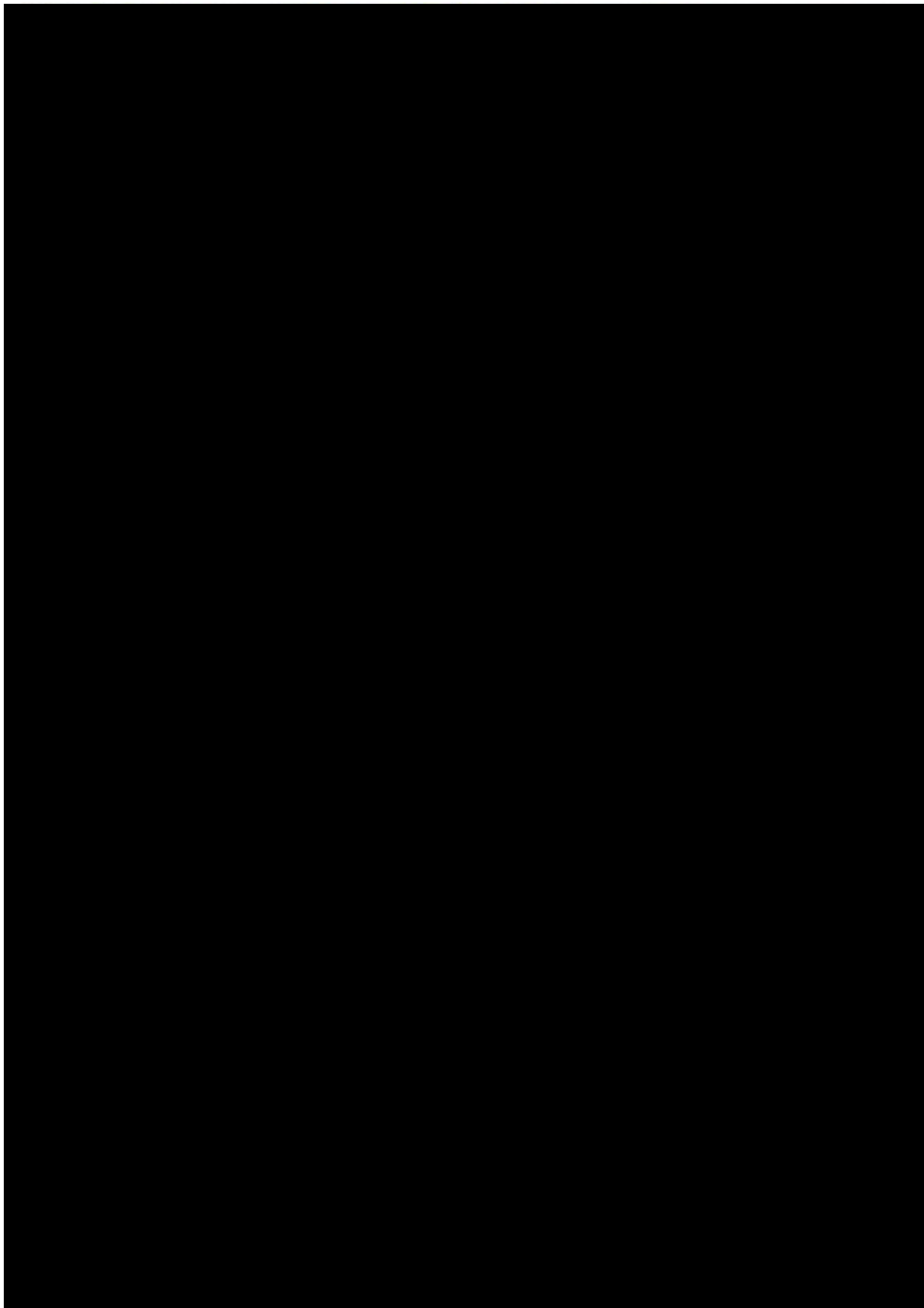


Figure 1-2 Local aerial – Subject Land edged red. Source: Nearmap

1.2 Previous submissions

In February and March 2020, two separate submissions were made on behalf of the landowner to the exhibition of the Stage 2 Western Sydney Aerotropolis Planning Package. In summary, the submissions made the following conclusion:

- That the Subject Land is not suitable for the purpose of a regional park or for biodiversity conservation and does not have the ecological values needed to justify applying the aims of the Environmental and Recreation zone.
- That the Subject Land is suitable for Enterprise purposes in that it is not constrained by flood or steep gradient, does not have heritage significance and is sized, configured and located to accommodate the industrial and commercial land uses envisaged by the Enterprise zone.
- That the proposed zoning of the Subject Land as indicated in the draft mapping appended to the Western Sydney Aerotropolis SEPP Discussion Paper should be amended from Environment and Recreation to Enterprise.

1.3 The gazetted *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*

The submissions made to the exhibition of the Stage 2 Planning Package with respect to the Subject Land were not taken up and the land is zoned *Environment and Recreation* under the SEPP (Western Sydney Aerotropolis) (Figures 1-3 & 1-4).

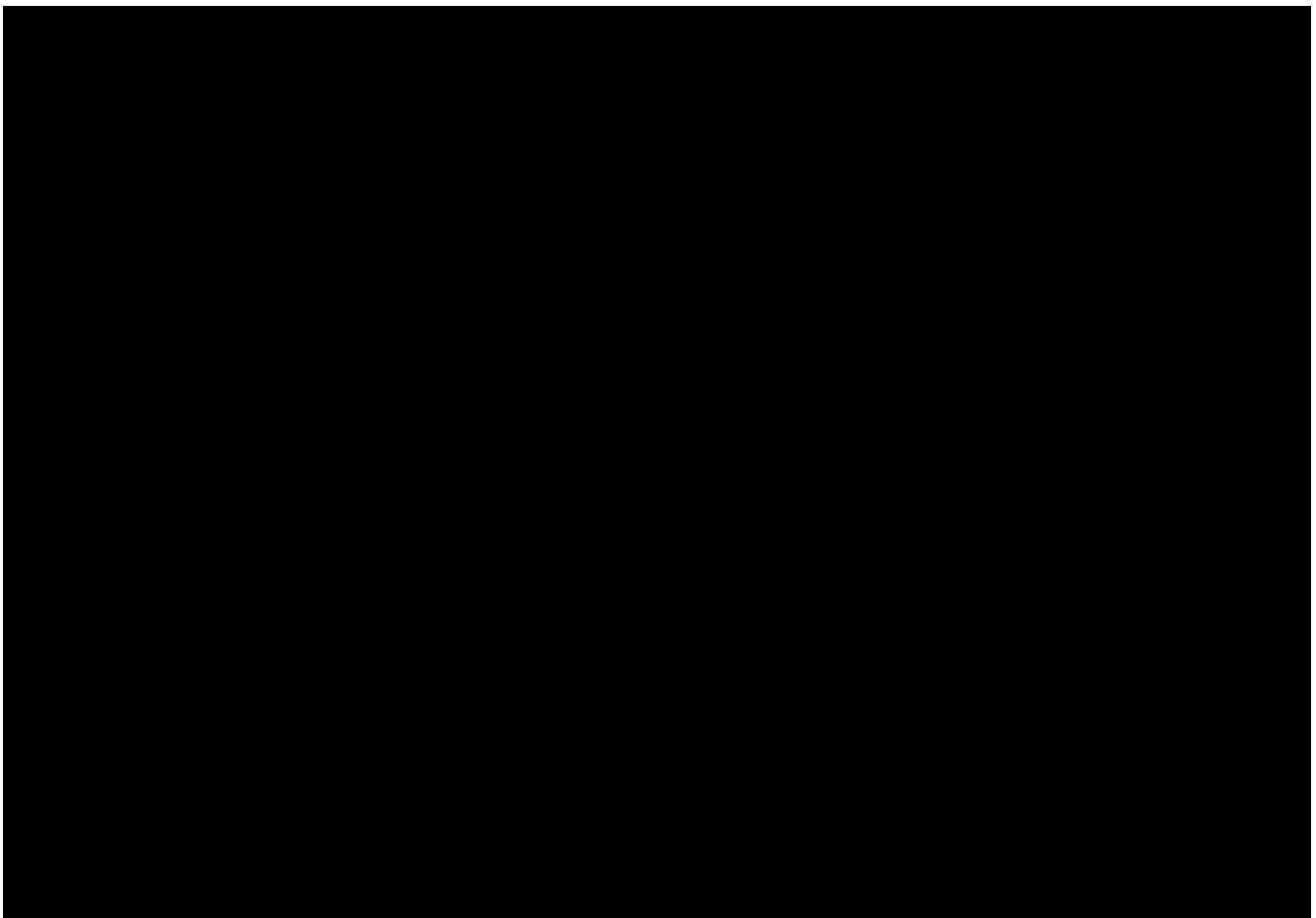


Figure 1-3 Land zoning in the SEPP (Western Sydney Aerotropolis) 2020 (Land Zoning Map, Sheet LZN_001)

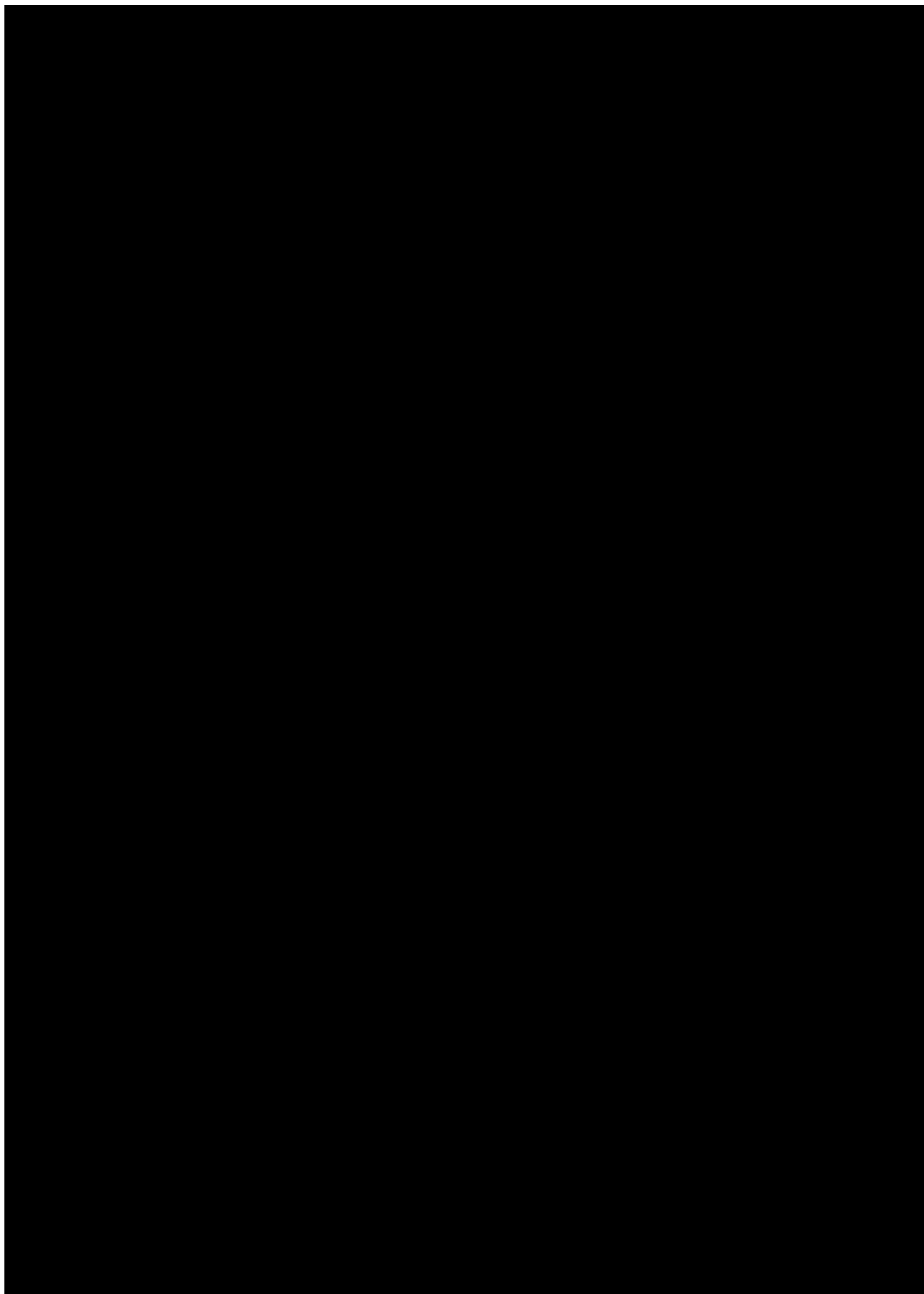


Figure 1-4 Land zoning in the SEPP (Westerns Sydney Aerotropolis) 2020 (detail extracted from Land Zoning Map, Sheet LZN_001)

1.4 This submission

This submission supports the arguments and conclusions in the previous submissions with respect to the zoning of the Subject Land and develops commentary and recommendations on the draft Cumberland Plain Conservation Plan with respect to its proposal to categorise the Subject Land as *Non-Certified – Avoided for Biodiversity*.

The submission maintains:

- That the categorisation of the land as *Non-Certified – Avoided for Biodiversity* is inconsistent with its biodiversity values.
- That the land is subject to an operative development consent that allows removal of vegetation within the footprint of approved future buildings on the site.
- That the assessment process leading to draft categorisation of the land as Non-Certified requires review as it has resulted in inaccurate conclusions with respect to biodiversity values across the Subject Land.
- That the land should be categorised as either *Certified* or *Exempt* in the adopted *Cumberland Plain Conservation Plan*.

Each of these contentions is explained below.

1.5 Draft Cumberland Plain Conservation Plan (draft CPCP)

1.5.1 Purpose and structure

The NSW DPIE describes the draft Cumberland Plain Conservation Plan (DPIE 2020a) as '*a plan to support growth and biodiversity conservation in the Western Parkland City*'¹. The draft CPCP has identified areas for growth and land for conservation. Once approved, the CPCP will be implemented by DPIE through a number of mechanisms.

The overarching purpose of the Plan is to support biodiversity and growth in the Western Sydney Parkland City by protecting the regions important conservation values. It will do this through the creation of new reserves, conservation areas and green spaces.

In essence the plan involves delivery of a conservation program to offset impacts of new development within the Western Parkland City on local and regional biodiversity.

The structure of the draft Plan is summarised in the diagram at Figure 1-3.

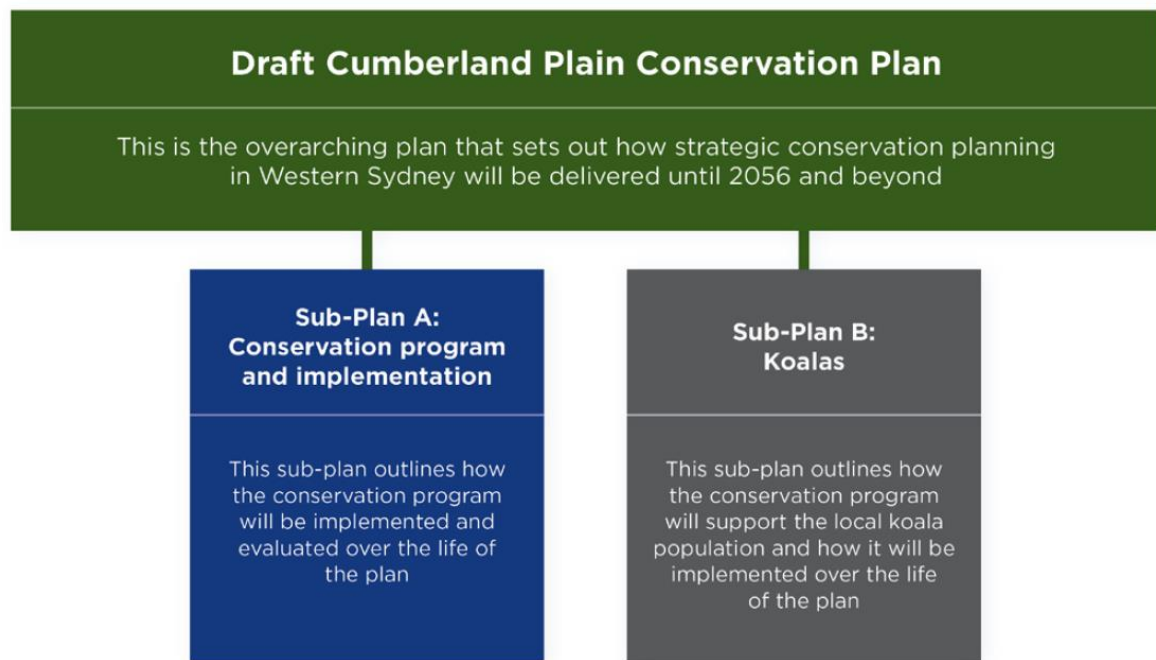


Figure 1: Draft Cumberland Plain Conservation Plan and Sub-plans

Figure 1-5 Structure of the draft Cumberland Plan Conservation Plan (Source: DPIE 2020)

The Subject Land does not include Koala Habitat so Sub-Plan B is not relevant to this submission.

1.5.2 Proposal for the Subject Land

The draft CPCP proposes to categorise the Subject Land in its entirety as *Non-Certified – Avoided for Biodiversity* (Figure 1-6). This categorisation is in response to the zoning of the entire land parcel as *Environment and Recreation* in the SEPP (Western Sydney Aerotropolis). The land surrounding the Subject Land is categorised as either *Certified* (to its north and west) or *Exempt* (to its East).

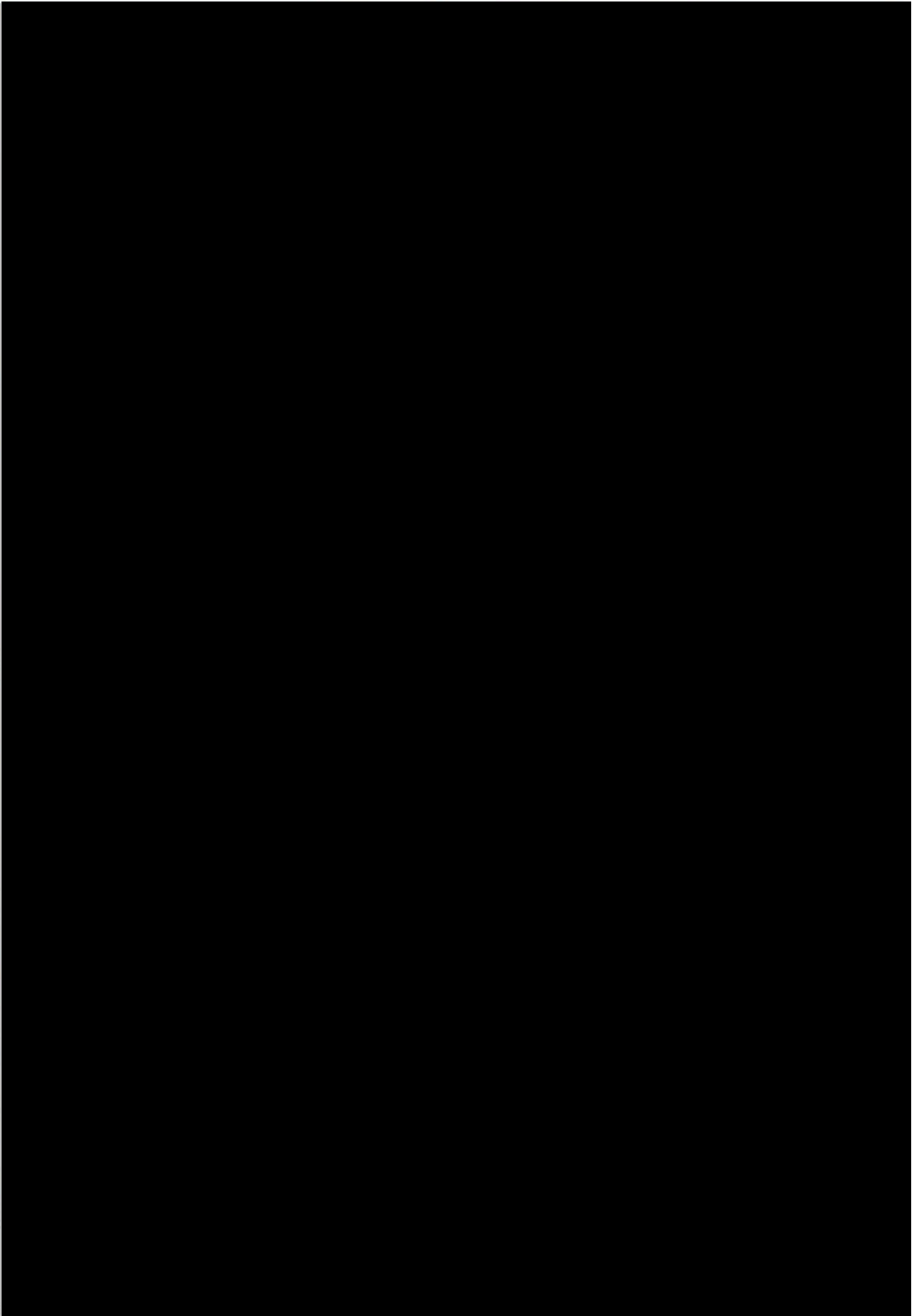


Figure 1-6 Western Sydney Aerotropolis Land Categories – subject land edged red (Excerpt draft Cumberland Plain Conservation Plan – Sub plan A)

1.6 Commentary on the proposed categorisation of the land.

1.6.1 Biodiversity value of the Subject Land

In August 2020, Ecological Consultants Australia Pty Ltd prepared a report on an Ecological Investigation into the Subject Land. The report (a copy of which is attached to this submission) was essentially commissioned to provide an opinion on the impacts on biodiversity values of the removal of vegetation that had occurred on the land. The report included commentary on the biodiversity values of the Subject Land and concluded that the site was highly disturbed due to works associated with the development approval for a chicken abattoir and processing plant along with other works.

The report also included a diagram that overlaid the approved plan for the chicken abattoir and processing plant onto a recent aerial photo of the site. This diagram, copied into this submission at Figure 1-7, identified 8.59 ha of the site as Disturbed Area, subject to the development approval. The remaining 1.51 ha was identified as retained vegetation.

Of relevance to this submission, the upshot of the Ecological Investigation is that the Subject Land in its current state exhibits minimal biodiversity value.

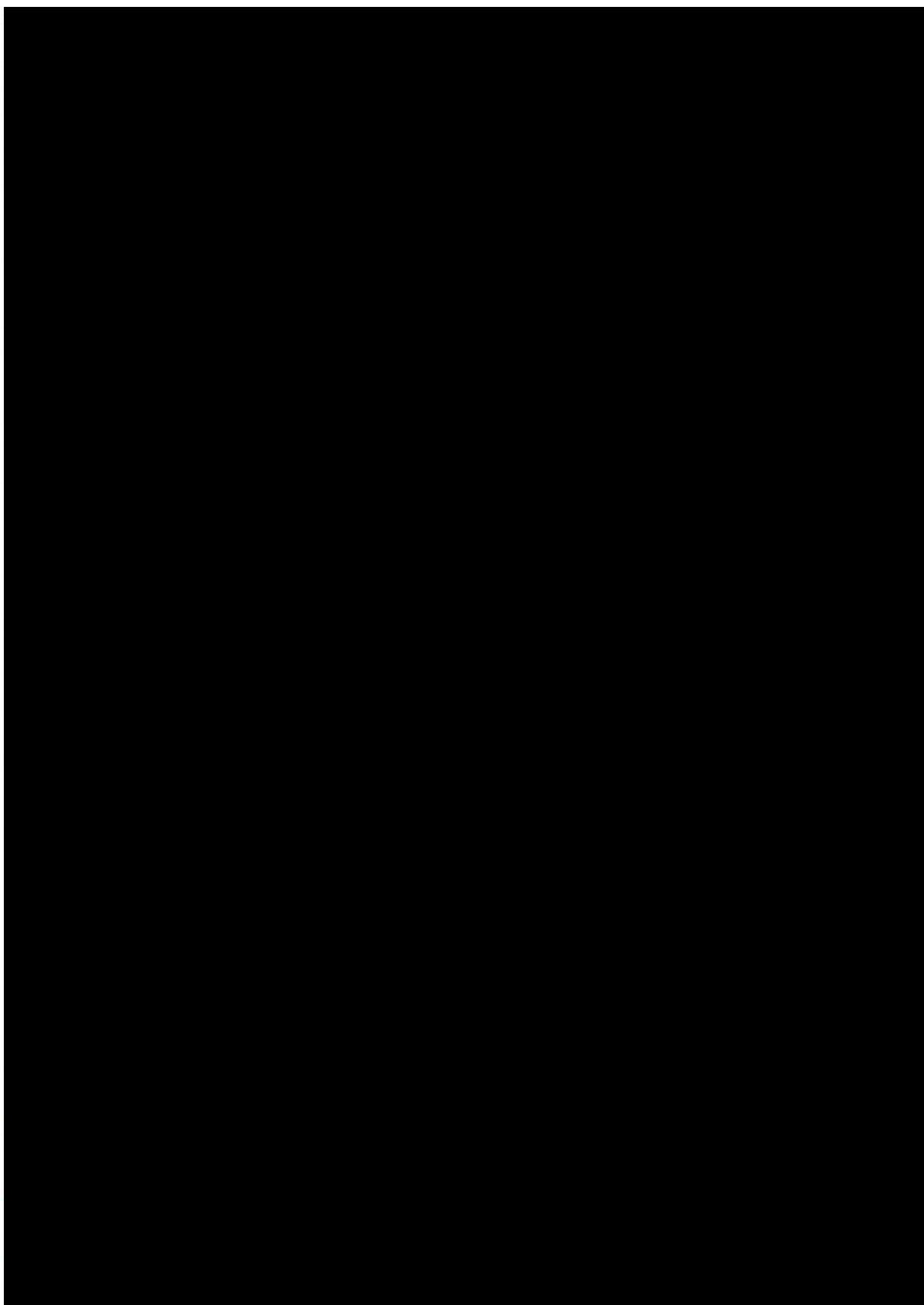


Figure 1-7 Overlay of approved DA 960082 onto the Subject Land (Source: Ecological Consultants, Australia, August 2020)

1.6.2 Existing operative development consent

The Subject Land benefits from an existing operative development consent.

On 28 August 1996, Penrith City Council granted Deferred Commencement consent to [REDACTED] Pt2 for erection and operation of a Poultry Processing Facility on the Subject Land.

The Deferred Commencement conditions were satisfied and the DA was substantially commenced within the two year timeframe required by the Consent.

On 26 January 2008, Council confirmed on its letterhead that the approved development had been substantially commenced and that the development had been "secured".

Our opinion with respect to this development approval is that it remains valid in accordance with Division 13 of the *Environmental Planning and Assessment Regulation, 2000*.

To support this opinion, copies of the following documents are attached to this submission:

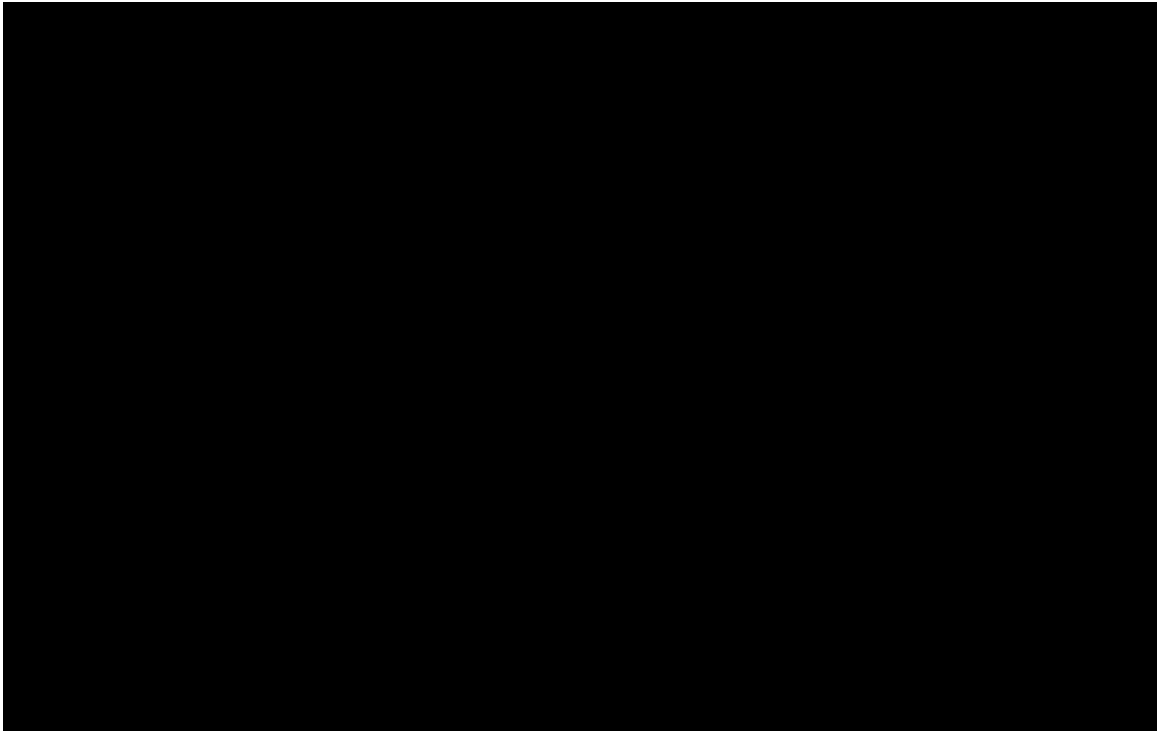
- The stamped approved plans;
- Letter of Determination of [REDACTED] Pt 2 – 28 August 1996;
- Letter confirming that the Conditions of Deferred Commencement have been satisfied and the development consent is operational – 3 October 1997; and
- Letter advising that substantial commencement has occurred and the development has been secured – 22 January 2008.

Substantial work has been carried out under the operative consent, including land clearing and construction of footings for some of the proposed buildings. Other vegetation remaining on the site and within the footprint of the approved development is also subject to the approval and can be lawfully cleared.

1.6.3 Vegetation cover

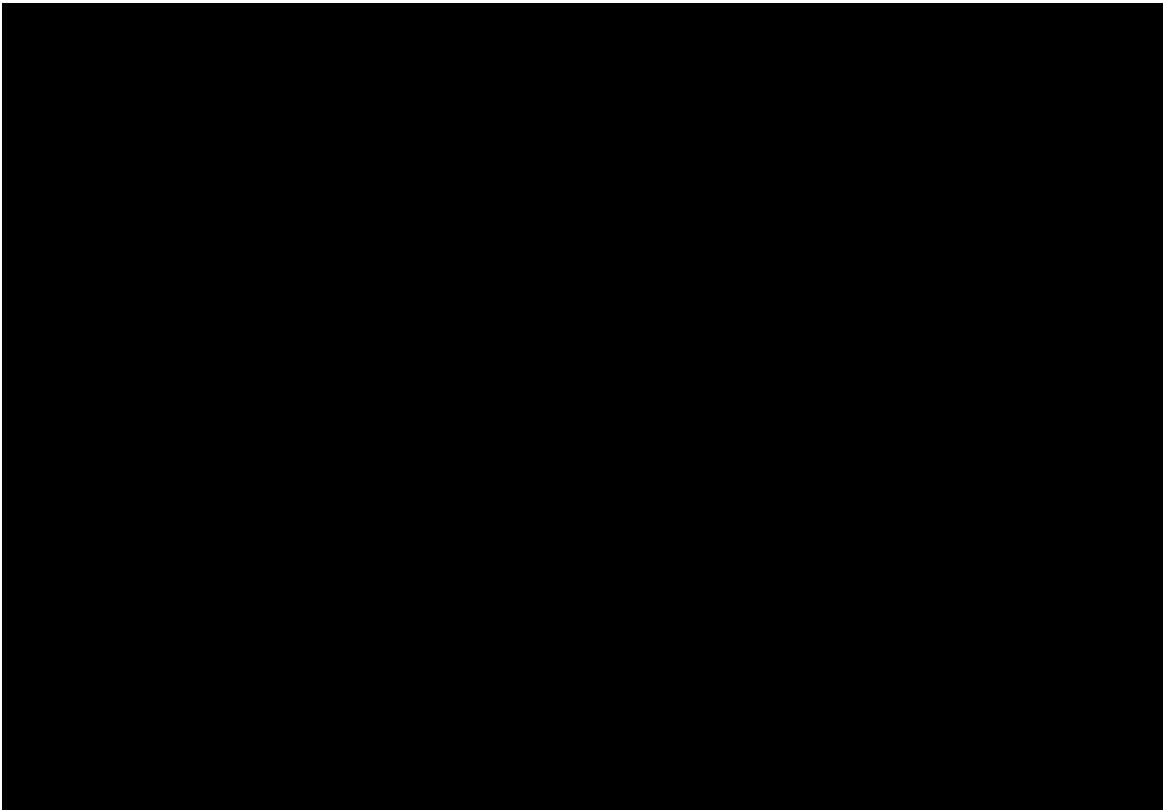
It is unclear what processes were followed by DPIE to inform the decision to zone the entire landholding as *Environment and Recreation* and to consequently categorise the land as *Non-Certified – Avoided for Biodiversity* in the draft CPCP.

To clarify the level of vegetation cover on the land in the past and currently, Cardno has carried out a review of historical aerial photography of the site (Figure 1-8). The aeriels indicate that the land was substantially vegetated until late 2015. After that time, progressive land clearing was carried out. The August 2020 aerial illustrates that the land is now almost completely cleared.



December 2009 – land substantially vegetated
Source: Nearmap

December 2015 - land remains substantially
vegetated. Source: Nearmap



February 2017 – northern portion of land
cleared
Source: Nearmap

August 2020 – current condition – land almost
completely cleared.
Source: Nearmap

Figure 1-8 Historical aerial photography of Subject Land.

1.6.4 Criteria for categorisation of land

The draft CPCP and the accompanying *State Environmental Planning Policy for Strategic Conservation Planning – Explanation of Intended Effect* provide the following criteria for categorising land

1.6.4.1 Certified land

Land that has been found to be capable of urban development and can be developed for urban purposes without the need for further site by site assessment or offsetting. Areas can only be biodiversity certified if measures under that certification adequately avoid, minimise and offset the development's impact on biodiversity values. (*State Environmental Planning Policy for Strategic Conservation Planning – Explanation of Intended Effect*, DPIE, 2020, p.2).

1.6.4.2 Excluded land

Excluded land is excluded from NSW strategic biodiversity certification and strategic assessment under the EPBC Act. These areas will not receive any biodiversity approvals under the Plan due to any of the following factors:

- *the land is already developed for urban use*
- *development is already underway on this land under a separate process*
- *the land is environmentally protected, including reserves and offset sites*
- *Commonwealth land sites (such as the Defence Establishment Orchard Hills)*
- *there are roads or easements on this land*
- *it has specific urban zoning such as business, industrial, residential or special purpose (either already developed or to be developed)*

(Draft CPCP, p.22)

1.6.4.3 Non-Certified land:

“Areas outside the certified-urban capable land but within the nominated areas will be ‘non-certified’ land and will not have biodiversity approval under the BC Act. There are two types of non-certified land: avoided land for biodiversity or other environmental purposes (riparian corridors or steep slopes) and non-certified land—Western Sydney Aerotropolis.

Avoided land 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."

Draft CPCP, 2020, P.20

Our opinion is that the Subject Land is not consistent with the criteria for Non-Certified Land because it is generally cleared of vegetation and does not does not exhibit sufficient biodiversity value to warrant exclusion from urban development.

Being subject to an existing and active development approval, the land should, in our opinion, be treated as capable of urban development. In this regard it is consistent with the criteria for certified land and should be categorised as *Certified*.

Alternatively, the land should be categorised as *Excluded* as it is clearly consistent with the following factor:

"development is already underway on this land under a separate process."

1.7 Conclusions and recommendation

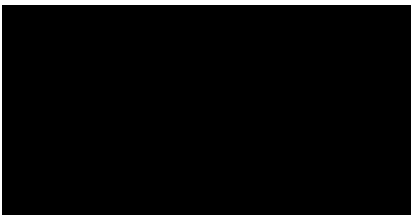
This is the third submission that has been prepared with regard to State Government planning for the land at Lot █ DP █ ████ Badgerys Creek. This submission reiterates the conclusions of the earlier submissions and makes the following conclusions with regard to the proposed categorisation of the entire landholding as *Non-Certified - Avoided for Biodiversity*.

- The zoning of the land as *Environment and Recreation* under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* is inappropriate as the land would not be capable of fulfilling the Objectives of the Zone.

- The appropriate zoning of the Subject Land under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* is *Enterprise*.
- The land in its current state, and subject to further approved removal of vegetation, has insufficient biodiversity value to warrant categorisation consequent to its zoning as *Non-Certified - Avoided for Biodiversity* in the *Cumberland Plain Conservation Plan*.
- The appropriate categorisation of the land in the *Cumberland Plain Conservation Plan* is either *Certified* or *Excluded*.

In this regard, we contend that the proposed categorisation of the land as *Non-Certified – Avoided for Biodiversity* in the draft *Cumberland Plain Conservation Plan* should be reviewed in accordance with these conclusions.

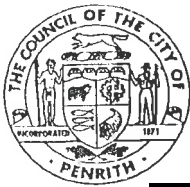
Yours sincerely,



John O'Grady
Manager Urban Planning
for Cardno



Enc: Letter of Determination of [REDACTED] Pt 2 – 28 August 1996 plus the stamped approved plans; Letter confirming that the Conditions of Deferred Commencement have been satisfied and the development consent is operational – 3 October 1997; and Letter advising that substantial commencement has occurred and the development has been secured – 22 January 2008.
Report – [REDACTED] - Ecological Investigation (Ecological Consultants Australia Pty Ltd, August 2020).



Penrith City Council

Our Ref:
Contact:
Telephone:

28 August 1996

LANSVALE NSW 2166

Dear Sir,

Erection and Operation of a Poultry Abattoir and Processing Facility
Badgerys Creek

Enclosed is Council's formal Notice of Consent in connection with the abovementioned proposal.

This Development Notice is a "deferred commencement" consent issued under Section 91AA of the Environmental Planning and Assessment Act, 1979. The information detailed in Schedule 1 of this Notice will need to be submitted to Council for approval. In this regard, a letter will be provided which formally confirms that the information has been approved by Council and enables the commencement of the development consent.

Conditions to the development consent are referred to in Schedule 2 of this Notice.

You are advised that the "deferred commencement" consent is unable to be commenced until after 28 days from the date of this notice in accordance with Section 93 of the Environmental Planning and Assessment Act 1979.

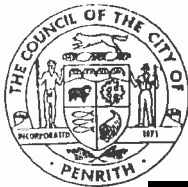
Prior to the preparation and submission of the Building Application to Council, you are advised to liaise with Council's Building Approvals and Environmental Protection Department with respect to essential services and the requirements of the Building Code of Australia.

Yours faithfully,

Liza Cordoba
for the Environmental Planning Manager

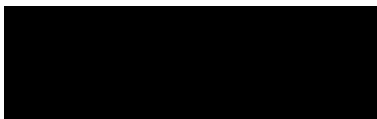
enc.

(PC116\d:\winword\consents\da960082.doc)



Penrith City Council

Our Ref:
Contact:
Telephone:



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF DETERMINATION

OF A DEVELOPMENT APPLICATION

Pursuant to Section 92 of the Act, notice is hereby given of the determination by the consent authority of the Development Application.

D.A. No.



Date of "deferred
commencement" Consent: 28 August 1996

Issued to:

Hondesse Pty Limited

Address:



LANSVALE NSW 2166 (Sydney)

Land to be Developed:



Proposed Development:

Erection and Operation of a Poultry Abattoir and Processing Facility. Plans Numbered DA-01'C', DA-02'C', DA-03'C', DA-04'C' received by Council on 31 July 1996.

Date of Determination:

19 August 1996

The Development Application has been determined by:

The Development Application has been determined by the granting of a “deferred commencement” consent under Section 91AA of the Environmental Planning and Assessment Act, 1979. Upon compliance with all conditions appearing in Schedule 1, and with the issue of confirmation to that effect in writing from Council, this “deferred commencement” consent shall commence to operate as a development consent, inclusive of all conditions appearing in Schedule 2, pursuant to Section 91 of the Act.

This consent will lapse in two (2) years from the date on which it commences to operate, unless development has commenced within that time.

This application was determined by Council at its meeting held on 19 August 1996. Minute No. 124.

The conditions of consent are set out as follows:

Schedule 1

- 1 An Environmental Management Plan is to be prepared and submitted to Council for approval. The Plan is to incorporate management and operational procedures for the development as it relates to noise, dust, odour, soil and waste management as well as the recommendations contained in the Environmental Impact Statement. In this regard the management and operational procedures are to focus on the following matters:

a) Effluent Irrigation and Associated Odour

The applicant shall submit details indicating that the soil is efficiently disposing of the effluent produced on the subject property and in effect, how potential odour impacts associated with the on-site irrigation of effluent will be mitigated. Prior to the approval of Council, the Plan is to be referred to the Federal Department of Transport and Regional Development for their concurrence.

Details are to include the preparation and maintenance of the soil for the purposes of effluent irrigation. In this regard, a comprehensive soil testing and monitoring program is to be provided for the subject property, with particular emphasis on phosphorus and sodium levels, as well as an analysis of the waste water.

A vegetative cover is to be provided and maintained in the 3 irrigation areas. Details are to be provided on the type of vegetative cover proposed.

Details are to be provided on a wet weather storage facility with a 10 day holding capacity to be utilised in those instances when on-site irrigation is prevented by wet weather.

Details are specifically to include how odour nuisances arising from the anaerobic dams may be minimised. This may include the method of

construction and maintenance programme for the dams, as well as the monitoring and management of both odour and vermin at the subject property.

b) *Solid Waste Management*

Details of how solid waste arising from the development will be stored and disposed of, including waste generated from the killing, processing areas and screen areas, as well as packaging waste.

c) *Dust*

The ambient dust deposition rate is not to exceed 4.0gm//m²/month for the development. The applicant shall submit advice from an air quality consultant indicating that the ambient deposition rate can be achieved, particularly during construction.

Details regarding the monitoring and management of dust emissions at the subject property are to be included, as well as dust suppression measures to be provided as part of the development.

d) *Noise*

Details are to specifically include the management and monitoring of noise, and where necessary, additional amelioration measures to be undertaken within the property.

- 2 Negotiations are to be initiated between Hondesse Pty Limited (the applicant) and Pacific Waste Management Pty Limited with the view to an agreement being reached between those parties for the applicant to contribute towards the ongoing maintenance of the Crown Road Reserve (being the "access road" off Elizabeth Drive) for the life of the poultry abattoir development. To ensure that an equitable agreement is reached, the contribution is to be calculated on the volume of heavy vehicle (truck) traffic generated by each development in each operational year, and is limited to that section of the access road between Elizabeth Drive and the proposed northern-most access driveway onto the subject property.

Schedule 2

- 1 This consent is limited to Stage 1 of the proposal, including a maximum of 15,000 birds to be processed per week. Stage 2 of the Poultry Abattoir and Processing Facility will require separate development approval of Council.
- 2 The submission of building plans and specifications under cover of a formal building application to the satisfaction of the Building Approvals and Environment Protection Department. It is to be noted that the consideration of this application has been limited generally to matters relating to site treatment and that detailed consideration has not been given to the internal layout of the building or matters controlled under the provisions of the relevant building requirements. Applicants are advised that it is in their interests to consult with Council's Building Approvals and Environment Protection Department with respect to these matters prior to the preparation of working drawings.
- 3 Submission of a schedule of proposed external finishes including samples of all external materials to be used for Council's consideration and approval concurrently with the submission of a Building Application. In this regard, it should be noted that the use of natural concrete block on external walls is not permitted.
- 4 Erosion and sediment control measures shall be provided to the satisfaction of Council and generally in accordance with the Department of Land and Water Conservation (Soil Conservation) standards. A detailed Soil and Water Management Plan shall be submitted to Council with the Building Application for approval. Approved measures shall be maintained until all disturbed areas have been revegetated to Council's satisfaction.
- 5 Improved architectural treatments are to be provided for the access road elevation of Stage 1 of the building. Details are to be submitted with the Building Application for approval following further discussions with Council's Environmental Planning Department.
- 6 The development site shall be landscaped and maintained with lawns and advanced shrubs and trees to the satisfaction of Council. A detailed landscape plan is to be lodged with the Building Application for approval and include:
 - (a) location of buildings, fences, roads, parking and storage areas;
 - (b) details of earthworks including mounding, dams and retaining walls;
 - (c) location and name of plant species;
 - (d) details of planting procedure and maintenance;
 - (e) barriers between landscaped and trafficable areas; and

- (f) provision of landscaping aligning the northern, southern and western boundaries of the development area.
- 7 The building area earmarked for Stage 2 of the development is to be suitably landscaped to minimise visual impacts resulting from the development. Details are to be included with the Landscape Plan, as required by condition 6 above.
- 8 No trees are to be cut down, lopped, destroyed or removed without the written approval of Council. In this regard, the applicant shall liaise with Council's Environmental Planning Department to arrange a joint site inspection prior to commencing site works.
- 9 An application for approval under Section 27 of the Noise Control Act, 1975 shall be made to the Environment Protection Authority. In this regard, evidence of such approval shall be submitted to Council prior to commencement of any work associated with the development.
- 10 Provision of noise attenuation measures as indicated in the accompanying Environmental Impact Statement. Details are to be submitted with the Building Application.
- 11 The use and occupation of the premises including all plant and equipment installed thereon shall not give rise to any offensive noise or vibration within the meaning of the Noise Control Act.
- 12 The operating noise level of plant and equipment shall not exceed the background level by more than 5dB(A).
- 13 Noise from the site during construction shall be controlled to reduce any disturbance or nuisance to nearby properties. The L10 noise level measured over a period of not less than 15 minutes when construction site is operating must not exceed the background level by more than 10dB(A).
- 14 Upon arrival into the development site, the live birds are to be stored in the enclosed holding area within the building.
- 15 All solid wastes are to be removed from the site in sealed tanks to minimise potential bird hazards impacting on the future operations of the Sydney West Airport.
- 16 The treatment and storage of waste liquids on the site should not encourage an increase in bird populations in the area.
- 17 Structures on the site are not to exceed the height limits imposed by the Obstacle Limitation Surface Plan for the Sydney West Airport.

- 18 Dust shall be controlled during construction works. This could include actions such as restricting topsoil removal, watering or sealing all roads where possible and amending construction practices during periods of high wind.
- 19 Only clean and unpolluted water shall be permitted to discharge to Council's stormwater drainage system.

To ensure this, a first flush stormwater management system shall be provided in accordance with the requirements of the Environment Protection Authority. Design details and evidence of approval by the Environment protection Authority shall be submitted with the Building Application.
- 20 A licence shall be obtained from the Environmental Protection Authority under the provisions of the Clean Waters Act, 1970 permitting the disposal of effluent from the processing plant and aerated septic system for permission to dispose of liquid wastes from the septic tank on the site. A copy of the licence shall be submitted to Council prior to occupation of the premises.
- 21 A 10 day wet weather storage facility is to be provided to accommodate wastes during rain periods when effluent irrigation is not possible. To determine these periods, soil moisture sensors are to be installed. Details are to be submitted with the Building Application.
- 22 The irrigation areas are to be rotated to allow a 10 day recovery period in accordance with the agronomic requirements of NSW Agriculture.
- 23 Any discharge to the atmosphere from the subject development shall comply with the requirements of the Clean Air Act.
- 24 There shall be no interference with the amenity of the area by reason of the emission of any unreasonable smell, odour, smoke, vapour or fumes as a result of the development.
- 25 A combined ingress and egress driveway measuring 8 metres wide is to be located parallel to the southern (side) boundary of the development area.
- 26 Separated ingress and egress access points, each measuring 6 metres wide, as well as a 1 metre wide median strip, are to be located parallel to the northern (side) boundary of the development area. Appropriate signposting and directional arrows are to be provided to Council's satisfaction. In this regard, a splay corner 2 metres x 2 metres is to be provided to the kerb.
- 27 Provision of heavy duty crossings to the satisfaction of Council. Paved vehicular footway crossings are to be provided at all points of ingress and egress to the satisfaction of and under the supervision of Council.

- 28 All delivery vehicles associated with the facility are to utilise the separated ingress and egress driveways. In this regard, details on the truck turning movements are to be shown on the Building Application.
- 29 A total of 22 off-street parking spaces are to be provided with the development, including, an allocated carparking space (measuring 5.5 metres long x 3.2 metres wide) is to be for a disabled person.
- 30 All parking spaces are to be permanently delineated to Council's satisfaction and have minimum dimensions 5.5m x 2.6m with a 6.7m turning aisle. The internal traffic circulation within the carpark shall be linemarked with directional arrows.
- 31 All security fencing is to be established behind the areas required to be landscaped and not on the road alignments.
- 32 All land required for vehicular access and parking shall be sealed in accordance with Council's requirements.
- 33 All vehicles are to enter and leave the development site in a forward direction.
- 34 A security gate for trucks associated with the development is to be located on the northern driveway, a minimum 30 metres from the road frontage. Details are to be submitted with the Building Application.
- 35 Exterior lighting shall be located so as to avoid any nuisance to neighbouring properties. Details on the lighting to be used as well as its location are to be submitted with the Building Application.
- 36 Prior to the release of the Building Approval, a Fire Safety Study and Emergency Plan shall be submitted to and approved by Council. The study will be referred to the Fire Brigade for comment.

The Fire Safety Study and Emergency Plan shall include an investigation of the following matters:

- a) Details of potential hazardous incidents, including the consequences of a credible incident involving explosion/fire.
- b) An outline of all fire prevention, protection, fire fighting measures and appliances.
- c) Details of emergency plans and procedures for the subject property.

The fire safety study and emergency plan shall be submitted to Council within six (6) months of the endorsed date of this consent.

- 37 The burning of waste of any kind is prohibited under the Clean Air Act, 1961. All waste materials shall be stored in suitable containers for disposal.
- 38 A facility for collecting, treating and disposing of concrete wastes generated in the construction of the development is to be installed on the site. The installation of the concrete waste facility must comply with the Concrete Wastes Guide (EPA 1995). Full details are to be submitted with the Building Application.
- 39 Submission of a letter from Integral Energy stating that all its requirements have been satisfied, prior to the release of the Building Approval.
- 40 A Section 73 Certificate under the Water Board (Corporatisation) Act 1994 is to be submitted to Council, stating that satisfactory arrangements have been made with Sydney Water for the amplification and/or water and sewerage services to the land prior to the release of the Building Approval.
- 41 The recommendations contained in the Environmental Impact Statement, prepared by Dick Benbow and Associates Pty Limited to contain air, noise and water pollution are to be fully implemented under the supervision of the consultant.
- Upon the completion of all works, Dick Benbow and Associates Pty Limited shall certify in writing to Council, that all the control measures in the statement comply in all respects with the relevant Acts and his recommendations to overcome all the sources of pollution. This certificate shall be submitted to Council prior to commencement of the use.
- 42 Trucks to and from the subject property are limited to between 6.00am and 5.00pm, each operational day.
- The hours of operation of the plant is limited to 6.00am and 3.00pm, each operational day. No operation is to occur on Sundays.
- Any extension to the operating hours will require the further consent of Council.
- 43 The maximum production capacity of the development is 15,000 birds per week. Any increase to the production capacity will require the further consent of Council.
- 44 The development is to be operated in accordance with the procedures outlined in the approved Environmental Management Plan. A review of the management and operational procedures contained in the Plan is to be undertaken on an annual basis. A report of this review is to be submitted to Council by the operator.

- 45 The continued maintenance of that section of the access road, between the site's northern-most access point and Elizabeth Drive, to Council's standard specification. The level of maintenance liability is to be apportioned on the basis of the total truck volumes associated with the proposed abattoir development, compared with those generated by the extraction industry operation conducted by Pacific Waste Management Pty Ltd located at the northern end of the access road, generated in each operational year.

Advice:

- The building is to have a Type B fire-resisting construction under the requirements of the Building Code of Australia. The applicant is to consult with Council's Building Approvals and Environment Protection Department prior to the submission of the Building Application.
- Egress from the building shall comply with Part D1 of the Building Code of Australia.
- The Fire Safety Study and Emergency Plan is to be prepared by a qualified hydraulic engineer and shall consider the requirements of the Australian Standards AS2419-1994 and the Building Code of Australia. The plan is to be submitted to Council in accordance with Condition 37 of the development consent.
- Access and facilities for persons with disabilities shall be provided to the building in accordance with the requirement of the Building Code of Australia and Council's Access policy.
- The applicant is to consult with Council's Public Health Services Unit in respect to the food premises prior to the preparation of the Building Application, to ensure compliance with the Food Act and Regulations.

These conditions have been imposed for the following reasons:

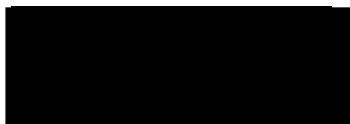
1. To ensure compliance with the terms of the relevant Planning Instrument.
2. To ensure that no injury is caused to the existing and likely future amenity of the neighbourhood.
3. Due to the circumstances of the case and the public interest.
4. To ensure that adequate road and drainage works are provided.
5. To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities.
6. To ensure that requirements relating to Health and Building matters will be met.
7. To ensure that access, parking and loading arrangements will be made to satisfy the demands created by the development.

Notice is hereby given of the right of appeal against the decision of Council pursuant to the Environmental Planning and Assessment Act, 1979.

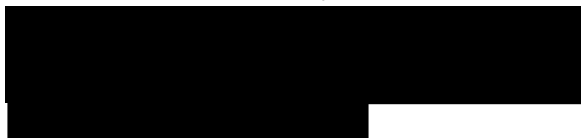
The granting of the above application does not relieve the Applicant of the obligation to obtain any other approval required under the Local Government Act, 1993, or any other Act and Ordinances under such Acts.

Liza Cordoba
for the Environmental Planning Manager

Dated this Twenty third day of August 1996



22 January 2008



FAIRFIELD NSW 2165

Dear Mr D'Onofrio,

**[REDACTED] for the Proposed Poultry Abattoir Processing Facility
at [REDACTED] Badgery Creek**

I refer to the above development application and your letter dated 7 November 2006 along with the submitted documentations to indicate that certain construction works were carried out prior to the expiry of the consent notice.

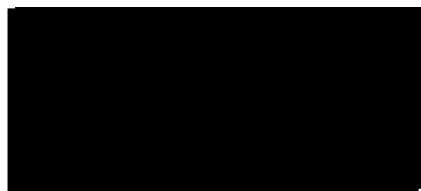
You are advised that Council's Officer has now inspected the site and noted that the footing excavation and reinforced concrete pours were carried out are still in place. In view of the site inspection and documentations provided by you which included

- a letter from Peter Marcus Consulting Engineers Pty Ltd dated 16 June 1999 to demonstrate that foundation works were carried out and were structurally sound,
- a facsimile sent by Rhodes Thompson Associates dated 12/3/1999 to indicate that earth works involving clearing of the pegged development area,

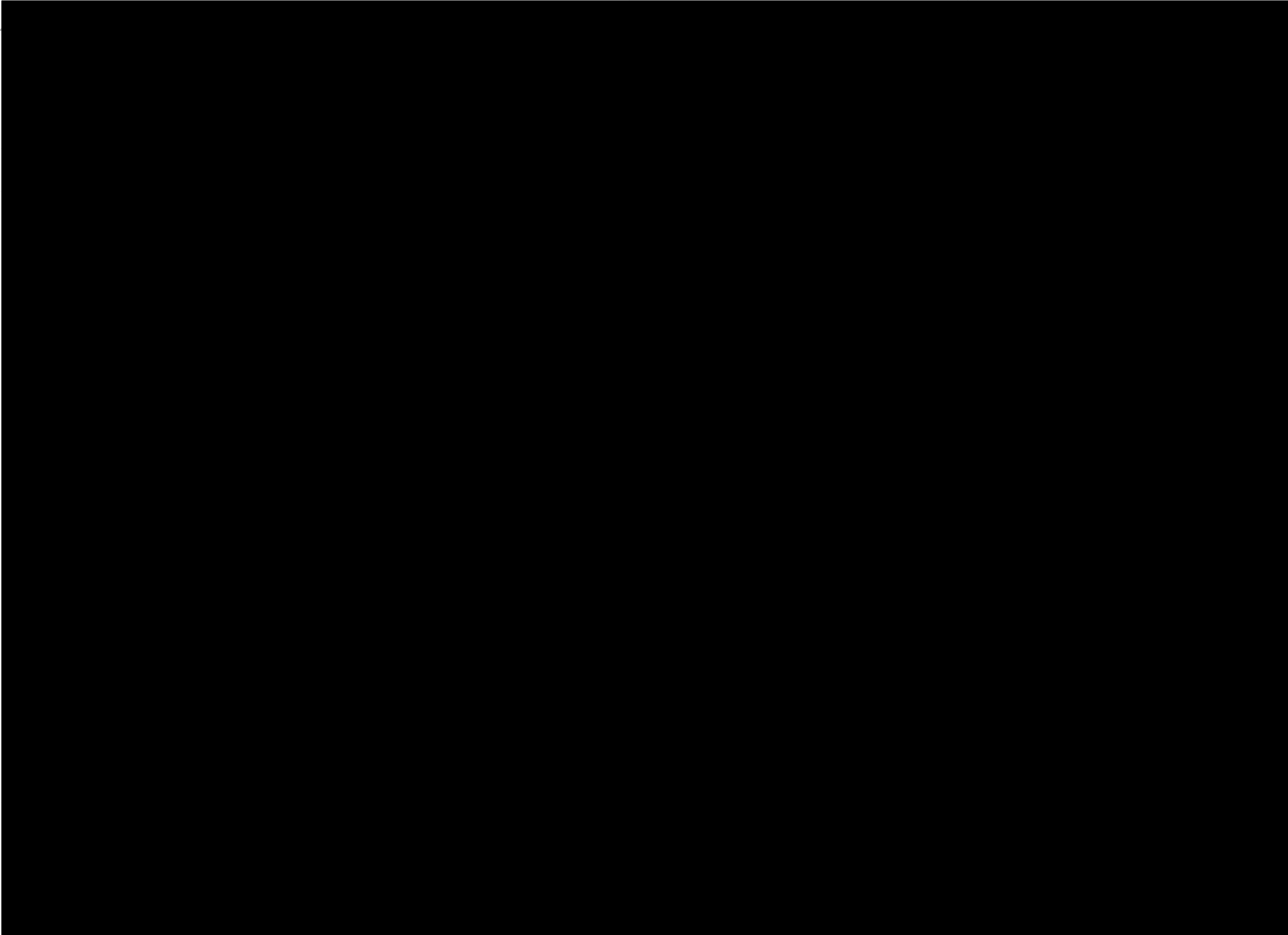
Council has now concluded that substantial construction works have been carried out on site in accordance with the approved plan prior to the expiry date of the relevant consent and advise that the consent issued for the above development has now been secured. You are reminded that all conditions of the Consent Notice No.960082 dated 28 August 1996 and Building Permit No.973429 dated 11/02/1998 must be complied with prior to the occupation of the building and commencement of the use/business.

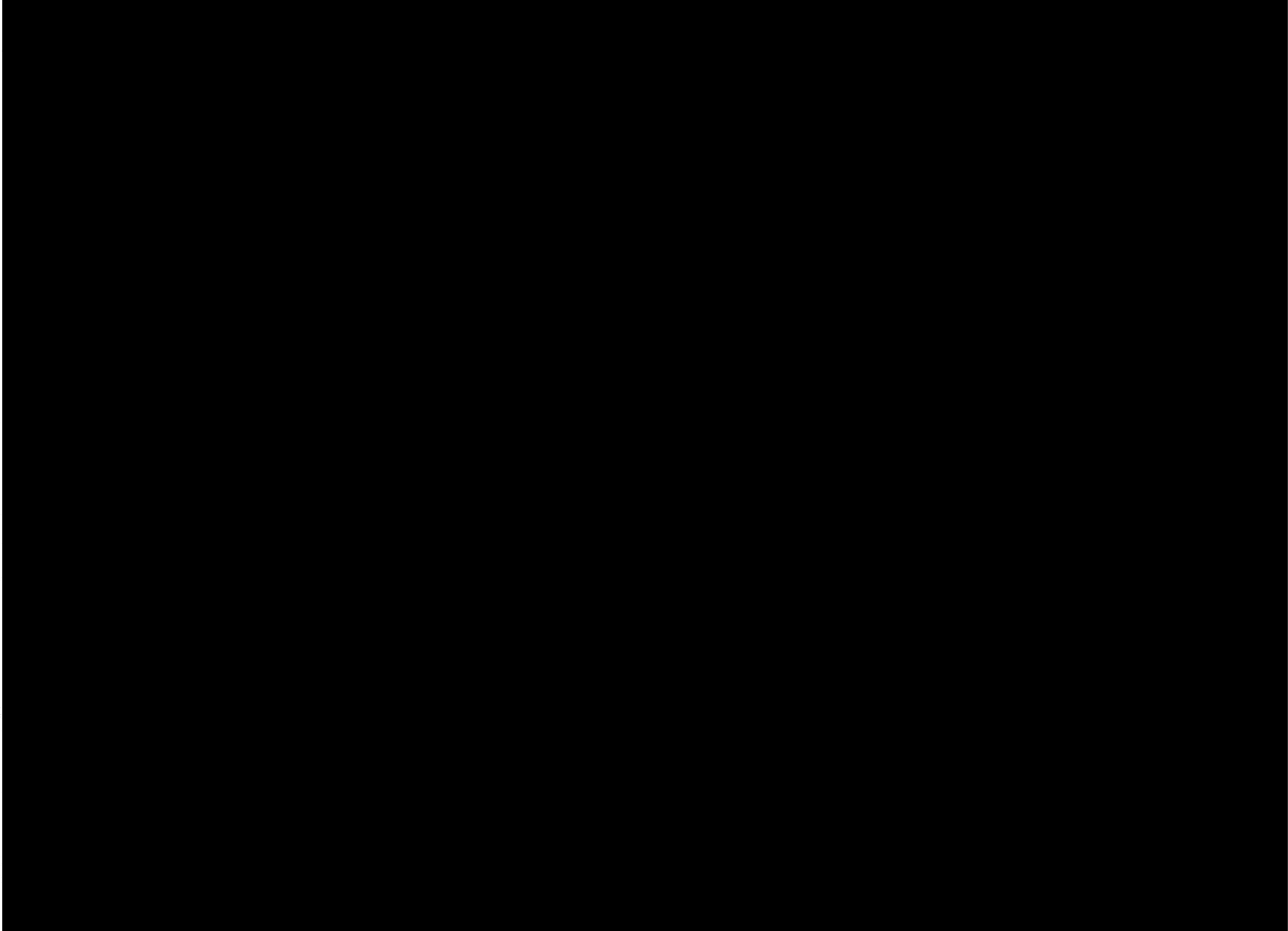
If you have any queries regarding this matter, please contact me on [REDACTED] or Warwick Stimson on [REDACTED]

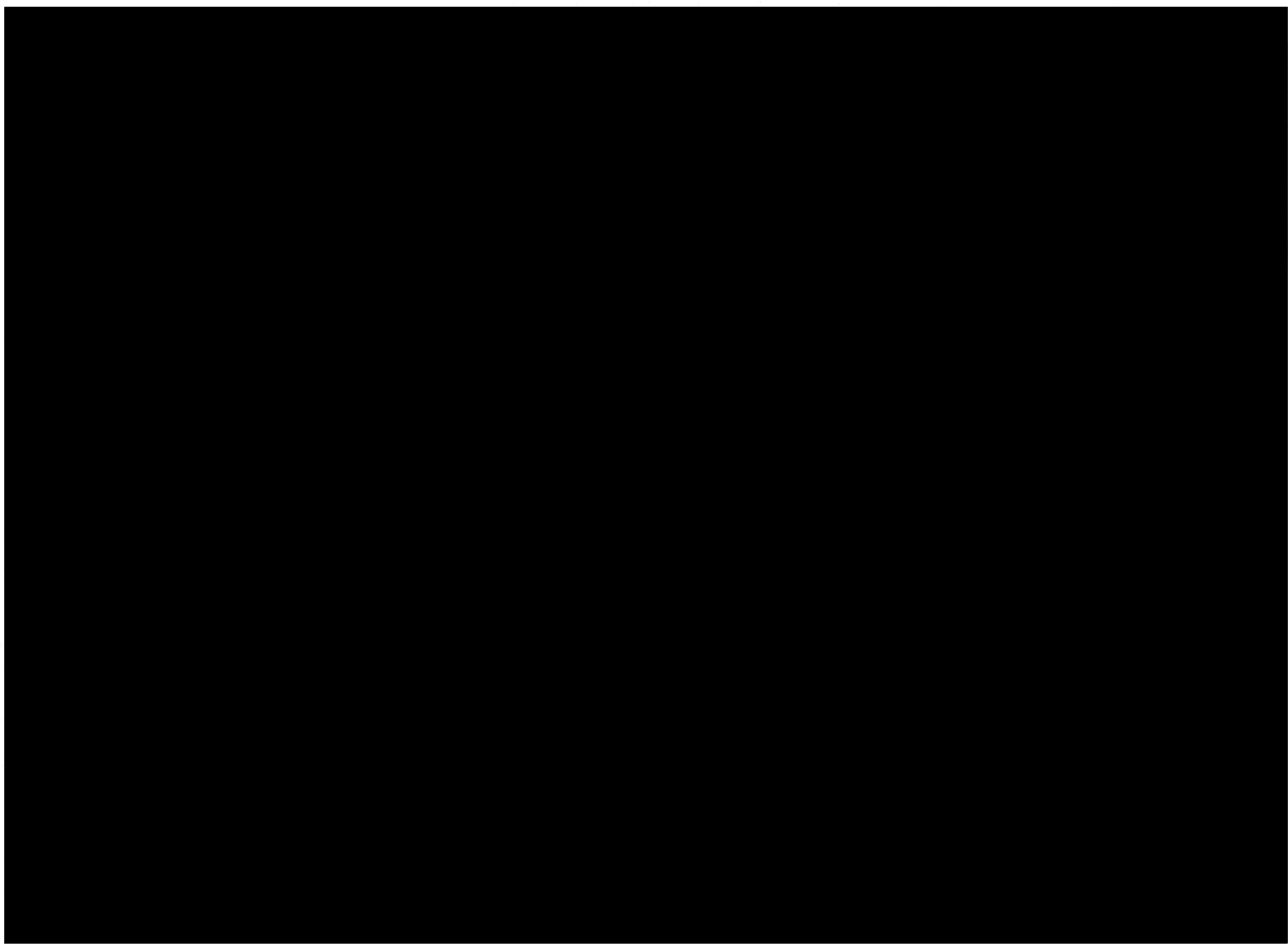
Yours faithfully,

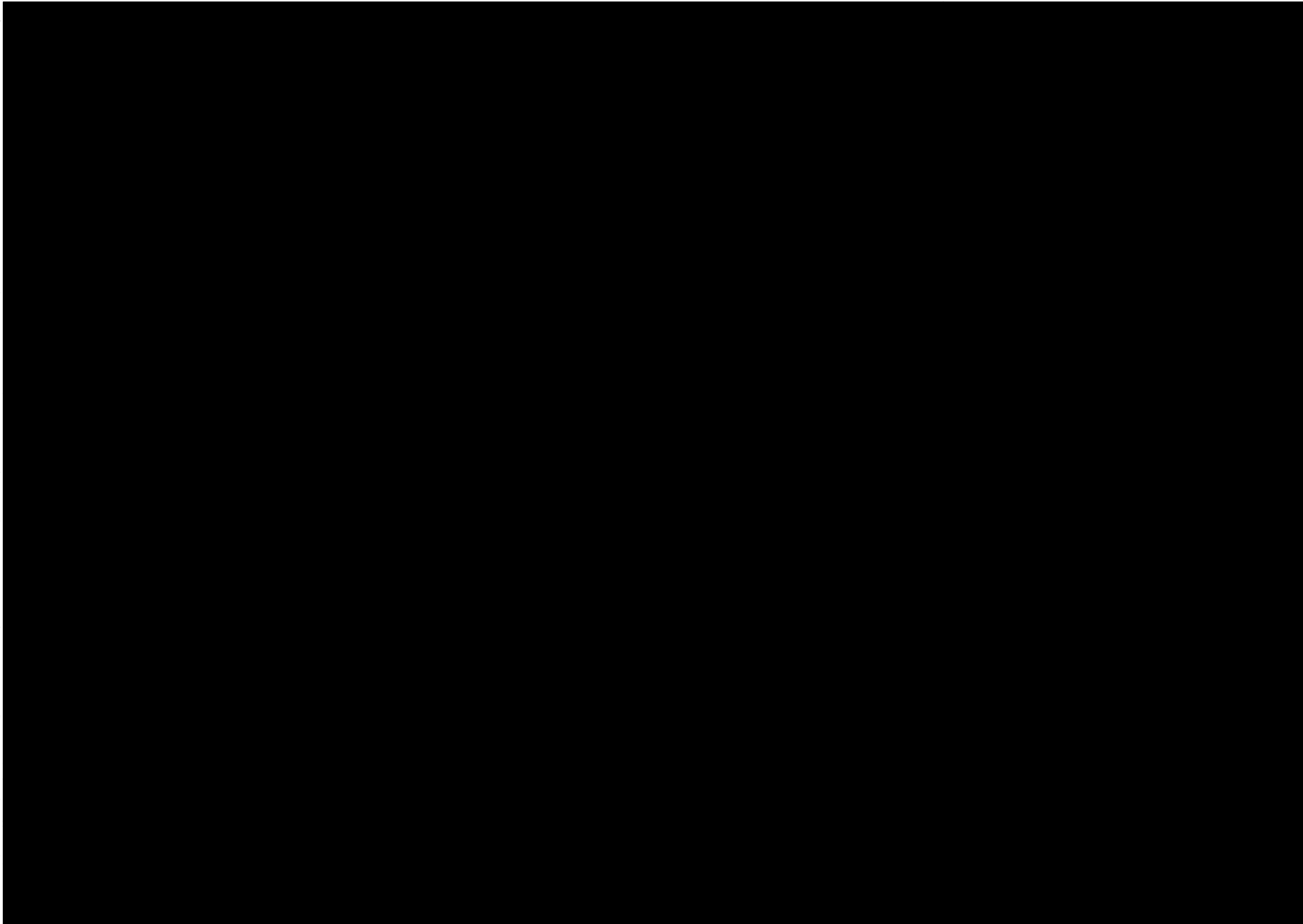


**Pukar Pradhan
Senior Environmental Planner**









LANING
Net. Banjeng

Stamp-approved EIMP
refer Attachment File Pt 3
Copy of Approved plans on Pt 2 File
(Folio 72)

Badgerys

Creek, NSW, 2555

Ecological Investigation

By Ecological Consultants Australia Pty Ltd TA

Kingfisher Urban Ecology and Wetlands

August 2020



About this document

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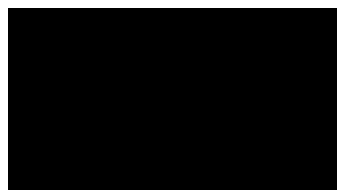
This study and report was undertaken by Ecological Consultants Australia at Studio 1/33 Avalon Parade, Avalon. The author of the report is Geraldene Dalby-Ball with qualifications BSc. majoring in Ecology and Botany with over 20 years' experience in this field and Jack Hastings with qualifications B EnvSc.

Limitations Statement

Information presented in this report is based on an objective study undertaken in response to the brief provided by the client. Any opinions expressed in this report are the professional, objective opinions of the authors and are not intended to advocate any particular proposal or pre-determined position.

Document Control Sheet	
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Version:	Final
Author:	Jack Hastings and Geraldene Dalby-Ball
Date:	August 2020
File location:	C:\Users\Geraldene\Dropbox\ECA 4 Projects\2 Projects\2019-2020\Badgerys Creek, NSW, 2555
Distribution:	Mr Manuel Caruana Langway Pty Ltd Lansvale NSW 2166. ACN 001 486 924

Signed: Geraldene Dalby-Ball – Director of Ecological Consultants Australia



Executive Summary

Ecological Consultants Australia (ECA) has been contracted by Nicolas Israel on behalf of the property owner Mr Manuel Caruana of Langway Pty Ltd to provide an ecological investigation at [REDACTED] Badgerys Creek, NSW, 2555 ("the site").

Ecologists have concluded that works for the approved DA; Poultry Processing Plant - [REDACTED] had been substantially commenced at the time of 'unauthorized clearing' on site at [REDACTED] Badgerys Creek, NSW. Penrith City Council has also acknowledged substantial commencement of the DA 960082 in a letter dated 22/01/2008, see section 5. Therefore, the unauthorized clearing zones would only be applicable to areas outside of the approved DA footprint.

Ecologists have undertaken an ecological investigation to determine the impact on vegetation and possible mitigation measures which may be applicable. Field survey data was gathered as per BAM methodology and entered into the Biodiversity Assessment Method Calculator (BAM-C) to determine the cost of possible offset measures as prescribed by the Biodiversity Conservation Act 2016 (BC Act).

The investigation also concluded that it is unlikely vegetation outside of the approved DA footprint, which was removed in 2018, would have significantly contributed towards the long-term survival of Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion. As identified in historical imagery, the impacted vegetation (outside of approved DA footprint) appears to be in marginal condition due to obvious disturbances within the zone. It is recommended however, that impacts be offset, either on site and/or within adjoining lots within the vegetation corridor.

Conclusions

- The approved DA; Poultry Processing Plant - DA [REDACTED] had been substantially commenced at the time of 'unauthorized clearing' on site.
- It is unlikely vegetation outside of the approved DA footprint, which was removed in 2018, would have significantly contributed towards the long-term survival of the vegetation community.
- Impacted vegetation (outside of approved DA footprint) appears to be in marginal condition – identified via historical imagery.
- Vegetation now cleared (that was present at time of DA approval) but outside the DA approved footprint is approximately 1.49ha (figure 3.1).
- If the 1.49ha was quality vegetation (as per the plot taken on-site) the credit costs for off-setting this is around [REDACTED]. It has been concluded that this area was 30% of the value of the official plot conducted in 2020 in the quality remaining vegetation.
- Based on this finding, the off-set value for the area cleared would be calculated at 30% X [REDACTED]. Therefore, the expected off-set cost is [REDACTED].

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1 Introduction

Ecological Consultants Australia (ECA) has been contracted by Nicolas Israel on behalf of the property owner Mr Manuel Caruana of Langway Pty Ltd to provide an ecological investigation at [REDACTED] Badgerys Creek, NSW, 2555 ("the site").

The report aims to determine the impact of recent vegetation clearing on site. A site investigation was conducted in July 2020 by senior ecologist Geraldene Dalby-Ball (accredited bio-bank assessor). The field survey data was gathered as per BAM methodology.

1.1 Site information and general description

The Subject Site (the "Site") is defined as the whole of the property. The site is identified at Lot [REDACTED] Badgerys Creek NSW. The site area is located within the City of Penrith Local Government Area (LGA) and covers approximately 10.1 ha.

The site has been modified and native vegetation removed in some areas. The cleared land is used to crush and store gravel, sand and plant equipment. Site offices and sheds are also located on cleared land. Native vegetation is not mapped on the Biodiversity Values Map (BVM) (DPIE 2020), nor is it mapped on council's Terrestrial Biodiversity layer under the Penrith Local Environment Plan 2010.

1.1.1 Approved DA

The approved DA was for a Poultry Processing Plant - [REDACTED] All information which is relevant to the approved development application (DA) has been provided by the client.

As detailed in a letter from Penrith City Council (dated 22/01/2008), the approved DA for a Poultry Processing Plant [REDACTED] had been substantially commenced prior to the unauthorised clearing on site. Therefore, the unauthorised clearing zones would only be applicable to areas outside of the approved DA footprint.

Table 1 - Site Administrative Information

Category	Details
Title Reference (Lot/DP)	[REDACTED]
Area (ha)	10.1Ha
Street Address	[REDACTED] Badgerys Creek, NSW, 2555.
LGA	City of Penrith Local Government Area (LGA)
Land Zoning	RU2: Rural Landscape <i>'Environment and Recreation' in the Draft Western Sydney Aerotropolis Plan.</i>

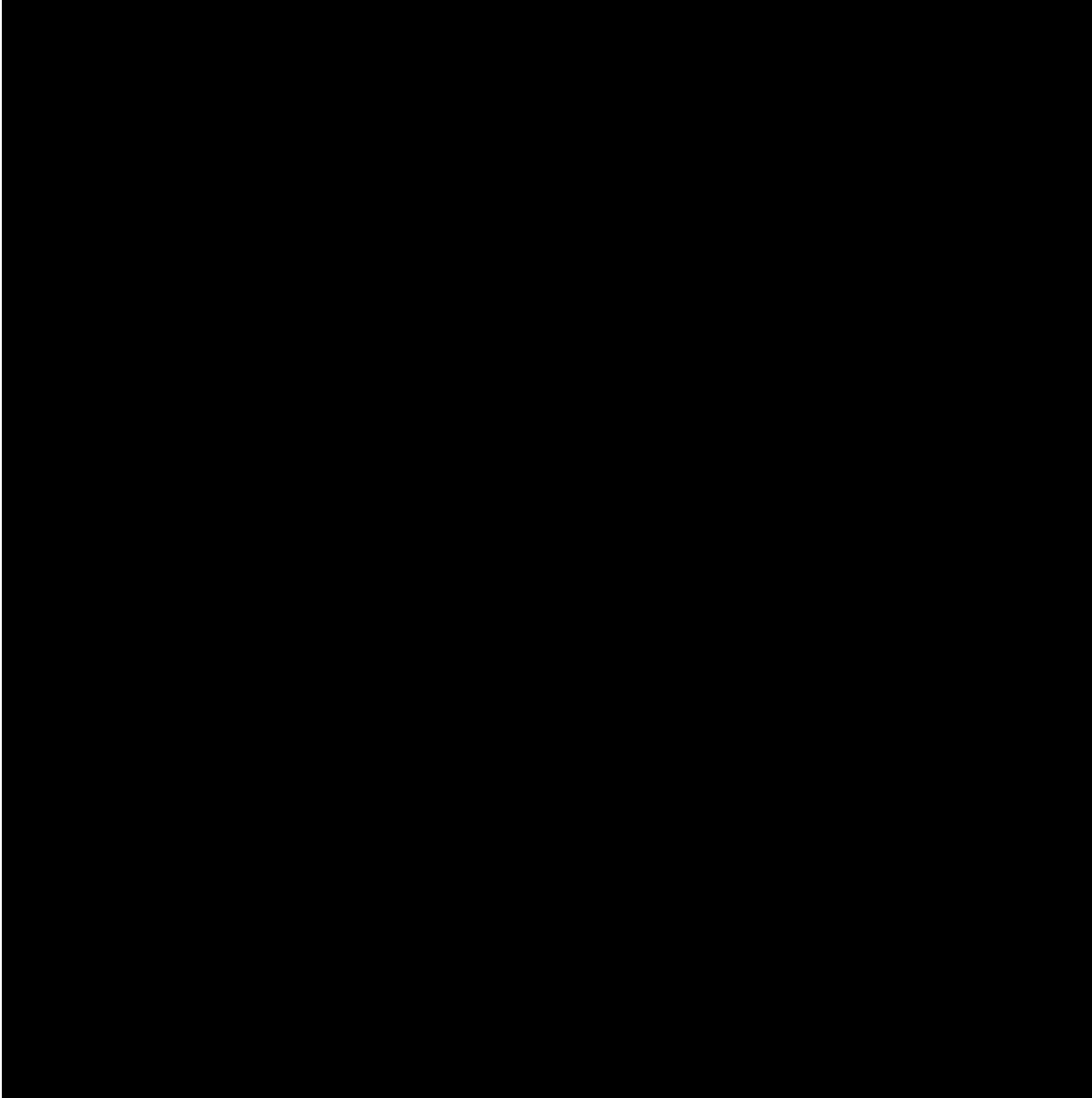


Figure 1.1. Site of the proposed development. Source of aerial SixMaps 2020

2 Landscape features

The site is located within agricultural/rural/light industrial setting. The surrounding properties are made up of agricultural (Cropping) rural (grazing and pasture paddocks) and patches of native bushland.

Desktop results – Plant Community Types (PCTs) and Vegetation Zones

A review of the most up-to-date vegetation mapping, CumberlandPlainWest_VIS__4207 OEH (2016), identified two plant community types (PCT) within site. The PCT are identified as;

Table 3 – Table of vegetation community synonyms as per NSW and Commonwealth legislation.

NSW PCT Code	NSW PCT Name	BC Act 2016	EPBC Act 1999
724	Broad-leaved Ironbark - Grey Box - Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion	Shale Sandstone Transition Forest in the Sydney Basin Bioregion State Conservation: Critically Endangered Ecological Community (CEEC)	Shale Sandstone Transition Forest in the Sydney Basin Bioregion Commonwealth Conservation: Critically Endangered (CE)
725	Broad-leaved Ironbark - Melaleuca decora shrubby open forest on clay soils of the Cumberland Plain, Sydney Basin Bioregion	Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion State Conservation: Endangered Ecological Community (EEC)	Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion Commonwealth Conservation: Critically Endangered (CE)

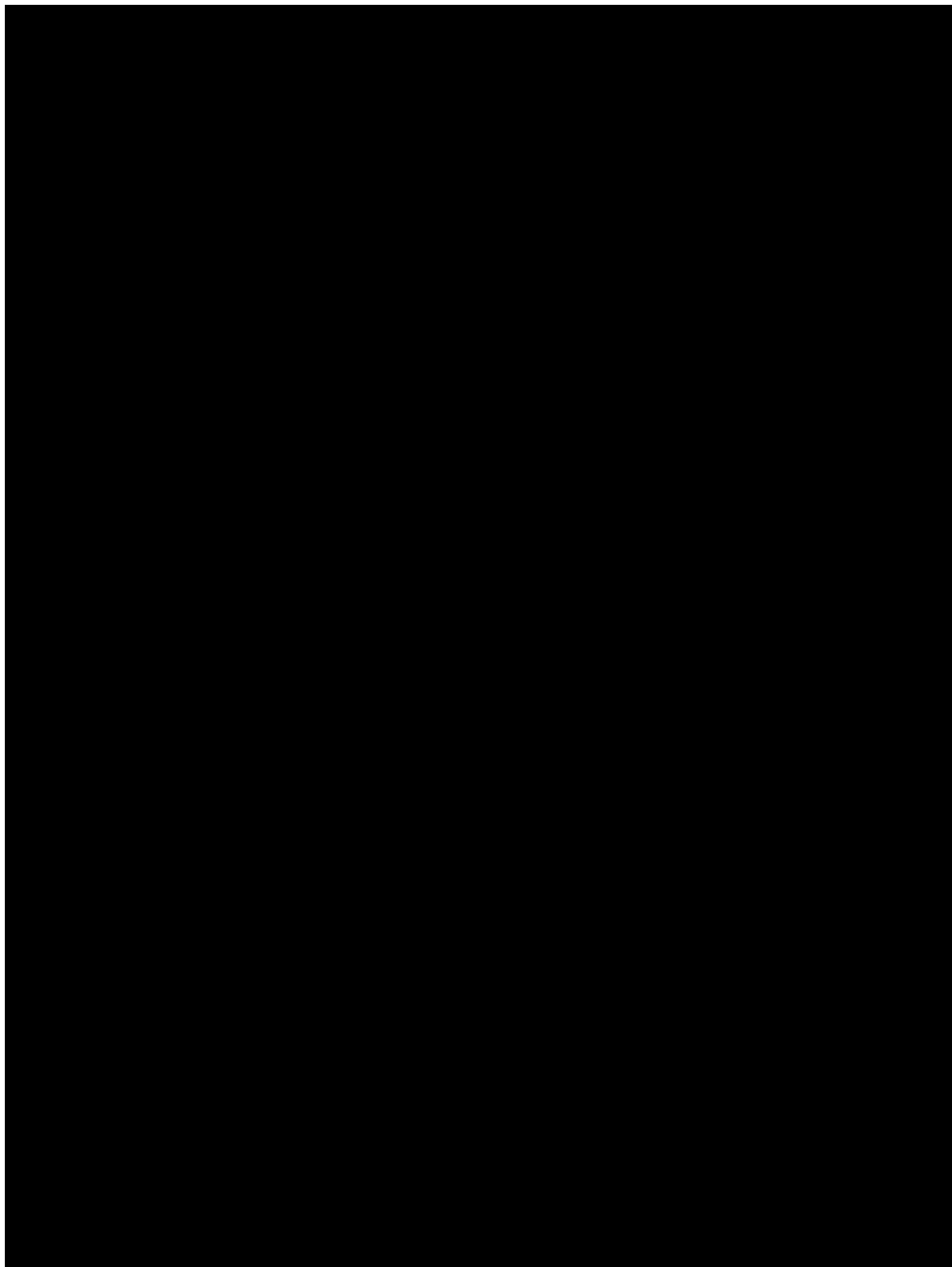


Figure 2.0. Subject site within mapped remnant vegetation surrounding the property. Source: Kingfisher 2020.

2.1 Field survey – PCTs and Vegetation Zones

2.1.1 Field Survey

The field survey revealed a highly-disturbed site. Vegetation has been assessed as Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion (PCT725). This finding was concluded following desktop investigations and field assessments.

The site has been modified such that many areas do not reflect the natural attributes of the original vegetation community. The patch of retained vegetation is in marginal condition and appears to be

resilient. There is a moderate abundance of weeds within this patch and bush regeneration techniques are recommended to maintain bushland resilience.

Dillwynia tenuifolia has previously been recorded on site (Lersyk Environmental, 2017). The area of vegetation in which the species is expected to occur has been retained. Again, the area has a moderate abundance of weeds and the immediate surrounding areas are significantly modified such that the species is unlikely to occur.

Stratification and plot dimensions

During the field investigation, a vegetation survey was conducted in the patch of retained vegetation. The plot was conducted as per the BAM Method with 20x20 plots (400m²) for assessing structure and composition with a center line extending 50m to create a 20 x 50 plot (1000m²) to assess function. See Biodiversity Assessment Method Operational Manual – Stage 1 (OEH 2018) page 26-28 for methods used.

2.1.2 Surrounding land use

Land use in the surrounding area comprises of a mix of rural, waste and resource recovery activities within the RU2 land zone.

Figure 1 (below) shows the location of those waste management and resource recovery facilities within close proximity of the subject site. These include Suez Resource Recovery Park (off [REDACTED]), Brandown Quarries (off [REDACTED]), Hi Quality Group (off [REDACTED]), Australian Native Landscapes (Martin Road), Wanless Sydney Recycling Park (Clifton Avenue).

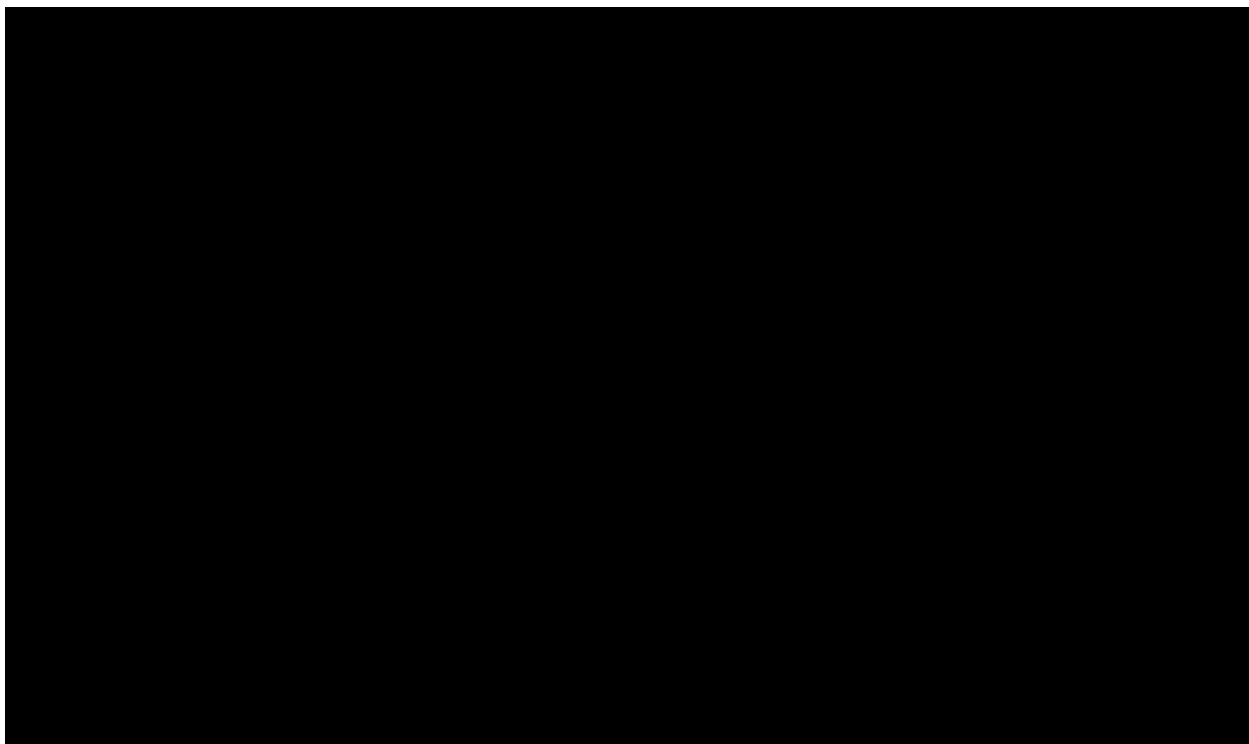


Figure 1 (below) shows the location of those waste management and resource recovery facilities within close proximity of the subject site. (Subject site – yellow arrow).

2.2 Discussion

Penrith City Council is continuing to investigate the clearing of vegetation on the premises. It must be noted that Penrith City Council has acknowledged substantial commencement of the DA in a letter dated 22/01/2008, see section 5. Therefore, any vegetation within the impact area for the approved DA had approval to be removed. As such, unauthorised clearing allegations are only applicable to areas outside of the approved DA footprint.

Ecologists have used this determination to conduct an impact investigation for areas effected by vegetation removal and modification in 2018. Ecologists have concluded that due to the condition of vegetation on site and surrounding land uses. It unlikely that the vegetation removed would have significantly contributed to the long-term survival of Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion.

The approved plan for the Poultry Processing Plant has been overlaid (via GIS geo-referencing) to determine the expected impact area of the approved DA. The expected impact area for the Poultry Processing Plant DA included; the building footprint, evaporation ponds, proposed landscaping areas and access roads. Estimates indicate that 8.59ha is approved for disturbance/removal as part of the DA 960082. Therefore, 1.51ha of vegetation would have been retained, outside of the approved disturbance/removal areas, see section 8 for the estimated disturbance zones for the approved DA.

In comparison, large areas of native vegetation have been retained on site and it had been concluded that the current area of retained vegetation is 1.55ha. As such, there is no significant difference in the net area of disturbance, when comparing the current condition of the site and the approved (expected) condition.

Additionally, ecologists have predicted that the current patches of retained vegetation are of higher conservation significance than the native vegetation which would have been retained under the Poultry Processing Plant DA. Historical aerial imagery shows a vehicle track divides the southern zone and the area also appears to lack mid and upper stratum diversity. It is expected that this area (if retained) would not have significantly contributed to the long-term survival of the vegetation community on site.

Figure 3.1 outlines the approved DA footprint, current areas of retained vegetation (1.55ha) and the disturbed areas, outside of the DA footprint (1.49ha).

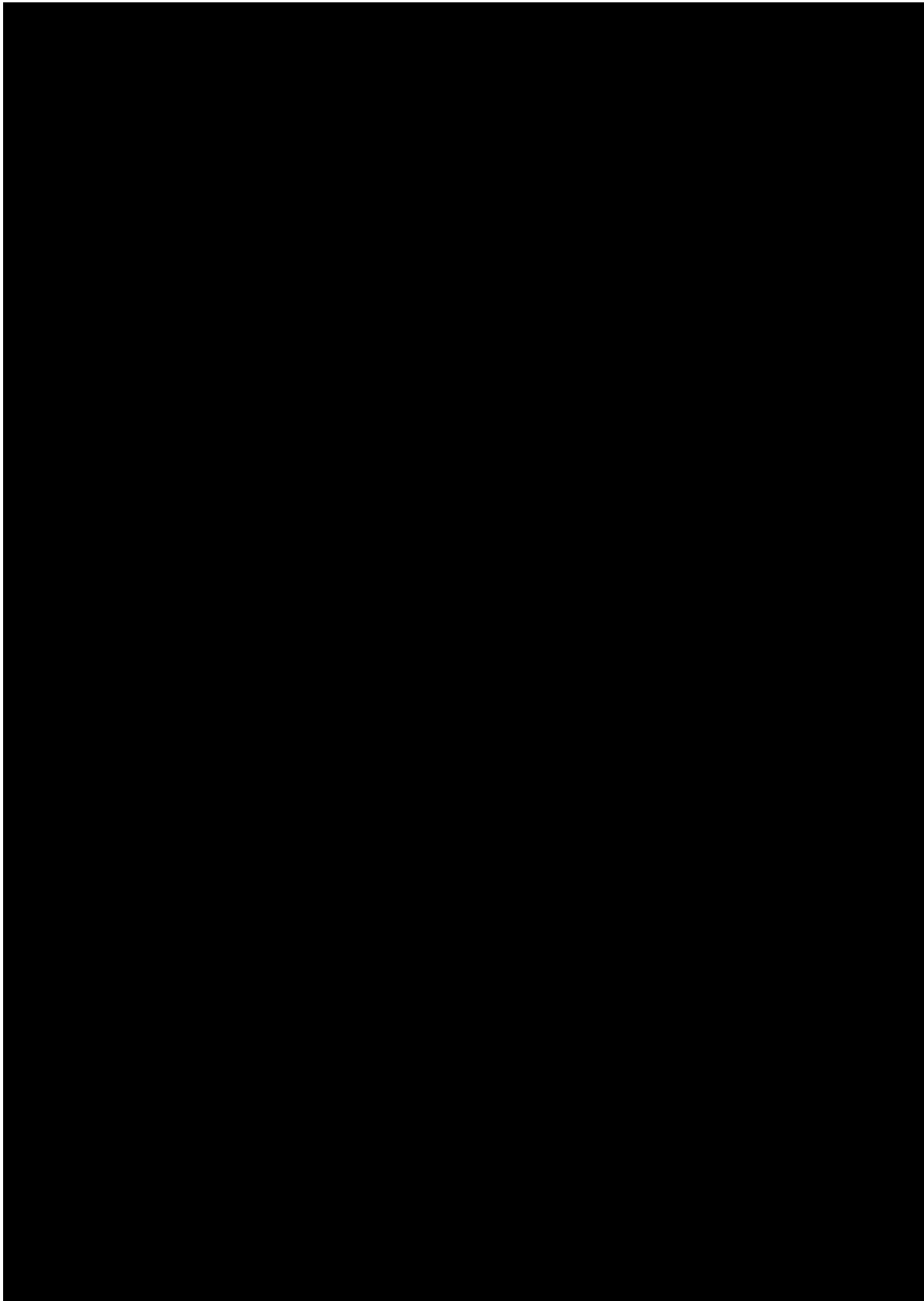


Figure 3.1. Approved plan for the Poultry Processing Plant, overlaid via GIS geo-referencing.

Plate 1: Historical imagery from 1998, 2006, 2009 and 2015 and Area 2 outlined in red. – Area 2 as per NOTICE TO PROVIDE INFORMATION AND RECORDS. DC17/0676.

Contact: Andrew Reece”

2.3 Impact Evaluation – BAM credit estimates

Field data was gathered using the BAM Method, with 20x20 plots (400m²) for assessing structure and composition with a center line extending 50m to create a 20 x 50 plot (1000m²) to assess function. See Biodiversity Assessment Method Operational Manual – Stage 1 (OEH 2018) page 26-28 for methods used.

This data enabled ecologists to determine the credit obligations which may be applicable in order to offset the unauthorised clearing, outside of the approved development footprint. Vegetation on site has been assessed as Cooks River/Castlereagh Ironbark Forest (TEC) in the Sydney Basin Bioregion (PCT725). This finding was concluded following desktop investigations and field assessments.

Vegetation now cleared (that was present at time of DA approval) but outside the DA approved footprint is approximately 1.49ha (figure 3.1). If the 1.49ha was quality vegetation (as per the plot taken on-site) the credit costs for off-setting this is around [REDACTED]. From plate 1, it can be seen that the vegetation in the zone is not dense vegetation (as represented by the plot data used in this study). Based on examination of nearby areas with current similar aerial imagery it is expected that this area was 30% of the value of the official plot conducted in 2020 in the quality remaining vegetation.

Based on this finding, the off-set value for the area cleared would be calculated at 30% of the [REDACTED]. Therefore, the expected off-set cost is [REDACTED].

3 Offset and Mitigation measures

To protect and enhance the viability and integrity of the remaining bushland on site, ecologists have recommended the following mitigation measures. It is recommended that impacts be offset either on site and/or within adjoining lots within the same vegetation corridor.

3.1.1.1 Exclusion zones and delineation of works zone

The vegetation which remains on site should be enclosed by exclusion zone fencing and signage erected to ensure personnel on site do not impact on the area. The fencing should ideally be an open mesh or bar type structure to allow air flow and light through and provide continuity with adjacent vegetation so as not to impede the function of a vegetation corridor. There must be openings underneath the barrier to allow for small fauna movements.

3.1.1.2 Native landscaping and bush regeneration

Activities including weed removal, removal of foreign materials, mulching and sediment controls and tube stock planting are recommended for the site. Replacement plantings are one of several best practice measures, to retain and support the long-term survival of the vegetation on site. It is recommended that seeds are collected from the site. Seedlings can then be propagated and planted once established. Landscaping across the site should be selected from locally native ground and shrub species.

Low impact bushland regeneration methods should also be utilised to meet weed control performance targets. The bushland on site displaying signs of resilience. The area is expected to recover naturally with appropriate and continuous maintenance of the native vegetation on site. Should tube stock be required, species should be selected from the Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion species list.

4 Site Photos

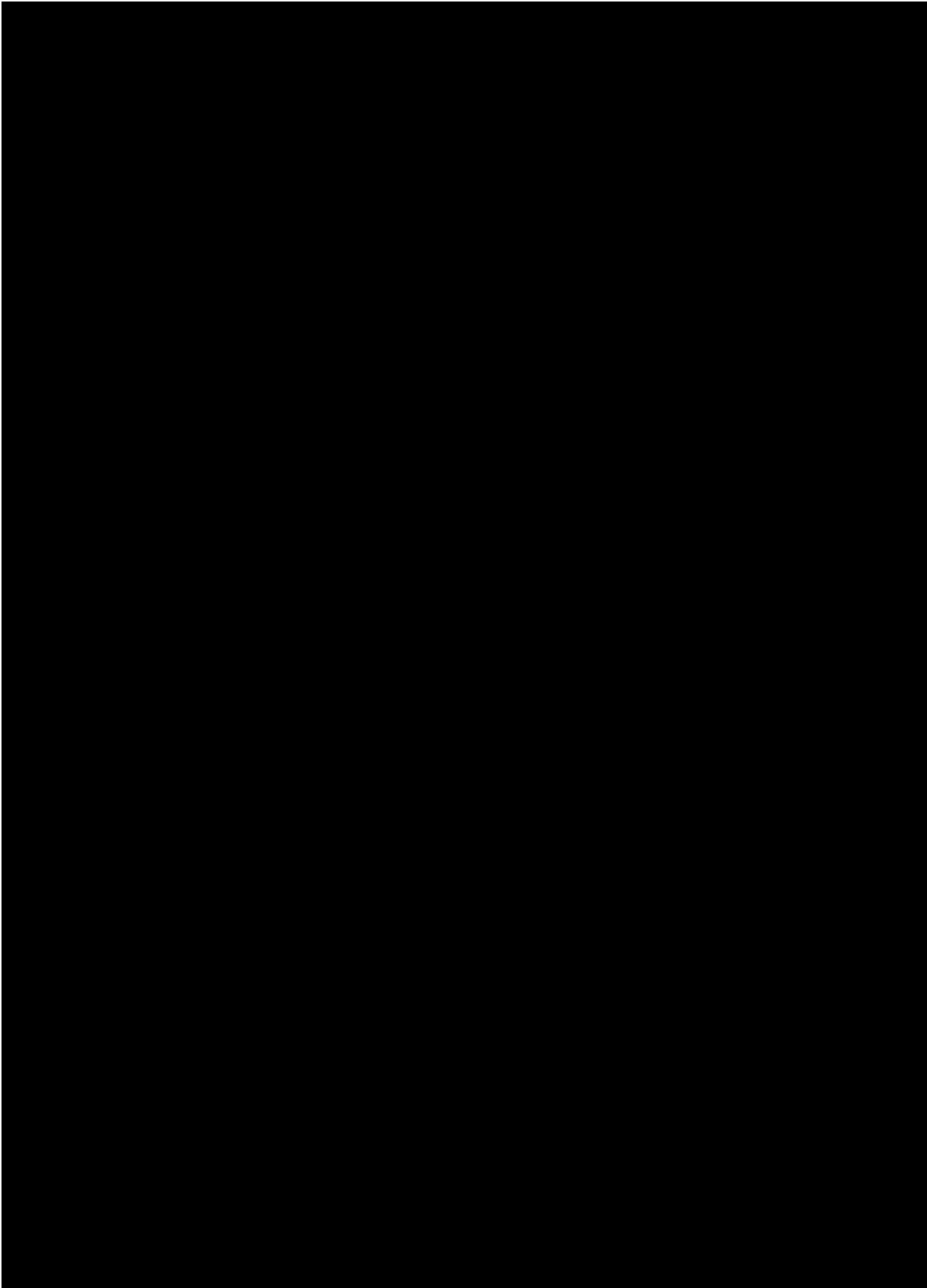


Plate 2: Native vegetation in the southern third of the site- retained.

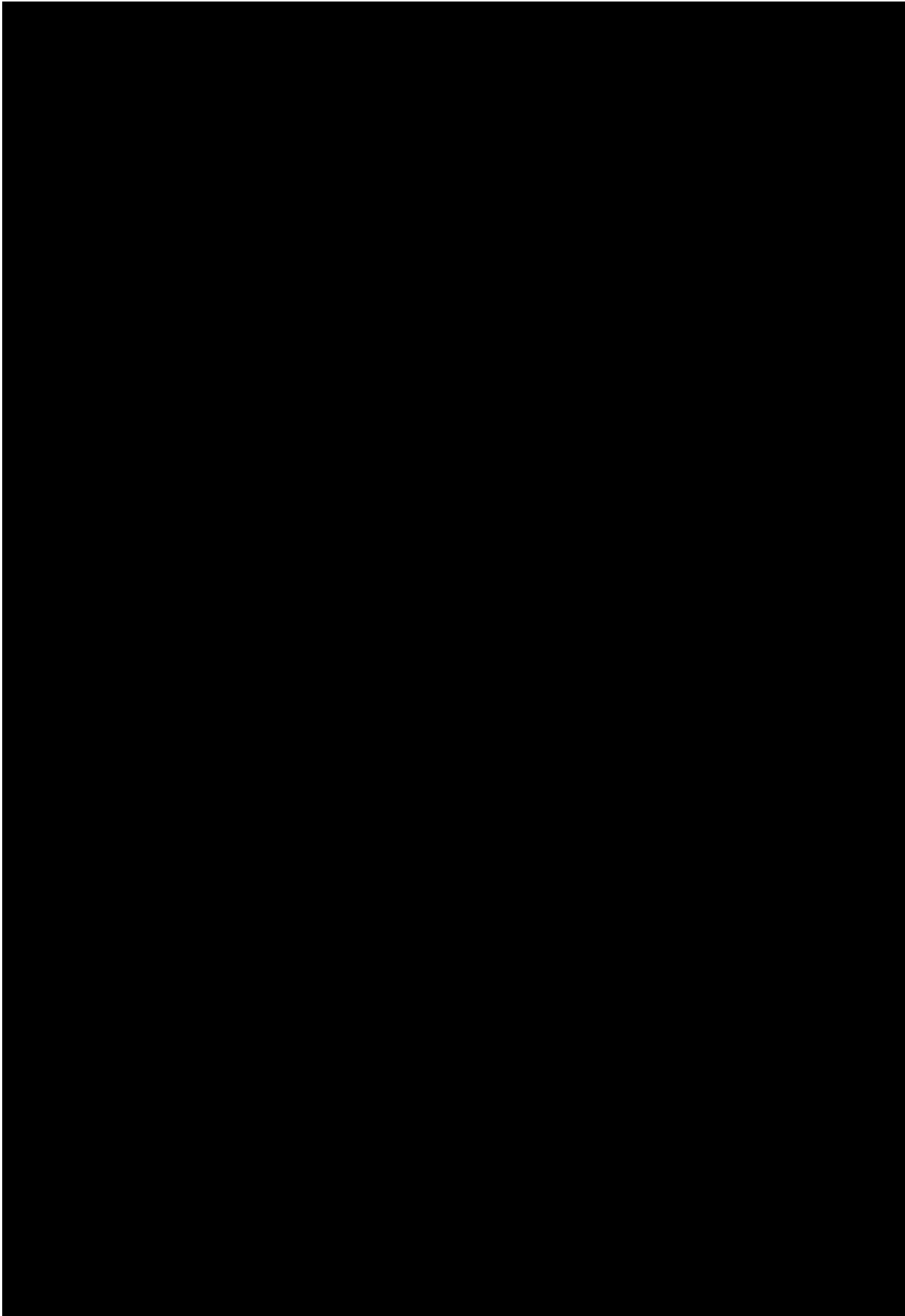


Plate 3: Current use of the site (top) and BAM Plot (bottom)

5 Penrith Council Letter – Substantial commencement of DA



RECEIVED
30 JAN 2008

BY:.....

22 January 2008

PO BOX 279
FAIRFIELD NSW 2165

Dear Mr D'Onofrio,

for the Proposed Poultry Abattoir Processing Facility
at Badgery Creek

I refer to the above development application and your letter dated 7 November 2006 along with the submitted documentations to indicate that certain construction works were carried out prior to the expiry of the consent notice.

You are advised that Council's Officer has now inspected the site and noted that the footing excavation and reinforced concrete pours were carried out are still in place. In view of the site inspection and documentations provided by you which included

- a letter from Peter Marcus Consulting Engineers Pty Ltd dated 16 June 1999 to demonstrate that foundation works were carried out and were structurally sound,
- a facsimile sent by Rhodes Thompson Associates dated 12/3/1999 to indicate that earth works involving clearing of the pegged development area,

Council has now concluded that substantial construction works have been carried out on site in accordance with the approved plan prior to the expiry date of the relevant consent and advise that the consent issued for the above development has now been secured. You are reminded that all conditions of the Consent Notice No.960082 dated 28 August 1996 and Building Permit No dated 11/02/1998 must be complied with prior to the occupation of the building and commencement of the use/business.

If you have any queries regarding this matter, please contact me on or Warwick Stimson on

Yours faithfully,

Pukar Pradhan
Senior Environmental Planner

6 Poultry Processing Plant - DA – Expected disturbance zone

Estimates indicate 8.59ha was proposed for disturbance/removal as part of the approved DA (red). Therefore, 1.51ha of vegetation would have been retained, outside of the approved disturbance/removal areas (green).

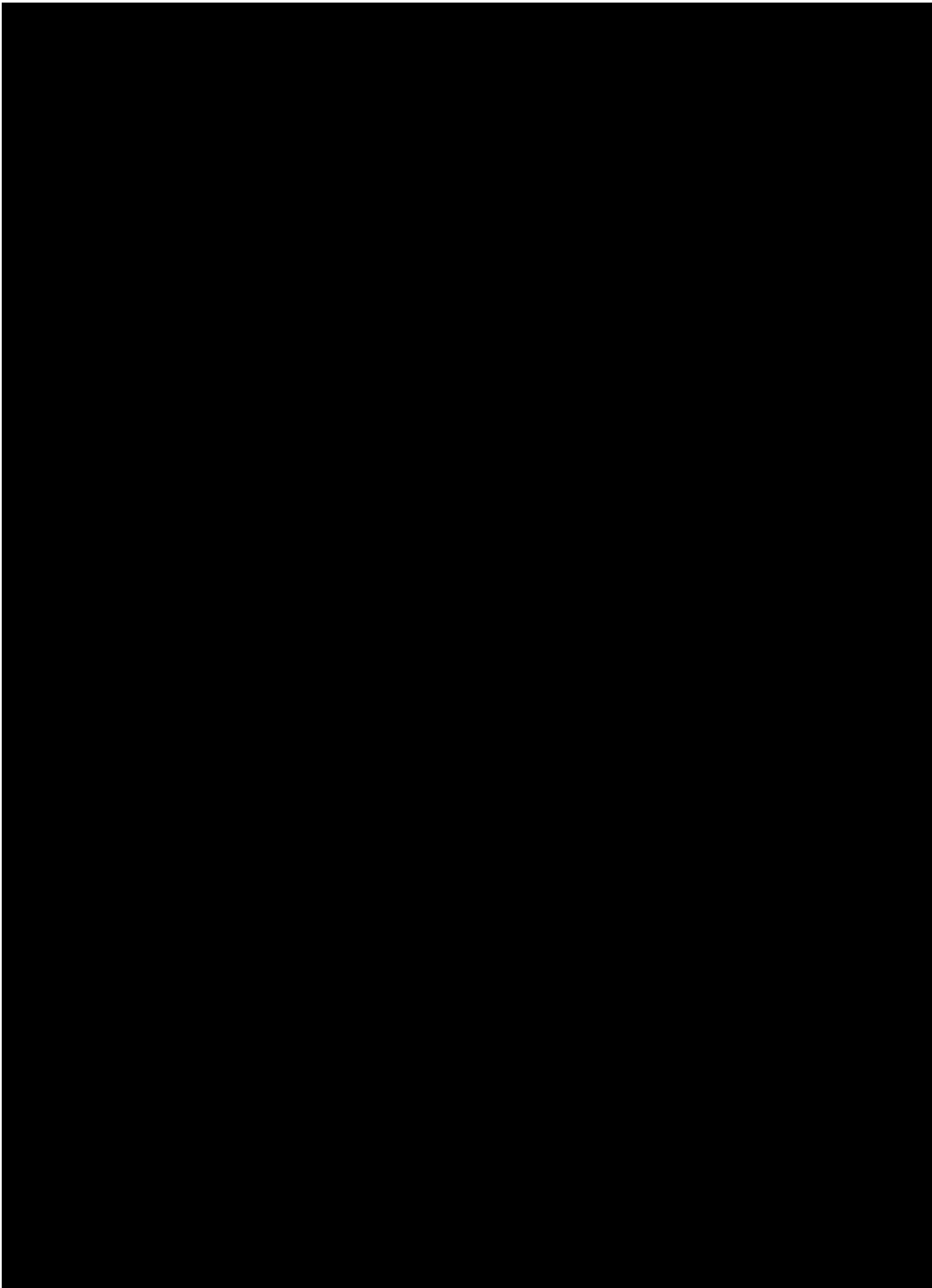


Figure 4.0. Poultry Processing Plant - DA overlay - Source: Nicolas Israel July 2020.

7 References

DPIE (2020). Atlas of NSW Wildlife (Bionet). New South Wales, Office of Environment and Heritage.

DPIE (2020). NSW Threatened Species Information.

DPIE (2020). PlantNET (The Royal Botanic Gardens and Domain Trust 2014).

(OEH, 2016) VIS_Vegetation_CumberlandPlainsWest_2013_E_4207

Ecoplaning (2020). Ecological Assessment, [REDACTED] Badgerys Creek, NSW, 2555.

Lesryk Environmental (2017). Flora and Fauna Survey and Assessment, [REDACTED] Badgerys Creek, NSW, September 2017. Prepared for National Integrated Creative Solutions on behalf of Crush and Haul Pty Ltd.

NSW Land and Property Information (2020). Six Maps Viewer.

Penrith City Council (8th May 2020). NOTICE TO PROVIDE INFORMATION AND RECORDS. DC17/0676.
Contact: Andrew Reece.

Penrith City Council (22/01/2008) – Attn ; Lino D’Onofrio. Ref= PP: 960082 DA.

8 Expertise of authors

With over 20 years wetland and urban ecology experience, a great passion for what she does, and extensive technical and on-ground knowledge make Geraldene a valuable contribution to any project.

Geraldene has over 8 years local government experience as manager of environment and education for Pittwater Council. Geraldene presented papers on the topic at the NSW Coastal Conference, Sydney CMA and Hawkesbury Nepean forums. Geraldene is a Technical Advisor Sydney Olympic Park Wetland Education and Training (WET) panel.

Geraldene has up to date knowledge of environmental policies and frequently provides input to such works. Geraldene was a key contributor to the recent set of Guidelines commissioned by South East Queensland Healthy Waterways Water Sensitive Urban Design Guidelines. Geraldene's role included significant contributions and review of the Guideline for Maintaining WSUD Assets and the Guideline for Rectifying WSUD Assets.

Geraldene is a frequent contributor to many community and professional workshops on ecological matters particularly relating to environmental management. She is an excellent Project Manager.

Geraldene is a joint author on the popular book Burnum Burnum's Wildthings published by Sainty and Associates. Author of the Saltmarsh Restoration Chapter Estuary Plants of East Coast Australia published by Sainty and Associates (2013). Geraldene's early work included 5 years with Wetland Expert Geoff Sainty of Sainty and Associates. Geraldene is an expert in creating and enhancing urban biodiversity habitat and linking People with Place.

Geraldene Dalby-Ball DIRECTOR



SPECIALISATIONS

- Urban Ecology – and habitat rehabilitation and re-creation.
- Urban waterway management – assessing, designing and supervising rehabilitation works
- Saltmarsh and Wetland re-creation and restoration – assessment, design and monitoring
- Engaging others in the area of environmental care and connection
- Technical Advisor – environmental design, guidelines and policies
- Sound knowledge and practical application of experimental design and statistics
- Project management and supervision
- Grant writing and grant assessment
- Budget estimates and tender selection
- Expert witness in the Land and Environment Court

CAREER SUMMARY

- **Director and Ecologist**, Ecological Consultants Australia. 2014-*present*
- **Director and Ecologist**, Dragonfly Environmental. 1998-*present*
- **Manager** Natural Resources and Education, Pittwater Council 2002-2010
- **Wetland Ecologist** Sainty and Associates 1995-2002

QUALIFICATIONS AND MEMBERSHIPS

- **Bachelor of Science with 1st Class Honors**, Sydney University
- WorkCover WHS General Induction of Construction Industry NSW White Card.
- Senior First Aid Certificate.
- **Practicing member and vice president** Ecological Consultants Association of NSW

Jack is a passionate ecologist who has worked with various stakeholders across both the public and private sectors to deliver sustainable environmental outcomes. He has worked on projects with major construction contractors and has been able to deliver tailored environmental solutions on time and within budget.

As an undergraduate student, he published a study that examined the cost of revegetation across the Richmond River Catchment in NSW. This study provided Jack with a deep understanding of urban and landscape ecology and the environmental factors associated with habitat restoration.

He has advanced communication skills and can deliver professional ecological assessments. He has a thorough understanding of current NSW and Commonwealth environmental legislation. He is also competent in the practical application of flora and fauna surveying and monitoring techniques.

Jack would be a valuable addition to any ecology project as he is committed to achieving the best possible outcome for both the client and the environment.

Key Projects Include:

- Monitoring of Endangered Species, various locations
- Environmental consultant for many civil developments throughout the Sydney region
- Researching the On-farm costs of revegetation in the Richmond River Catchment
- Sustainable business transformation proposal for a retail store.

Jack Hastings

ECOLOGIST



SPECIALISATIONS

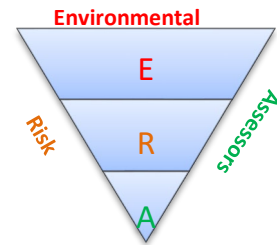
- Urban and landscape ecology – design and re-creation
- Environmental Impact Assessments (EIA)
- Review of Environmental Factors for development applications
- Flora and Fauna management plans
- Habitat tree assessment, marking and mapping
- GIS mapping
- Sound understanding and practical application of experimental design
- Grant writing and grant assessment

CAREER SUMMARY

- **Ecologist**, Ecological Consultants Australia. *2019-present*
- **Environmental Consultant**, BBN Consulting. *2018-2019*

QUALIFICATIONS AND MEMBERSHIPS

- **Bachelor of Environmental Science**, Southern Cross University.
- **Certificate II Agriculture**.
- **WHS General Induction of Construction Industry NSW White Card**.



Ref: ERA LTR03 [REDACTED] to V Parisi re Langway rezoning objection 01 .docx
23 September 2020

Mr Vincent Parisi
Lawyer
Hunter Lawyers
3/5 Norfolk Street
Liverpool NSW 2170

Email: vparisi@hunterlaw.com.au

Dear Mr Parisi,

[REDACTED]
Land Rezoning from RU2 to Recreation/Environment

I refer to my recent discussions with Mr Manuel Caruana in relation to the land rezoning proposed by the Department of Planning, Industry and Environment (DPIE) for the property located at [REDACTED] [REDACTED] Badgerys Creek NSW (subject site). The property is owned by Langway Pty Ltd (Langway) with ACN 001 486 924 (landlord) of which Mr Manuel Caruana is a director. Mr Caruana has requested that I prepare this letter and the submission of objection to the rezoning on his behalf.

The objective of this letter is to advise you of this matter and refer the submission of objection to you and your legal colleagues for legal advice on the way to move forward with this matter if the DPIE refused to accept this objection and the property is rezoned from RU2 – Rural Landscape to Environment and Recreation. Your advice should include the potential impacts of the changes to the rezoning on the future development of the property having regard to the existing Development Consents and surrounding environment including commercial and industrial facilities.

Attached is the objection submission for your consideration.

I look forward to receiving your advice. Meanwhile, if you wish to discuss this matter further do not hesitate to contact me on any of contact details included below.

Yours sincerely

[REDACTED]
Nicolas Israel MIEAust MEIANZ PMEng
Director
National Integrated Creative Solutions &
Environmental Risk Assessors Pty Ltd
[REDACTED]

1 INTRODUCTION

This letter submission was prepared on behalf of Langway Pty Ltd (Langway) who is the registered owner of the land identified as [REDACTED] Badgerys Creek (also known as Lot [REDACTED] in DP [REDACTED] (subject site).

The submission is intended for the use of Langway only unless a permission is given by Langway for its use by others such as its associates, its legal representatives, and its consultants.

1.1 REFERENCE DOCUMENTS

This submission was prepared based on a long list of documents. The most relevant documents are listed below and for completeness it is suggested that this letter be read in conjunction with these documents and their updates/addendums.

- 1 Notice of Determination – Development Consent No [REDACTED] Pt2 – 28 August 1996 – issued by Penrith City Council (**Attachment 1**),
- 2 Letter from Penrith City Council; dated 22 January 2008 confirming that the development with DA960082 has now been secured,
- 3 Notice of Determination – Development Consent No [REDACTED] – 20 April 2018 – issued by Penrith City Council,
- 4 Notice of Determination – Development Consent No DA16/0722.01 – 20 April 2018 as amended on 19 July 2018 – issued by Penrith City Council (**Attachment 2**),
- 5 Ecological Investigation – [REDACTED] Badgerys Creek, NSW, 2555 – Prepared by Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands and dated August 2020,
- 6 Penrith Local Environmental Plan 2010,
- 7 Draft Western Sydney Aerotropolis Plan,
- 8 Draft Western Sydney Aerotropolis Development Control Plan Phase 1,
- 9 Western Sydney Aerotropolis Discussion Paper,
- 10 Environment and Recreation Zone Fact Sheet,

1.2 OBJECTIVES OF SUBMISSION

The main objectives of the submission are:

- 1) Demonstrate that the rezoning is unjustified,
- 2) Demonstrate that the rezoning is unsubstantiated technically, scientifically
- 3) Demonstrate that the rezoning is unlawful,
- 4) Demonstrate that the biodiversity value of current vegetation is extremely low,
- 5) To demonstrate that the most appropriate land zoning is Enterprise.

2 CREDENTIALS OF THE WRITER

I am a qualified Professional Mechanical Engineer (PMEng), a member of the Institute of Engineers Australia (MIEAust), a member of the Environment Institute of Australia and New Zealand (MEIANZ), have been working as an environmental engineer for over 34 years of which approximately 28 years with the NSW Environment Protection Authority and its predecessors at different capacities and projects. I have also completed many relevant post graduate studies.

3 SITE AND SURROUNDING ENVIRONMENT

The site the subject of this report is the middle part of [REDACTED] Badgerys Creek in the State of New South Wales and in the Local Government Area of Penrith City Council. The property is also legally known as Lot [REDACTED] DP [REDACTED] The Total land area of the property is approximately 101,180 m².

The property is surrounded by the following sites:



Table 1 includes a summary of the property and the subject site.

Table 1: Summary of Property and Subject site Details

Location of Subject site	[REDACTED]
Land Dimensions of Property (Approximate)	Northern Boundary: 184 m Eastern Boundary: 551 m Southern Boundary: 184 m Western Boundary: 551 m
Total Area of Property	Approximately 10.118 hectares or 101,180 m ²
Local Government Area	Penrith City Council
Existing Land Use	The environment of the subject site and surrounding properties is modified rural, consisting of grazing, crops in hot house environments and some dwellings, some waste processing facilities, resource recovery facilities, a landfill that accepts special and other wastes. Western Sydney Airport is being constructed at the Southern side of [REDACTED] in the suburb of Badgerys Creek which is south west of this subject site
Current Land Zoning	RU2 – Rural Landscape
Approved Development	There is no approved development to undertake waste management activities on this part of the property

4 EXISTING DEVELOPMENT CONSENTS

The first development consent was obtained in the late nineties to construct and operate a poultry abattoir. A copy of the Notice of Determination with Development Consent No [REDACTED] Pt2 which was issued on 28 August 1996 by Penrith City Council, is included in **Attachment 1**, The footprint of this development is estimated at 72% of the total area of the subject site.

The second development consent was obtained in 2018 to construct and operate a resource recovery facility which falls within the definition of a waste management facility. A copy of the Notice of Determination with Development Consent No [REDACTED] which was issued on 20 April 2018 and amended on 19 July 2018 by Penrith City Council, is included in **Attachment 2**. The footprint of this development is estimated at 10% of the total area of the subject site.

Clause 121 of the State Environmental Planning Policy (Infrastructure) 2007 permits certain activities such as “**waste or resource management facilities**” which includes resource recovery facilities, to be undertaken by any person with development consent on land in a prescribed zone. Clause 120 provides a definition of prescribed zone which includes **RU2- Rural Landscape**.

Therefore, the development as a Waste Management Facility is permitted within this zone.

5 CURRENT ISSUE

Based on the latest information available to the public, the NSW State Government has approved the rezoning of the subject site without taking into consideration the submissions previously lodged by the landlord. The Department of Planning, Industry and Environment in its latest publication has made available the new State Environmental Planning Policy (Western Sydney Aerotropolis)

5.1 CURRENT ZONING

Based on Penrith Local Environmental Plan 2010, the current land zoning of the subject site is RU2 – Rural Landscape. More details about this land zone are provided below.

Zone RU2 Rural Landscape

1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To preserve and improve natural resources through appropriate land management practices.
- To ensure development is compatible with the environmental capabilities of the land and does not unreasonably increase the demand for public services or public 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; Forestry; Funeral homes; Helipads; Home-based child care; Home businesses; Home industries; Information and education facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Rural supplies; Schools; Secondary dwellings; Stock and sale yards; Tourist and visitor accommodation; Veterinary hospitals

4 Prohibited

Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3

Notwithstanding the above several State Environmental Planning Policies include provisions for activities to be permitted within the RU2 – Rural Landscape land zone. Of importance to the landlord is the use of Waste Management Facilities which are permitted under the infrastructure SEPP.

5.2 PROPOSED ZONING

The proposed land zoning is Environment and Recreation. Details associated with the proposed land zoning is provided below.

Environment and Recreation Zone

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To protect the ecological, scenic and recreation values of waterways, including Wianamatta–South Creek and its tributaries.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and conserve the environment, including threatened and other species of native fauna and flora and their habitats, areas of high biodiversity significance and ecological communities.

2 Permitted without consent

Nil

3 Permitted with consent

Any development not specified in item 2 or 4

4 Prohibited

Air transport facilities; Airstrips; Amusement centres; Backpackers' accommodation; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Centre-based child care facilities; Charter and tourism boating facilities; Correctional centres; Depots; Educational establishments; Electricity generating works; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Hardware and building supplies; Heavy industrial storage establishments; Helipads; Highway service centres; Hospitals; Hotel or motel accommodation; Industrial retail

outlets; Industrial training facilities; Industries; Intensive livestock agriculture; Jetties; Medical centres; Mooring pens; Moorings; Mortuaries; Office premises; Open cut mining; Port facilities; Public administration buildings; Residential accommodation; Respite day care centres; Restricted premises; Rural industries; Service stations; Serviced apartments; Sex services premises; Specialised retail premises; Storage premises; Timber yards; Transport depots; Truck depots; Turf farming; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water treatment facilities; Wholesale supplies

5.3 ADDITIONAL INFORMATION

In addition, substantial work has commenced on the construction of a poultry abattoir and processing facility. This approval also permits the removal of trees that currently exist on the subject site simply because they are within the approved abattoir footprint as shown in **Figure 1** below.

Figure 1: Abattoir and Processing Facility Approved Footprint Superimposed on Current Aerial View of the Subject Site

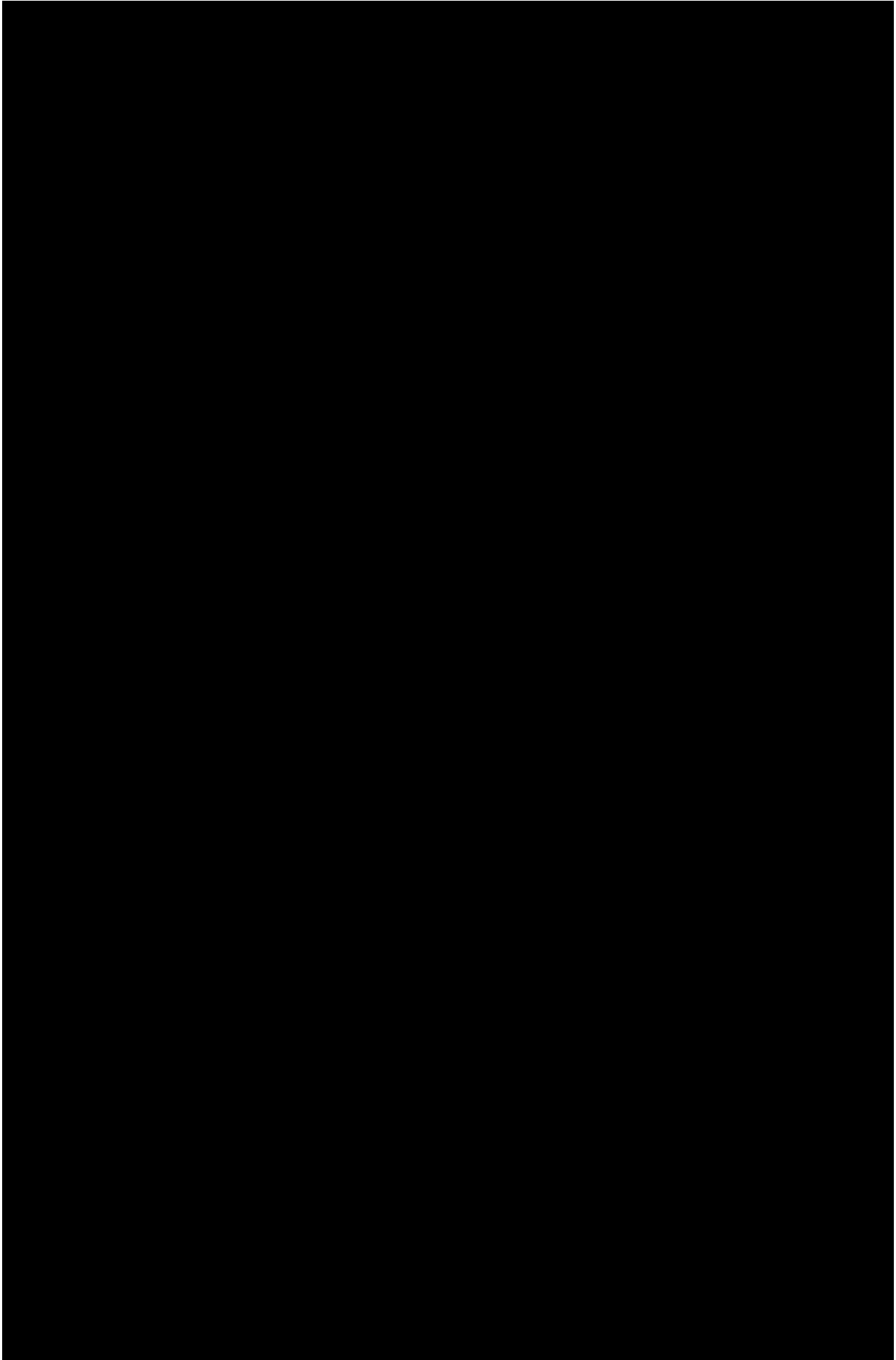
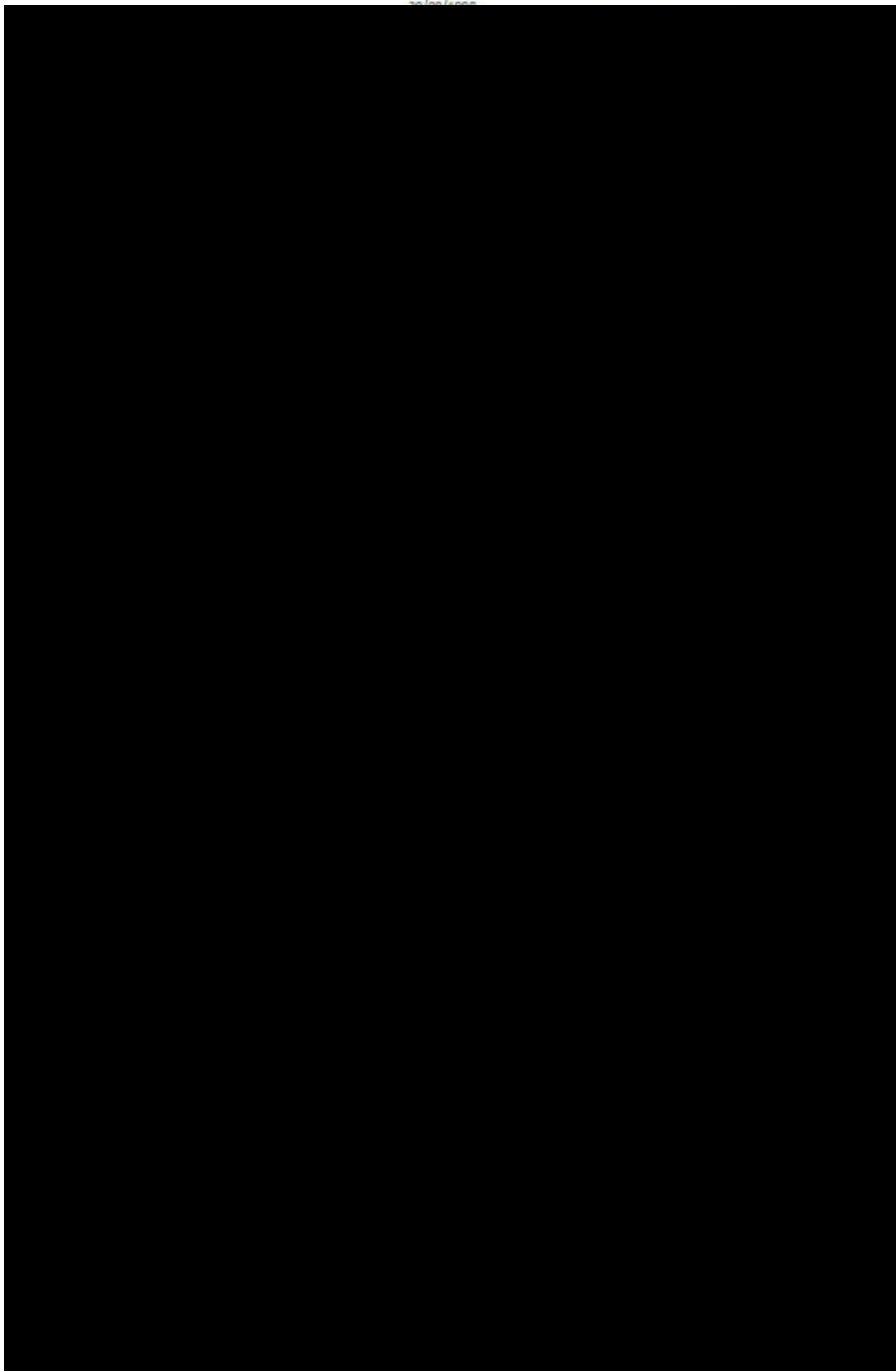


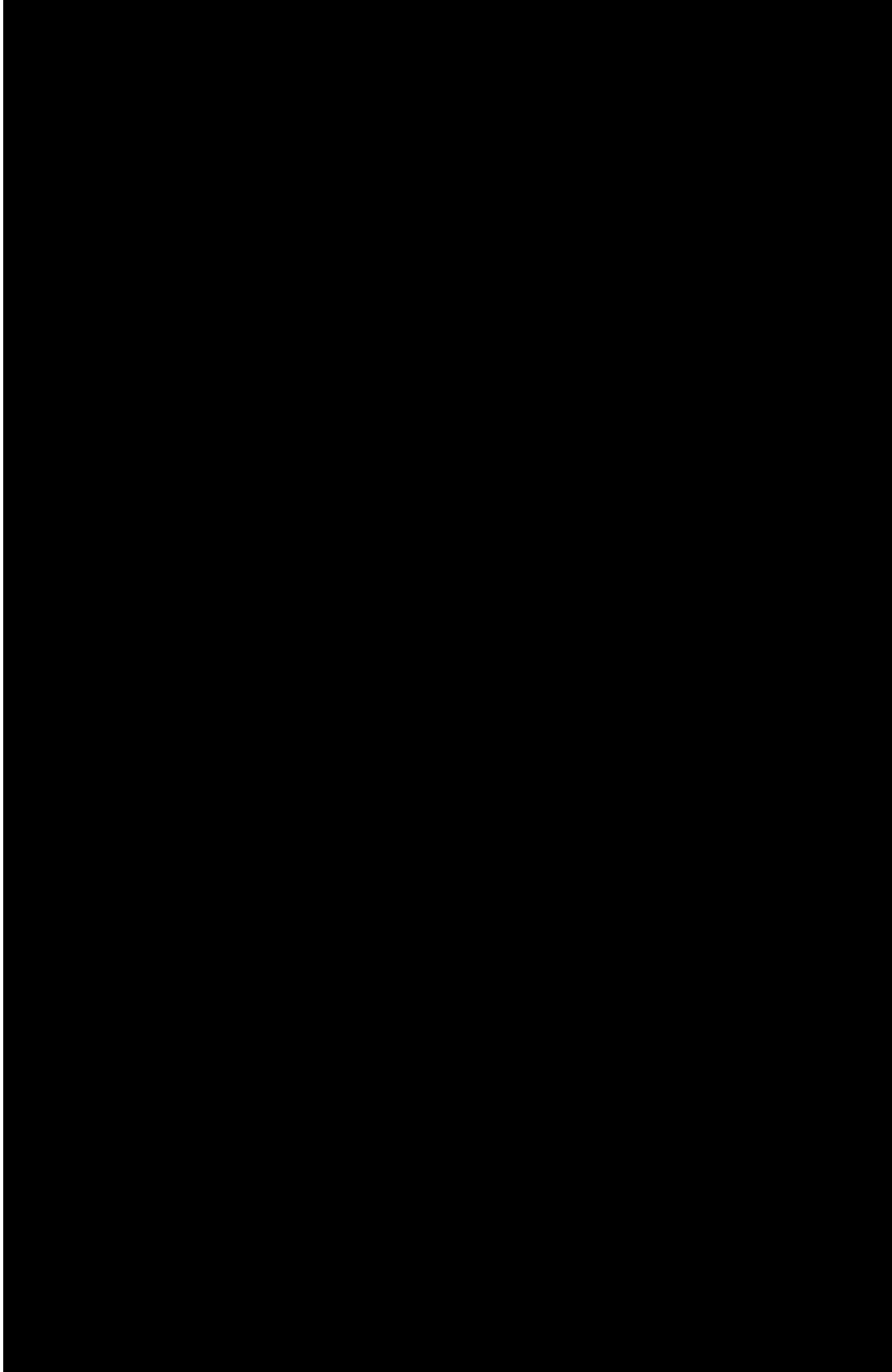
Figure 2 shows the approved abattoir and processing facility approved footprint superimposed on an aerial footprint dated 29 September 1998 to demonstrate that back then there was even much less vegetation outside the approved footprint of the abattoir.

Figure 2: Abattoir and Processing Facility Approved Footprint Superimposed on Aerial View of the Subject Site dated 29 September 1998



It is important to note that because of these existing and proposed land uses, the subject site has been substantially cleared of any significant vegetation as shown in **Figure 3** and the majority of this vegetation will be cleared as a result of approved poultry abattoir and processing facility.

Figure 3: Current Aerial View of the Subject Site



Pursuant to Penrith Local Environmental Plan 2010 (PLEP) the subject site is zoned R2 -Rural Landscape with a primary objective *"to encourage sustainable primary industry production"* In providing a mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith Council area.

The PLEP:

- Does not identify the subject site as environmentally sensitive land;
- Does not identify the subject site as containing terrestrial biodiversity;
- Does not identify the subject site as being affected by the 1% AEP flood event; and
- Does not identify the subject site as containing endangered ecological communities or having high biodiversity value.

In addition, the subject site is not mapped on the Biodiversity Values (BV) Map prepared by the Department of Planning, Industry and Environment (OPIE) under Part 7 of the Biodiversity Conservation Act 2016 (BC Act). The OPIE website notes the BV Map *" identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing"*.

The current issue is the fact that the decision to rezone the subject site has been approved without taking into consideration the actual status of the site from environmental and planning prospective. In addition, the decision has been made without taken into consideration the actual biodiversity value of current vegetation but rather what vegetation that could have been on site

6 PREVIOUS SUBMISSIONS BY LANDOWNER

The landlord and his consultants prepared and submitted two (2) submissions objecting to the proposed land rezoning. Both submissions provide comprehensive substantiated justifications for the objections.

The two (2) submissions previously lodged with the appropriate relevant State Government Agencies are:

1. Submission – Western Sydney Aerotropolis Plan & Western Sydney Aerotropolis Discussion Paper on the proposed State Environmental Planning Policy – prepared by Gough Planning and dated 11 February 2020,
2. Submission to Western Sydney Aerotropolis for Langway Pty Ltd – prepared by Polvere Planning & Development Pty Ltd and dated 12 March 2020.

7 PREVIOUS ADVICE BY PLANNING EXPERTS

Gough Planning provided the following advice:

- *"As described above, the subject property is devoid of bushland, with the exception of a small section of vegetation located towards the southern boundary. We are instructed that this bushland has been approved for removal by development consent No. [REDACTED]. The subject property does not contain an endangered ecological community, nor does it not form part of a wildlife corridor. We note that the surrounding and nearby properties are completely absent of bushland or significant vegetation.*
- *The zoning of our client's entire property for conservation purposes would not achieve the Plan's objective of creating a new green linkage between Badgerys Creek and Wianmatta-South Creek.⁵ The site would be isolated by adjoining commercial/industrial*

uses and no visual connection would be achieved with the riparian corridors to the east or west.

- The historic and current use of the property has seen the natural landform modified. As such natural features such as rock outcrops and natural watercourses are no longer present on the property. The site has extremely limited opportunities for fauna habitat.
- The subject property is located within the ANEC/ANEF contours of 25-30⁶. In such areas noise sensitive landuses are prohibited due to the impact of significant aircraft noise. The creation of a natural area would be inappropriate.
- The subject property is located within the 3km wildlife buffer.⁷ Due to the risk of wildlife strike, the Aerotropolis Plan at clause 5.13 discourages "parks or biodiversity conservation sites" in close proximity to the airport. In addition, the Plan discourages the planting of vegetation that could attract wildlife. The creation of an environmental conservation area on the subject property would be contrary to clause 5.13 of the Plan.
- The land is not affected by flooding and does not contain significant conservation values. The property does not satisfy the criteria for a biodiversity corridor identified in clause 2.10 of the Discussion Paper".

The following conclusion was made by Gough Planning:

"On the basis of the matters contained in this submission we requests that the 'Land Zone Map' be amended to remove the proposed 'Environment and Recreation' zoning from our client's property and its replacement with an Enterprise zoning".

Polvere Planning & Development (PPD) provided the following advice:

1. *"there is insufficient justification for the rezoning of the subject site to 'Environment and Recreation'; and*
2. *the subject site should instead be rezoned 'Enterprise', the same as the surrounding lands".*

The following conclusions were derived by PPD:

1. *Is not considered suitable for a regional park, biodiversity conservation or flood management/mitigation;*
2. *Does not have the ecological values needed to justify applying the aims of the Environment and Recreation zone.; and*
3. *Does not meet the specified pre-conditions for where the Environment and Recreation zone should be located.*

8 OBJECTIONS TO PROPOSED LAND ZONING

Based on the information presented in this submission and the potential impacts of the proposed rezoning on the subject site, in particular the potential impacts on the approved activities and facilities, the landlord strongly objects to the proposed un-substantiated and unjustified rezoning.

9 CONCLUSIONS

Based on the information presented in this submission, the subject site will have either a Waste Management facility (Resource Recovery facility) and/or a Poultry Abattoir and Processing facility.

The small number of trees left within the subject site and are within the approved footprint will be removed in accordance with the development consent.

The minimal biodiversity value of the handful number of trees will not justify the proposed re-zoning.

10 RECOMMENDATIONS

It is recommended that the proposed rezoning be withdrawn, and the subject site be rezoned as Enterprise.

Prepared by

Nicolas Israel MIEAust MEIANZ PMEng
Director
**National Integrated Creative Solutions &
Environmental Risk Assessors Pty Ltd**

PO Box
SEVEN HILLS NSW 1730

Attachment 1: Notice of Determination – Development Consent No 

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	[REDACTED]
Description of development:	Modifications to Consent Conditions - Resource Recovery Facility
Classification of development:	Class 5

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot [REDACTED]
Property address:	[REDACTED] BADGERYS CREEK NSW 2555

DETAILS OF THE APPLICANT

Name & Address:	[REDACTED] [REDACTED] KEMPS CREEK NSW 2178
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DECISION OF CONSENT AUTHORITY

In accordance with Sections 81(1) (a) and 96 of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

Date from which consent operates	20 April 2018
Date the consent expires	20 April 2020
Date of this decision	12 April 2018 as amended on 19 July 2018 under Section 96 of the Environmental Planning and Assessment Act.

POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Lauren Van Etten
Contact telephone number:	[REDACTED]

NOTES

Reasons

The conditions in the attached schedule have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 as amended.

Conditions

Your attention is drawn to the attached conditions of consent in attachment 1.

Certification and advisory notes

You should also check if this type of development requires a construction certificate in addition to this development consent

It is recommended that you read any Advisory Note enclosed with this notice of determination.

Review of determination

The applicant may request Council to review its determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 within 6 months of receiving this Notice of Determination.

You cannot make this request if the development is Designated Development, Integrated Development or State Significant development or if the application was decided by Sydney West Planning Panel.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six (6) months of receiving this Notice of Determination.

You cannot appeal if a Commission of Inquiry was held for the subject development application, or if the development is a State Significant Development.

An appeal to the Land and Environment Court is made by lodging an application to the Court in accordance with the Rules of the Court.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 28 days after the date of this notice. The objector cannot appeal if a Commission of Inquiry was held.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Sydney West Planning Panels

If the application was decided by the Sydney West Planning Panel, please refer to Section 18 of the Greater Sydney Commission Act 2015 and Section 23H of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

ATTACHMENT 1: CONDITIONS OF CONSENT

General

- 1 The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Drawing No	Revision	Drawn By	Date	Description
NICS_172004_FIG01 REV01	-	Nicolas Israel	25/09/17	Revised Concept Design Premises Layout
110372/DA04	A	J.Wyndham Prince	13/10/17	Weigh Bridge & Site Office Details
110372/DA01	D	J.Wyndham Prince	27/09/17	Cover Sheet & Engineering Plan
110372/DA02	D	J.Wyndham Prince	27/09/17	Site Sections & Detail
110372/DA03	D	J.Wyndham Prince	27/09/17	Soil and Water Management Drainage Plan & Turning Paths
NICS_172004_FIG04 REV01	-	Nicolas Israel	30/09/17	Erosion & Sediment Control Plan
DWG-17-4735-B	-	Envirotech	3/10/17	AWTS Plan

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning & Assessment Act 1979.

- 2 The development shall not be used or occupied until an Occupation Certificate has been issued.
- 3 A separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.
- 4 The operating hours are from 7am to 6pm Mondays to Fridays, 8am to 6pm Saturdays, and 8am to 5pm Sundays.
- 5 ***Deleted***

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 6 In order to ensure there will be no adverse impact in relation to dust, noise and vibration on the surrounding area, a construction management plan shall be provided to the Development Services Manager of Penrith City Council for approval prior to the commencement of works but no later than 3 months from the date of consent. In addition, an operational management plan shall be provided to the Development Services Manager of Penrith City Council for approval prior to the issue of an Occupation Certificate.

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 7 In order to allow healthy tree growth, a 2m wide landscape strip is required around the perimeter of the site.

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning and Assessment

Act 1979.

- 8 The site is restricted to having less than 1,000 tonnes or 1,000 cubic metres of waste on site at any time and restricted to a maximum processing capacity of less than 6000 tonnes per year. Data shall be submitted to Council to demonstrate that the volumes are compliant. **This data shall be submitted within 18 months of the date this consent is issued.**
- 9 **This consent lapses on the expiration of 2 years from the date the consent was issued.**
- 10 Any costs incurred by public authorities, in cleaning activities of the access road, where directly attributable to the proposed development, will be reimbursed by the applicant.

Environmental Matters

- 11 Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004. (Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

The approved sediment and erosion control measures are to be maintained until the landscaping, driveway and on-site parking areas have been completed for the development, with the exception of permanent erosion and sediment control measures, which are to be maintained throughout the operation of the development.

12 ***Deleted***

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 13 All waste materials associated with the administrative operation of the development are to be stored on-site within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.
- 14 Waste materials are to be disposed of at a lawful waste management facility. All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.
- 15 Liquids including (but not limited to) oil and fuel are to be stored in a bunded weatherproof area. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be graded to a blind sump so as to facilitate emptying and cleaning.

All liquid spills are to be cleaned up using dry methods only.

- 16 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. A licensed waste contractor is to remove liquid waste from the premises to an appropriate waste facility. The waste contractor and waste facility are to hold the relevant licenses issued by the NSW

Environment Protection Authority.

- 17 No fill material shall be imported to the site until such time as a Validation Certificate(with a copy of any report forming the basis for the validation) for the fill material has been submitted to Council. The Validation Certificate shall:
- state the legal property description of the fill material source site,
 - be prepared by an appropriately qualified person with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
 - clearly indicate the legal property description of the fill material source site,
 - provide details of the volume of fill material to be used in the filling operations,
 - provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
 - (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified person/s shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{Note: An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soils science, ecotoxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

- 18 Dust suppression techniques are to be employed in accordance with the Revised Air Quality Assessment (Report No: NICS_172004_AQIA_REV01) dated 6 October 2017 to ensure compliance with the criteria established in that report.

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 19 Mud and soil from vehicular movements to and from the site must not be deposited on the road.
- 20 Prior to the commencement of works, a revised Landscape Plan is to be submitted to the Principal Certifying Authority. The species selection is to be amended to only include plant species native to the Cooks River/Castlereagh Ironbark Forest and Shale Gravel Transition Forest vegetation communities.

- 21 Prior to the issue of an Occupation Certificate, the applicant is to submit to Council's Development Services Manager for approval a Restoration Plan for the area of the lot (Lot [REDACTED] from the southern side of the southern earth sound mound, south-wards through to the existing vegetation near the dam.

The aim of the Restoration Plan is to outline how vegetation within the site will be re-established and the techniques to be implemented to rehabilitate the site. The Restoration Plan must be prepared by an Environmental Consultant or Bush Regenerator with theoretical and practical experience in bushland restoration and management. A Certificate IV in Conservation and Land Management is required as a minimum. In preparation of the Restoration Plan the consultant will need to undertake an assessment of the regeneration potential of the site.

The Restoration Plan is to be consistent with relevant environmental legislation and policies, including, but not limited to, the NSW *Biodiversity Conservation Act 1995*, the *Biosecurity Act 2016* the *Water Management Act 2002*, the *Rural Fires Act 1997* as well as the federal *Environment Protection and Biodiversity Conservation Act 1999*, and guidelines such as the *Rural Fire Services Planning for Bushfire Protection 2006* and *Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland* (DEC, 2005).

The Restoration Plan should contain a written report and a detailed map or plan drawing of the property.

The Restoration Plan is to include:

1. Site description - Specify the current nature, extent and condition of vegetation on the site and describe the vegetation types that are expected to have been present prior to clearing. Detail site constraints, and any significant or sensitive environmental features such as threatened species, water features, large hollow-bearing trees, etc. Include photographs from set reference points. This should be informed by the flora and fauna assessment.
2. This should be accompanied by a site map that shows:
 - Scale, legend, north arrow, property address, date and author or source;
 - Site boundaries and size of subject site to which the Restoration Plan applies;
 - Topography indicating contours;
 - Identify important natural features such as rock outcrops, watercourses/drainage lines (including ephemeral/intermittent), riparian zones, large or hollow-bearing trees and other habitat features;
 - The location of threatened flora or fauna species or ecological communities;
 - Areas of native vegetation;
 - Areas of weed invasion;
 - The location of existing tracks/trails.
 - Location and extent of any clearing and other impacts.
3. The Restoration Plan shall apply to the site for a period of **2 years**. The Restoration Plan is to outline the timing of actions within this time frame. Within this time frame there will be an initial intensive restoration period which will be followed by a maintenance period. It is to outline clear time frames for implementation as well as performance indicators/milestones - the time frame for each task, as well as key performance indicators. This shall be presented in a table so that the schedule of works is clear and easily followed and the measures for completion are clear.
4. The area to be restored is to be divided into relevant management zones based on their condition, recovery potential, and required actions. These are to be shown on a map.
5. The Restoration Plan is to provide objectives and targets to guide the management actions. It must provide clear and measurable criteria against which achievement of the objectives and targets can be assessed.
6. The Restoration Plan is to clearly outline all required management actions for life of Plan such as weed control, assisted regeneration, revegetation, direct seeding and habitat augmentation (such as large woody debris). Reuse of suitable woody debris and leaf litter on site should be part of the plan.
7. Any revegetation/direct seeding shall use locally native (local provenance) species that would have formed part of the vegetation community found on the site. The source of the seed and plants to be

used in restoration shall be identified in the Restoration Plan.

8. The Restoration VMP is to provide cost estimates for all activities for the life of the plan.
9. Reporting – Activity and monitoring reports are to be submitted to Penrith Council's Senior Biodiversity Officer. The following reporting schedule is required:
 - 6 months from date of approval of Restoration VMP
 - 12 months
 - 2 years

Each report is to detail all activities undertaken and should measure the key performance criteria identified for each action identified in the Restoration Plan. Progress photos from set photo points shall be included with each report.

Upon written approval of the Restoration Plan from Council, the owner is to commence implementation of the Restoration Plan for the site. All works are to be undertaken under the guidance of a qualified Bush Regenerator with a minimum of 3 years practical bush regeneration experience on the Cumberland Plain and a Certificate III in Conservation and Land Management (or equivalent).

Council reserves the right to undertake inspections of restoration activities periodically.

Once approved, the Restoration Plan forms part of the conditions of consent and must be implemented in its entirety.

- 22 All native trees that are felled as part of the development are to be re-used on site in the restoration area for habitat improvement and soil stabilisation. They are not to be mulched or chipped but are to be kept as large logs and branches.
- 23 Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Noise Impact Assessment prepared by Nicolas Israel dated 5 October 2017. The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, including the recommendations proposing a combination of fence and earthmounds as indicated in red on the stamped approved plans. In addition, no earth mounds shall exceed a slope of 1 to 3. A certificate is to be obtained from a qualified acoustic consultant certifying that the development meets the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

- 24 The sediment basin is to be designed and constructed to ensure a nil water discharge to the surrounding environment. The sediment pond is to have a capacity for all storms up to and including the 1 in 100 year event.

A spillway is not permitted to be constructed. All waste water generated on the development site and directed to the sediment pond is to be contained within the site and is not to discharge out of the active operational area contained within the earth mounds.

A detailed sediment basin construction survey plan and operation plan is required to be prepared and submitted to Council for approval, detailing the location, sizing and construction of the sediment pond. **The Plan is to be submitted to Council for approval, prior to the commencement of works (including earthworks) but no later than 3 months from the date of consent.** The Plan is to include, but not be limited to the following:

- details of the liner to be provided to the sediment pond
- delete all reference to a spillway

- detail the proposed operational procedures to be employed to ensure that the maximum capacity of the sediment pond is not reached and to demonstrate that excess water is removed from the site by a lawful waste contractor for disposal at a licensed waste management facility
- erosion and sediment controls
- details of the management of water from the rumble grid wheel wash demonstrating capacity in the sediment pond to receive and contain wheel wash water

The Plan is to detail the location and sizing of the sediment pond in relation to other site activities and is to demonstrate that the sediment pond will not impact upon the effluent disposal area.

Council approval of the Plan must be obtained prior to the commencement of works (including site earthworks).

- 25 Water from the sediment basin is not to be discharged on to land other than the active operational area of the site and the landscaped mounds. Water used for dust suppression and landscaping purposes is required to comply with the Australian and New Zealand (ANZECC) Guidelines for Fresh and Marine Water Quality.

Water quality monitoring of the sediment basin is to occur monthly for the first twelve (12) months of operation, and after every rain event during that twelve (12) month period. A Water Quality Compliance Report is to be prepared by an environmental consultant and submitted to Council:

- within eight months of the commencement of operations and is to provide a summary and assessment of the monthly water quality monitoring undertaken during the first six months.
- within fourteen (14) months of the commencement of operations and is to provide a summary and assessment of the monthly water quality monitoring undertaken during the 6-12 month period after the commencement of operations

Water quality monitoring data is to be kept on the premises and is to be made available to Penrith City Council upon request.

Water monitoring is to be conducted to ensure ongoing compliance with ANZECC Guidelines for Fresh and Marine Water Quality criteria. Water that does not comply with ANZECC water quality criteria is to be removed from the site by a lawful waste contractor and disposed of at a lawful waste management facility. Receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

Should the Water Quality Compliance Report identify any non-compliance issues, the Report is to provide suitable recommendations for the mitigation of those issues. These mitigation issues are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

Dependent upon results of the monitoring, Council may permit, after the twelve month period monitoring at a lesser frequency of quarterly monitoring. This can only be subject to approval in writing from Penrith City Council.

- 26 Continuous earth mounds are to be constructed with no break in the mounds permitted, except in the location of the driveway. The construction of a spillway that impacts or intercepts the earth mounds is not permitted.
- 27 **Prior to the commencement of works**, an Unexpected Finds Stockpile Management Plan for the storage and management of unexpected finds and contaminated material, is required to be submitted to Penrith City Council for approval. The Plan is to include but not be limited to providing the following details:
- the location and maximum storage quantity (including height) of the stockpile(s) of unexpected

- finds/contaminated material
- the environmental management controls to be employed to ensure that the material does not result in any water quality, air, soil or groundwater impacts. In this regard the plan is to detail the design of the unexpected finds stockpile area, demonstrating that appropriate environmental and public health protection is provided, including bunding and stockpile coverage to prevent air borne emissions
- the proposed frequency of removal of unexpected finds from the site
- the proposed waste contractors and waste management facilities to be used to remove and dispose of unexpected finds.

A copy of Council's approval of the information submitted is to be provided to the Certifying Authority prior to the commencement of works.

- 28 Vibration from the development operational activities is not to be perceptible at the site boundaries in accordance with the approved Revised Noise Impact Assessment Report.
- 29 The recommendations of the approved Revised Air Quality Assessment dated 6 October 2017 prepared by National Integrated Creative Solutions are to be implemented and adhered to. In relation to the proposed air quality monitoring schedule, details shall be **submitted to Council quarterly to Council for the first 18 months from the date this consent was issued.** Dependent upon results of the monitoring, Council may permit, after the 18 month period monitoring at a lesser frequency. This can only be subject to approval in writing from Penrith City Council.

BCA Issues

- 30 The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:
- (a) deal with each essential fire safety measure in the building premises, and
 - (b) be given:
 - within 12 months after the last such statement was given, or
 - if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

- 31 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- (a) complying with the deemed to satisfy provisions, or
 - (b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
 - (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

Health Matters and OSSM installations

- 32 In the event of Council receiving complaints regarding air emissions, including dust, from the development, the owner and/or occupier of the development may be required by Council to obtain the services of a suitably qualified air quality consultant to undertake an air quality impact assessment of the development to address the concerns of the community. The Air Quality Impact Assessment report is to be prepared and provided to Council within 45 days of being requested. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

Construction

- 33 Construction works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:
- Mondays to Fridays, 7am to 6pm
 - Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
 - No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Engineering

- 34 All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.

- 35 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to the commencement of works. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on [REDACTED] or visit Penrith City Council's website for more information.

- 36 Prior to the issue of any works, a Section 138 Roads Act applications, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:
- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
 - b) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
 - c) Road occupancy or road closures
 - d) The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
 - e) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on [REDACTED] or visit Penrith City Council's website for more information.

Note:

- a) Separate approvals may also be required from the Roads and Maritime Services for classified roads.
 - b) All works associated with the Roads Act approval must be completed prior to the issue of an Occupation Certificate.
- 37 The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by J. Wyndham Prince, reference number 110372/DA03, Revision D, dated 30/07/2017.
- During construction, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments.
- 38 Prior to construction of the carpark, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and Penrith City Council's Development Control Plan.
- 39 Prior to commencement of any works associated with the development, sediment and erosion control measures are installed in accordance with the approval and to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

- 40 Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Maritime Services' publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Maritime Services Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

- a) A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- b) Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to CC.

- 41 All earthworks shall be undertaken in accordance with AS 3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

- 42 Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that all works associated with a S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Penrith City Council.
- 43 Prior to the issue of an Occupation Certificate, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation and / or Subdivision (Strata) Certificate where Penrith City Council is not the Principal Certifying Authority.

- 44 Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that the:
- a) Stormwater management systems(including on-site detention)
 - Have been satisfactorily completed in accordance with the requirements of this consent.
 - Have met the design intent with regard to any construction variations to the approved design.
 - Any remedial works required to been undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

45 Prior to the issue of any Occupation Certificate, a restriction as to user and positive covenant relating to the:

- a) Stormwater management systems

Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater and Drainage for Building Developments policy.

46 Prior to the issue of any Occupation Certificate, directional signage and linemarking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifying Authority.

47 The stormwater management systems shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

48 All vehicles are to enter/exit the site in a forward direction.

Landscaping

49 No fill, machinery, or materials are to be placed or stored within the drip line of any tree that is to be retained. Tree protection measures are to be implemented as outlined in the Australian Standard AS 4970-2009 'Protection of trees on development sites'. No fill, machinery, or materials are to be placed or stored within the drip line of any tree that is to be retained.

50 No native trees or other vegetation (including shrubs and other understory vegetation) are to be removed, ringbarked, cut, topped, lopped, slashed or wilfully destroyed (other than those shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

Certification

- 51 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
 - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Operation of OSSM

- 52 The on-site sewage management (OSSM) system and effluent management area shall be installed and operated in accordance with the:
- “Environmental and Health Protection Guidelines On Site Sewage Management for Single Households”
 - Australian Standards AS1547:2012,
 - Council's On-Site Sewage Management and Greywater Reuse Policy,
 - current (at the time of installation) NSW Health Accreditation documentation,
 - the 'On-site Wastewater Management Report (REF-17-4735-B) prepared by Envirotech Pty Ltd and dated 3 October 2017,
 - the stamped approved Effluent Management Area Plan, and
 - the conditions of this consent.

Prior to the issue of the ‘Approval to Operate’, a Commissioning Certificate for the OSSM system shall be provided to Penrith City Council for approval. This Certificate shall certify that the aerated wastewater treatment system (AWTS) has been installed and is operating in accordance with the conditions of its NSW Health accreditation documentation.

Prior to the issue of the Occupation Certificate and before the OSSM system can be used, an ‘Approval to Operate’ for the OSSM system is to be sought from and issued by Penrith City Council.

- 53 All wastewater generated from the office administration building and amenities is to be diverted to an Aerated Wastewater Treatment System (AWTS) and be disposed of by way of a pressure dosed absorption bed. The absorption bed and the AWTS is to be located a minimum distance of 5.0 metres from any materials storage area/stockpile and a minimum of 5.0 metres from the top of the earth mound. The absorption bed is to have a minimum total bed area of 29.25m².

The system and effluent management area are to be installed and managed in accordance with the:

- “Environmental and Health Protection Guidelines On Site Sewage Management for Single Households”
- Australian Standards AS 1547:2012,
- Council's On-Site Sewage Management and Greywater Reuse Policy,
- the 'On-site Wastewater Management Report (REF-17-4735-B) prepared by Envirotech Pty Ltd and dated 3 October 2017
- The system is to be utilised for up to 5 permanent employees and up to 4 visitors or a total daily load of 350L/day. Any increase to the wastewater loading may require a new wastewater report for Council's consideration.

- 54 Penrith City Council is both the consent authority and certifying authority for the installation of the On-Site Sewage Management System (OSSM). **It is your responsibility to contact Council's Development Services Department to organise all inspections required for the installation of the system.**

In this regard, the septic tank(s) and disposal area(s) will need to be inspected on completion of the system's installation (before backfilling occurs) and prior to its commissioning, to ensure compliance with those conditions specific to the installation of the system.

A copy of the satisfactory inspection reports carried out by Council shall be submitted to the Principal Certifying Authority if Council is not the Principal Certifying Authority.

- 55 The septic tank, drainage lines and absorption bed shall not be altered without the prior approval of Council. In addition, the septic tank shall not be buried or covered.
- 56 All drainage and sanitary plumbing for the office and associated amenities shall be carried out in accordance with the requirements of the Plumbing and Drainage Act 2011 and the Plumbing Code of Australia.

As amended on 19 July 2018 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 57 The disposal area shall including the following:
- the distribution line is to be buried from the tank to the designated disposal area;
 - the treated wastewater can be evenly irrigated across the entire designated disposal area;
 - be prepared with a minimum 100mm cover of absorbent soil that has been ripped into the existing top soil. The area to be prepared should include up to 2.5m either side of the trench;
 - have an even grade / be graded to a minimum 1% crossfall and turfed
 - be located a minimum distance of 5.0 metres from material stockpile area(s) and work areas and a minimum distance of 5.0 metres from the top of the earth mound.
- 58 There shall be no effluent runoff from the effluent management area to active operational areas of the site nor to adjoining premises, public places or reserves.
- 59 The owner/occupier shall enter into an annual service contract with the manufacturer, distributor or other person authorised (in writing) by Penrith City Council to service the aerated septic tank(s) every three (3) months from the date of commissioning in the following manner:
- i. A three monthly service shall include a check on all mechanical, electrical and functioning parts of the aerated system including:
 - the chlorinator,
 - replenishment of the disinfectant,
 - the UV disinfection unit,
 - all pumps and switches,
 - the air blower, fan or air venturi,
 - the alarm system,
 - the effluent disposal area ,
 - the slime growth on the filter media, and
 - the operation of the sludge returns system.
 - ii. The following field tests are to be carried out at every service:
 - free residual chlorine using DPD colorimetric or photometric method,
 - pH from a sample taken from the irrigation chamber,
 - dissolved oxygen from a sample taken from the final aeration or stilling chamber (although recommended) is optional.
 - iii. On the yearly anniversary date of the commissioning of the system, an annual service of the system shall also be carried out which includes a check on the sludge accumulation in the septic tank (primary treatment tank) and the clarifier, where appropriate.
 - iv. For systems which utilise the sewage treatment principle of activated sludge or contact aeration, a sludge bulking test, known as a SV30 Test, shall also be conducted on an annual basis. This test is to determine whether the accumulated sludge is bulking, indicating that the aeration compartment(s) will require desludging.
 - v. On completion of each service, a service report sheet is to specify all service items and test results, the

amount of chlorine compound provided, parts replaced (if applicable), the date the service was conducted and the technician's name. A copy of the service report is to be:

- given to the property owner and another to the applicant (if not the same), and
- forwarded to Penrith City Council.

Each service agent shall provide a registered business office which, if unattended during business hours, is provided with a telephone answering device or service. A means of reporting a malfunction or breakdown outside normal business hours shall be available. In the event of a breakdown or malfunction, the service agent shall, within 24 hours of the breakdown or malfunction, ensure that temporary repairs are carried out to the aerated system to ensure continued operation of the system. This may necessitate provision of adequate spare parts and temporary replacement blowers and irrigation pumps where repairs cannot be completed on site.

- 60 The effluent management area is to be turfed to the satisfaction of Council.
- 61 No operational development activities, concreting, driveways, vehicles or any other structure or access way is to be located over any portion of the effluent management area.
- 62 All stormwater and seepage shall be diverted away from the septic tank and the disposal area.
- 63 **Prior to the commencement of works**, the NSW Health Accreditation documentation for the AWTS is to be submitted to Council for approval. If Council is not the certifying authority, a copy of Council's written approval is to be provided to the Private Certifying Authority.
- 64 A 100% reserve area is to be set aside for the on-site sewage management system. This area is to be established with turf and is not to be used for any ancillary purpose. No materials are to be stored in the reserve area, and the reserve area is not to be developed. In the event that the primary effluent disposal area is to fail the reserve area is to be used. Written approval is to be obtained from Penrith City Council prior to any works being undertaken.

SIGNATURE

Name:	Lauren Van Etten
Signature:	

For the Development Services Manager

Attachment 2: Notice of Determination – Development Consent No [REDACTED] Pt2



Penrith City Council

Our Ref:
Contact:
Telephone:

28 August 1996

[REDACTED]
[REDACTED]
LANSVALE NSW 2166

Dear Sir,

Erection and Operation of a Poultry Abattoir and Processing Facility
[REDACTED] Badgerys Creek

Enclosed is Council's formal Notice of Consent in connection with the abovementioned proposal.

This Development Notice is a "deferred commencement" consent issued under Section 91AA of the Environmental Planning and Assessment Act, 1979. The information detailed in Schedule 1 of this Notice will need to be submitted to Council for approval. In this regard, a letter will be provided which formally confirms that the information has been approved by Council and enables the commencement of the development consent.

Conditions to the development consent are referred to in Schedule 2 of this Notice.

You are advised that the "deferred commencement" consent is unable to be commenced until after 28 days from the date of this notice in accordance with Section 93 of the Environmental Planning and Assessment Act 1979.

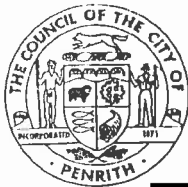
Prior to the preparation and submission of the Building Application to Council, you are advised to liaise with Council's Building Approvals and Environmental Protection Department with respect to essential services and the requirements of the Building Code of Australia.

Yours faithfully,

[REDACTED]
Liza Cordoba
for the Environmental Planning Manager

enc.

(PC116\d:\winword\consents\da960082.doc)



Penrith City Council

Our Ref:
Contact:
Telephone:



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF DETERMINATION

OF A DEVELOPMENT APPLICATION

Pursuant to Section 92 of the Act, notice is hereby given of the determination by the consent authority of the Development Application.

D.A. No.



**Date of "deferred
commencement" Consent:** 28 August 1996

Issued to:

Hondesse Pty Limited

Address:



LANSVALE NSW 2166 (Sydney)

Land to be Developed:



Proposed Development:

Erection and Operation of a Poultry Abattoir and Processing Facility. Plans Numbered DA-01'C', DA-02'C', DA-03'C', DA-04'C' received by Council on 31 July 1996.

Date of Determination:

19 August 1996

The Development Application has been determined by:

The Development Application has been determined by the granting of a “deferred commencement” consent under Section 91AA of the Environmental Planning and Assessment Act, 1979. Upon compliance with all conditions appearing in Schedule 1, and with the issue of confirmation to that effect in writing from Council, this “deferred commencement” consent shall commence to operate as a development consent, inclusive of all conditions appearing in Schedule 2, pursuant to Section 91 of the Act.

This consent will lapse in two (2) years from the date on which it commences to operate, unless development has commenced within that time.

This application was determined by Council at its meeting held on 19 August 1996. Minute No. 124.

The conditions of consent are set out as follows:

Schedule 1

- 1 An Environmental Management Plan is to be prepared and submitted to Council for approval. The Plan is to incorporate management and operational procedures for the development as it relates to noise, dust, odour, soil and waste management as well as the recommendations contained in the Environmental Impact Statement. In this regard the management and operational procedures are to focus on the following matters:

a) Effluent Irrigation and Associated Odour

The applicant shall submit details indicating that the soil is efficiently disposing of the effluent produced on the subject property and in effect, how potential odour impacts associated with the on-site irrigation of effluent will be mitigated. Prior to the approval of Council, the Plan is to be referred to the Federal Department of Transport and Regional Development for their concurrence.

Details are to include the preparation and maintenance of the soil for the purposes of effluent irrigation. In this regard, a comprehensive soil testing and monitoring program is to be provided for the subject property, with particular emphasis on phosphorus and sodium levels, as well as an analysis of the waste water.

A vegetative cover is to be provided and maintained in the 3 irrigation areas. Details are to be provided on the type of vegetative cover proposed.

Details are to be provided on a wet weather storage facility with a 10 day holding capacity to be utilised in those instances when on-site irrigation is prevented by wet weather.

Details are specifically to include how odour nuisances arising from the anaerobic dams may be minimised. This may include the method of

construction and maintenance programme for the dams, as well as the monitoring and management of both odour and vermin at the subject property.

b) *Solid Waste Management*

Details of how solid waste arising from the development will be stored and disposed of, including waste generated from the killing, processing areas and screen areas, as well as packaging waste.

c) *Dust*

The ambient dust deposition rate is not to exceed 4.0gm//m²/month for the development. The applicant shall submit advice from an air quality consultant indicating that the ambient deposition rate can be achieved, particularly during construction.

Details regarding the monitoring and management of dust emissions at the subject property are to be included, as well as dust suppression measures to be provided as part of the development.

d) *Noise*

Details are to specifically include the management and monitoring of noise, and where necessary, additional amelioration measures to be undertaken within the property.

- 2 Negotiations are to be initiated between Hondesse Pty Limited (the applicant) and Pacific Waste Management Pty Limited with the view to an agreement being reached between those parties for the applicant to contribute towards the ongoing maintenance of the Crown Road Reserve (being the "access road" off Elizabeth Drive) for the life of the poultry abattoir development. To ensure that an equitable agreement is reached, the contribution is to be calculated on the volume of heavy vehicle (truck) traffic generated by each development in each operational year, and is limited to that section of the access road between Elizabeth Drive and the proposed northern-most access driveway onto the subject property.

Schedule 2

- 1 This consent is limited to Stage 1 of the proposal, including a maximum of 15,000 birds to be processed per week. Stage 2 of the Poultry Abattoir and Processing Facility will require separate development approval of Council.
- 2 The submission of building plans and specifications under cover of a formal building application to the satisfaction of the Building Approvals and Environment Protection Department. It is to be noted that the consideration of this application has been limited generally to matters relating to site treatment and that detailed consideration has not been given to the internal layout of the building or matters controlled under the provisions of the relevant building requirements. Applicants are advised that it is in their interests to consult with Council's Building Approvals and Environment Protection Department with respect to these matters prior to the preparation of working drawings.
- 3 Submission of a schedule of proposed external finishes including samples of all external materials to be used for Council's consideration and approval concurrently with the submission of a Building Application. In this regard, it should be noted that the use of natural concrete block on external walls is not permitted.
- 4 Erosion and sediment control measures shall be provided to the satisfaction of Council and generally in accordance with the Department of Land and Water Conservation (Soil Conservation) standards. A detailed Soil and Water Management Plan shall be submitted to Council with the Building Application for approval. Approved measures shall be maintained until all disturbed areas have been revegetated to Council's satisfaction.
- 5 Improved architectural treatments are to be provided for the access road elevation of Stage 1 of the building. Details are to be submitted with the Building Application for approval following further discussions with Council's Environmental Planning Department.
- 6 The development site shall be landscaped and maintained with lawns and advanced shrubs and trees to the satisfaction of Council. A detailed landscape plan is to be lodged with the Building Application for approval and include:
 - (a) location of buildings, fences, roads, parking and storage areas;
 - (b) details of earthworks including mounding, dams and retaining walls;
 - (c) location and name of plant species;
 - (d) details of planting procedure and maintenance;
 - (e) barriers between landscaped and trafficable areas; and

- (f) provision of landscaping aligning the northern, southern and western boundaries of the development area.
- 7 The building area earmarked for Stage 2 of the development is to be suitably landscaped to minimise visual impacts resulting from the development. Details are to be included with the Landscape Plan, as required by condition 6 above.
- 8 No trees are to be cut down, lopped, destroyed or removed without the written approval of Council. In this regard, the applicant shall liaise with Council's Environmental Planning Department to arrange a joint site inspection prior to commencing site works.
- 9 An application for approval under Section 27 of the Noise Control Act, 1975 shall be made to the Environment Protection Authority. In this regard, evidence of such approval shall be submitted to Council prior to commencement of any work associated with the development.
- 10 Provision of noise attenuation measures as indicated in the accompanying Environmental Impact Statement. Details are to be submitted with the Building Application.
- 11 The use and occupation of the premises including all plant and equipment installed thereon shall not give rise to any offensive noise or vibration within the meaning of the Noise Control Act.
- 12 The operating noise level of plant and equipment shall not exceed the background level by more than 5dB(A).
- 13 Noise from the site during construction shall be controlled to reduce any disturbance or nuisance to nearby properties. The L10 noise level measured over a period of not less than 15 minutes when construction site is operating must not exceed the background level by more than 10dB(A).
- 14 Upon arrival into the development site, the live birds are to be stored in the enclosed holding area within the building.
- 15 All solid wastes are to be removed from the site in sealed tanks to minimise potential bird hazards impacting on the future operations of the Sydney West Airport.
- 16 The treatment and storage of waste liquids on the site should not encourage an increase in bird populations in the area.
- 17 Structures on the site are not to exceed the height limits imposed by the Obstacle Limitation Surface Plan for the Sydney West Airport.

- 18 Dust shall be controlled during construction works. This could include actions such as restricting topsoil removal, watering or sealing all roads where possible and amending construction practices during periods of high wind.
- 19 Only clean and unpolluted water shall be permitted to discharge to Council's stormwater drainage system.

To ensure this, a first flush stormwater management system shall be provided in accordance with the requirements of the Environment Protection Authority. Design details and evidence of approval by the Environment protection Authority shall be submitted with the Building Application.
- 20 A licence shall be obtained from the Environmental Protection Authority under the provisions of the Clean Waters Act, 1970 permitting the disposal of effluent from the processing plant and aerated septic system for permission to dispose of liquid wastes from the septic tank on the site. A copy of the licence shall be submitted to Council prior to occupation of the premises.
- 21 A 10 day wet weather storage facility is to be provided to accommodate wastes during rain periods when effluent irrigation is not possible. To determine these periods, soil moisture sensors are to be installed. Details are to be submitted with the Building Application.
- 22 The irrigation areas are to be rotated to allow a 10 day recovery period in accordance with the agronomic requirements of NSW Agriculture.
- 23 Any discharge to the atmosphere from the subject development shall comply with the requirements of the Clean Air Act.
- 24 There shall be no interference with the amenity of the area by reason of the emission of any unreasonable smell, odour, smoke, vapour or fumes as a result of the development.
- 25 A combined ingress and egress driveway measuring 8 metres wide is to be located parallel to the southern (side) boundary of the development area.
- 26 Separated ingress and egress access points, each measuring 6 metres wide, as well as a 1 metre wide median strip, are to be located parallel to the northern (side) boundary of the development area. Appropriate signposting and directional arrows are to be provided to Council's satisfaction. In this regard, a splay corner 2 metres x 2 metres is to be provided to the kerb.
- 27 Provision of heavy duty crossings to the satisfaction of Council. Paved vehicular footway crossings are to be provided at all points of ingress and egress to the satisfaction of and under the supervision of Council.

- 28 All delivery vehicles associated with the facility are to utilise the separated ingress and egress driveways. In this regard, details on the truck turning movements are to be shown on the Building Application.
- 29 A total of 22 off-street parking spaces are to be provided with the development, including, an allocated carparking space (measuring 5.5 metres long x 3.2 metres wide) is to be for a disabled person.
- 30 All parking spaces are to be permanently delineated to Council's satisfaction and have minimum dimensions 5.5m x 2.6m with a 6.7m turning aisle. The internal traffic circulation within the carpark shall be linemarked with directional arrows.
- 31 All security fencing is to be established behind the areas required to be landscaped and not on the road alignments.
- 32 All land required for vehicular access and parking shall be sealed in accordance with Council's requirements.
- 33 All vehicles are to enter and leave the development site in a forward direction.
- 34 A security gate for trucks associated with the development is to be located on the northern driveway, a minimum 30 metres from the road frontage. Details are to be submitted with the Building Application.
- 35 Exterior lighting shall be located so as to avoid any nuisance to neighbouring properties. Details on the lighting to be used as well as its location are to be submitted with the Building Application.
- 36 Prior to the release of the Building Approval, a Fire Safety Study and Emergency Plan shall be submitted to and approved by Council. The study will be referred to the Fire Brigade for comment.

The Fire Safety Study and Emergency Plan shall include an investigation of the following matters:

- a) Details of potential hazardous incidents, including the consequences of a credible incident involving explosion/fire.
- b) An outline of all fire prevention, protection, fire fighting measures and appliances.
- c) Details of emergency plans and procedures for the subject property.

The fire safety study and emergency plan shall be submitted to Council within six (6) months of the endorsed date of this consent.

- 37 The burning of waste of any kind is prohibited under the Clean Air Act, 1961. All waste materials shall be stored in suitable containers for disposal.
- 38 A facility for collecting, treating and disposing of concrete wastes generated in the construction of the development is to be installed on the site. The installation of the concrete waste facility must comply with the Concrete Wastes Guide (EPA 1995). Full details are to be submitted with the Building Application.
- 39 Submission of a letter from Integral Energy stating that all its requirements have been satisfied, prior to the release of the Building Approval.
- 40 A Section 73 Certificate under the Water Board (Corporatisation) Act 1994 is to be submitted to Council, stating that satisfactory arrangements have been made with Sydney Water for the amplification and/or water and sewerage services to the land prior to the release of the Building Approval.
- 41 The recommendations contained in the Environmental Impact Statement, prepared by Dick Benbow and Associates Pty Limited to contain air, noise and water pollution are to be fully implemented under the supervision of the consultant.
- Upon the completion of all works, Dick Benbow and Associates Pty Limited shall certify in writing to Council, that all the control measures in the statement comply in all respects with the relevant Acts and his recommendations to overcome all the sources of pollution. This certificate shall be submitted to Council prior to commencement of the use.
- 42 Trucks to and from the subject property are limited to between 6.00am and 5.00pm, each operational day.
- The hours of operation of the plant is limited to 6.00am and 3.00pm, each operational day. No operation is to occur on Sundays.
- Any extension to the operating hours will require the further consent of Council.
- 43 The maximum production capacity of the development is 15,000 birds per week. Any increase to the production capacity will require the further consent of Council.
- 44 The development is to be operated in accordance with the procedures outlined in the approved Environmental Management Plan. A review of the management and operational procedures contained in the Plan is to be undertaken on an annual basis. A report of this review is to be submitted to Council by the operator.

- 45 The continued maintenance of that section of the access road, between the site's northern-most access point and Elizabeth Drive, to Council's standard specification. The level of maintenance liability is to be apportioned on the basis of the total truck volumes associated with the proposed abattoir development, compared with those generated by the extraction industry operation conducted by Pacific Waste Management Pty Ltd located at the northern end of the access road, generated in each operational year.

Advice:

- The building is to have a Type B fire-resisting construction under the requirements of the Building Code of Australia. The applicant is to consult with Council's Building Approvals and Environment Protection Department prior to the submission of the Building Application.
- Egress from the building shall comply with Part D1 of the Building Code of Australia.
- The Fire Safety Study and Emergency Plan is to be prepared by a qualified hydraulic engineer and shall consider the requirements of the Australian Standards AS2419-1994 and the Building Code of Australia. The plan is to be submitted to Council in accordance with Condition 37 of the development consent.
- Access and facilities for persons with disabilities shall be provided to the building in accordance with the requirement of the Building Code of Australia and Council's Access policy.
- The applicant is to consult with Council's Public Health Services Unit in respect to the food premises prior to the preparation of the Building Application, to ensure compliance with the Food Act and Regulations.

These conditions have been imposed for the following reasons:

1. To ensure compliance with the terms of the relevant Planning Instrument.
2. To ensure that no injury is caused to the existing and likely future amenity of the neighbourhood.
3. Due to the circumstances of the case and the public interest.
4. To ensure that adequate road and drainage works are provided.
5. To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities.
6. To ensure that requirements relating to Health and Building matters will be met.
7. To ensure that access, parking and loading arrangements will be made to satisfy the demands created by the development.

Notice is hereby given of the right of appeal against the decision of Council pursuant to the Environmental Planning and Assessment Act, 1979.

The granting of the above application does not relieve the Applicant of the obligation to obtain any other approval required under the Local Government Act, 1993, or any other Act and Ordinances under such Acts.

Liza Cordoba
for the Environmental Planning Manager

Dated this Twenty third day of August 1996

Nat. Benjierya

3 October 1997

[REDACTED]
[REDACTED]
LANSVALE NSW 2166

Dear Mr Caruana

**Development Consent-Designated Development
Erection and Operation of a Poultry Abattoir and Processing Facility
[REDACTED] Badgerys Creek**

I refer to the additional information submitted to Council in relation to the conditions detailed in Schedule 1 of the Notice of Determination.

I wish to advise that the Environmental Management Plan and Attachments, excluding the Emergency Response Manual and the Fire Safety Plan, are approved by Council. This satisfies the conditions under Schedule 1. A copy of the approved EMP is enclosed for your information.

The Emergency Response Manual and the Fire Safety Plan are to be submitted to Council with the Building Application in accordance with condition 36, Schedule 2 of the Notice of Determination. It is appropriate that the Emergency Response Manual and the Fire Safety Plan should be incorporated in the annual review of the EMP.

The development consent is operational from 3 October 1997, being the date of this letter. The conditions of the development consent are referred to in Schedule 2 of the Notice of Determination dated 28 August 1996.

However, the development consent is unable to be commenced until 28 days after 3 October 1997. This is in accordance with section 93 of the Environmental Planning and Assessment Act, 1979.

If you have any further enquiries, please contact me on [REDACTED]

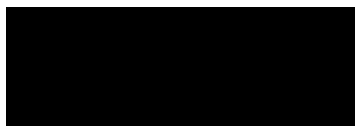
Yours faithfully

[REDACTED]
[REDACTED]
for the Environmental Planning Manager

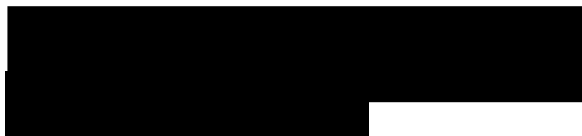
encl.

(pc223/c:/winword/letters/das/960082.doc)

RM to note [initials]
Stamp - approved EMP
refer Attachment File Pt 3
Copy of Approved plans on Pt 2 File
(Folio 72)



22 January 2008



FAIRFIELD NSW 2165

Dear Mr D'Onofrio,

**[REDACTED] for the Proposed Poultry Abattoir Processing Facility
at [REDACTED] Badgery Creek**

I refer to the above development application and your letter dated 7 November 2006 along with the submitted documentations to indicate that certain construction works were carried out prior to the expiry of the consent notice.

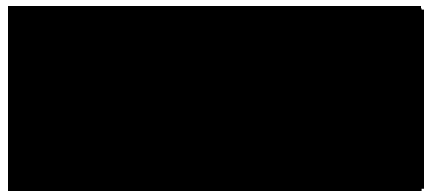
You are advised that Council's Officer has now inspected the site and noted that the footing excavation and reinforced concrete pours were carried out are still in place. In view of the site inspection and documentations provided by you which included

- a letter from Peter Marcus Consulting Engineers Pty Ltd dated 16 June 1999 to demonstrate that foundation works were carried out and were structurally sound,
- a facsimile sent by Rhodes Thompson Associates dated 12/3/1999 to indicate that earth works involving clearing of the pegged development area,

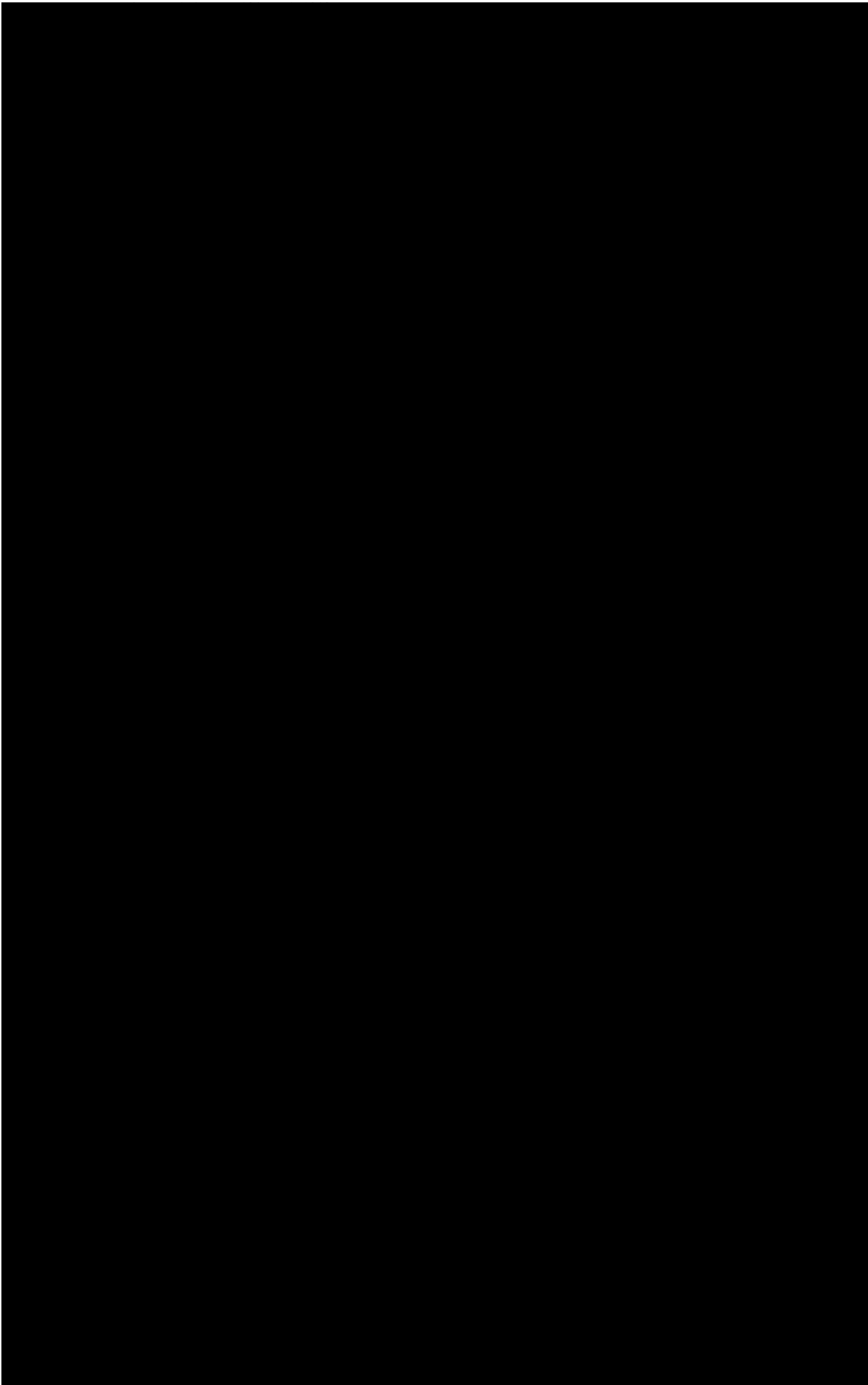
Council has now concluded that substantial construction works have been carried out on site in accordance with the approved plan prior to the expiry date of the relevant consent and advise that the consent issued for the above development has now been secured. You are reminded that all conditions of the Consent Notice No.960082 dated 28 August 1996 and Building Permit No.973429 dated 11/02/1998 must be complied with prior to the occupation of the building and commencement of the use/business.

If you have any queries regarding this matter, please contact me on [REDACTED] or Warwick Stimson on [REDACTED]

Yours faithfully,



**Pukar Pradhan
Senior Environmental Planner**



Badgerys

Creek, NSW, 2555

Ecological Investigation

By Ecological Consultants Australia Pty Ltd TA

Kingfisher Urban Ecology and Wetlands

August 2020



About this document

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Statement of Authorship

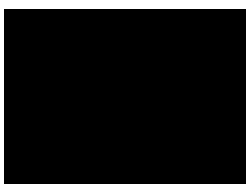
This study and report was undertaken by Ecological Consultants Australia at Studio 1/33 Avalon Parade, Avalon. The author of the report is Geraldene Dalby-Ball with qualifications BSc. majoring in Ecology and Botany with over 20 years' experience in this field and Jack Hastings with qualifications B EnvSc.

Limitations Statement

Information presented in this report is based on an objective study undertaken in response to the brief provided by the client. Any opinions expressed in this report are the professional, objective opinions of the authors and are not intended to advocate any particular proposal or pre-determined position.

Document Control Sheet	
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Distribution:	Mr Manuel Caruana Langway Pty Ltd Lansvale NSW 2166. ACN 001 486 924

Signed: Geraldene Dalby-Ball – Director of Ecological Consultants Australia



Executive Summary

Ecological Consultants Australia (ECA) has been contracted by Nicolas Israel on behalf of the property owner Mr Manuel Caruana of Langway Pty Ltd to provide an ecological investigation at [REDACTED] Badgerys Creek, NSW, 2555 ("the site").

Ecologists have concluded that works for the approved DA; Poultry Processing Plant - DA [REDACTED] had been substantially commenced at the time of 'unauthorized clearing' on site at [REDACTED] Badgerys Creek, NSW. Penrith City Council has also acknowledged substantial commencement of the DA [REDACTED] in a letter dated 22/01/2008, see section 5. Therefore, the unauthorized clearing zones would only be applicable to areas outside of the approved DA footprint.

Ecologists have undertaken an ecological investigation to determine the impact on vegetation and possible mitigation measures which may be applicable. Field survey data was gathered as per BAM methodology and entered into the Biodiversity Assessment Method Calculator (BAM-C) to determine the cost of possible offset measures as prescribed by the Biodiversity Conservation Act 2016 (BC Act).

The investigation also concluded that it is unlikely vegetation outside of the approved DA footprint, which was removed in 2018, would have significantly contributed towards the long-term survival of Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion. As identified in historical imagery, the impacted vegetation (outside of approved DA footprint) appears to be in marginal condition due to obvious disturbances within the zone. It is recommended however, that impacts be offset, either on site and/or within adjoining lots within the vegetation corridor.

Conclusions

- The approved DA; Poultry Processing Plant - DA [REDACTED] had been substantially commenced at the time of 'unauthorized clearing' on site.
- It is unlikely vegetation outside of the approved DA footprint, which was removed in 2018, would have significantly contributed towards the long-term survival of the vegetation community.
- Impacted vegetation (outside of approved DA footprint) appears to be in marginal condition – identified via historical imagery.
- Vegetation now cleared (that was present at time of DA approval) but outside the DA approved footprint is approximately 1.49ha (figure 3.1).
- If the 1.49ha was quality vegetation (as per the plot taken on-site) the credit costs for off-setting this is around [REDACTED]. It has been concluded that this area was 30% of the value of the official plot conducted in 2020 in the quality remaining vegetation.
- Based on this finding, the off-set value for the area cleared would be calculated at 30% X [REDACTED]. Therefore, the expected off-set cost is [REDACTED].

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1 Introduction

Ecological Consultants Australia (ECA) has been contracted by Nicolas Israel on behalf of the property owner Mr Manuel Caruana of Langway Pty Ltd to provide an ecological investigation at [REDACTED] Badgerys Creek, NSW, 2555 ("the site").

The report aims to determine the impact of recent vegetation clearing on site. A site investigation was conducted in July 2020 by senior ecologist Geraldene Dalby-Ball (accredited bio-bank assessor). The field survey data was gathered as per BAM methodology.

1.1 Site information and general description

The Subject Site (the "Site") is defined as the whole of the property. The site is identified at Lot [REDACTED] // DP [REDACTED] Badgerys Creek NSW. The site area is located within the City of Penrith Local Government Area (LGA) and covers approximately 10.1 ha.

The site has been modified and native vegetation removed in some areas. The cleared land is used to crush and store gravel, sand and plant equipment. Site offices and sheds are also located on cleared land. Native vegetation is not mapped on the Biodiversity Values Map (BVM) (DPIE 2020), nor is it mapped on council's Terrestrial Biodiversity layer under the Penrith Local Environment Plan 2010.

1.1.1 Approved DA

The approved DA was for a Poultry Processing Plant - DA [REDACTED]. All information which is relevant to the approved development application (DA) has been provided by the client.

As detailed in a letter from Penrith City Council (dated 22/01/2008), the approved DA for a Poultry Processing Plant (DA [REDACTED]) had been substantially commenced prior to the unauthorised clearing on site. Therefore, the unauthorised clearing zones would only be applicable to areas outside of the approved DA footprint.

Table 1 - Site Administrative Information

Category	Details
Title Reference (Lot/DP)	[REDACTED]
Area (ha)	10.1Ha
Street Address	[REDACTED] Badgerys Creek, NSW, 2555.
LGA	City of Penrith Local Government Area (LGA)
Land Zoning	RU2: Rural Landscape <i>'Environment and Recreation' in the Draft Western Sydney Aerotropolis Plan.</i>

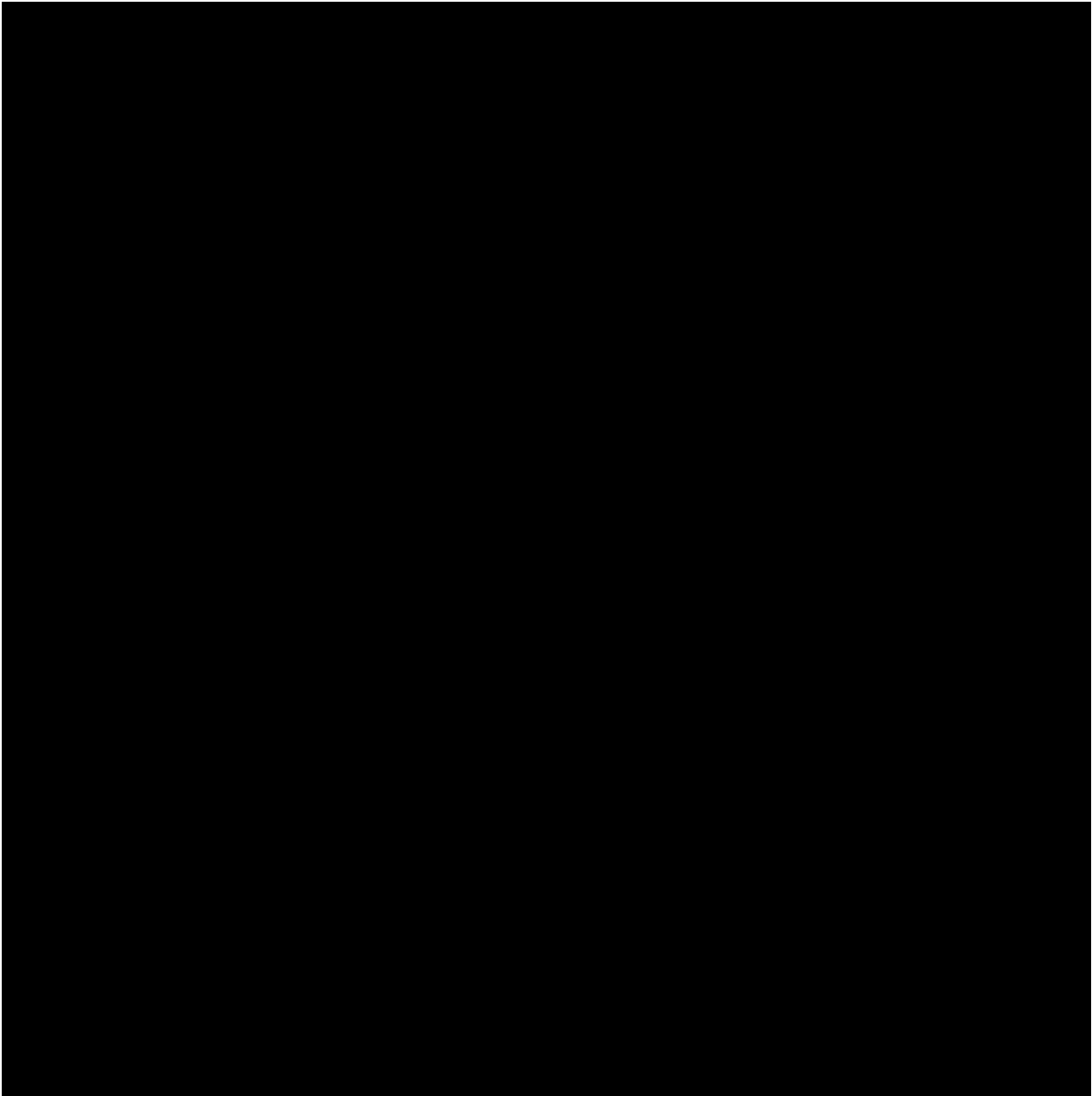


Figure 1.1. Site of the proposed development. Source of aerial SixMaps 2020

2 Landscape features

The site is located within agricultural/rural/light industrial setting. The surrounding properties are made up of agricultural (Cropping) rural (grazing and pasture paddocks) and patches of native bushland.

Desktop results – Plant Community Types (PCTs) and Vegetation Zones

A review of the most up-to-date vegetation mapping, CumberlandPlainWest_VIS__4207 OEH (2016), identified two plant community types (PCT) within site. The PCT are identified as;

Table 3 – Table of vegetation community synonyms as per NSW and Commonwealth legislation.

NSW PCT Code	NSW PCT Name	BC Act 2016	EPBC Act 1999
724	Broad-leaved Ironbark - Grey Box - Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion	Shale Sandstone Transition Forest in the Sydney Basin Bioregion State Conservation: Critically Endangered Ecological Community (CEEC)	Shale Sandstone Transition Forest in the Sydney Basin Bioregion Commonwealth Conservation: Critically Endangered (CE)
725	Broad-leaved Ironbark - Melaleuca decora shrubby open forest on clay soils of the Cumberland Plain, Sydney Basin Bioregion	Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion State Conservation: Endangered Ecological Community (EEC)	Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion Commonwealth Conservation: Critically Endangered (CE)

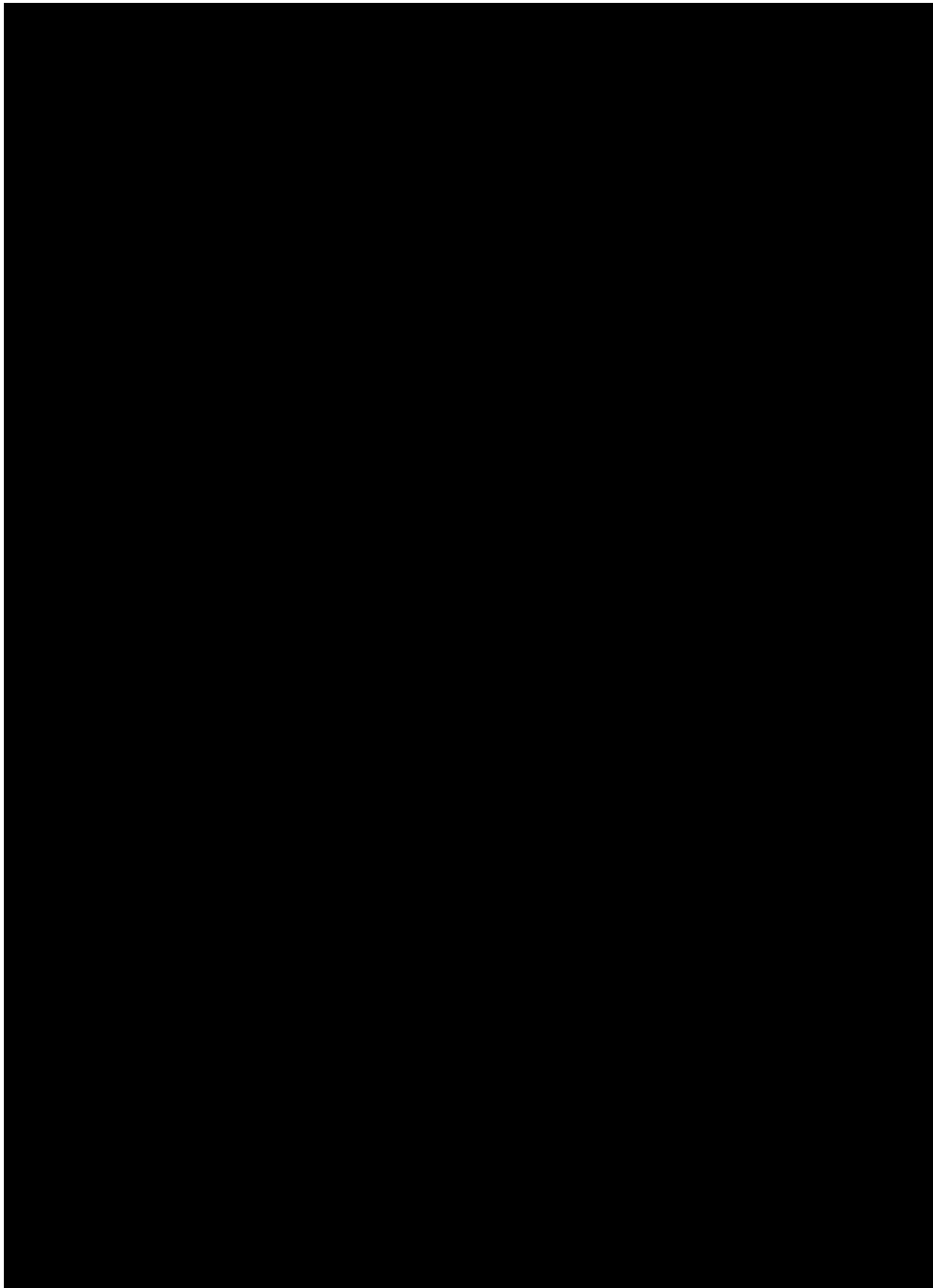


Figure 2.0. Subject site within mapped remnant vegetation surrounding the property. Source: Kingfisher 2020.

2.1 Field survey – PCTs and Vegetation Zones

2.1.1 Field Survey

The field survey revealed a highly-disturbed site. Vegetation has been assessed as Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion (PCT725). This finding was concluded following desktop investigations and field assessments.

The site has been modified such that many areas do not reflect the natural attributes of the original vegetation community. The patch of retained vegetation is in marginal condition and appears to be

resilient. There is a moderate abundance of weeds within this patch and bush regeneration techniques are recommended to maintain bushland resilience.

Dillwynia tenuifolia has previously been recorded on site (Lersyk Environmental, 2017). The area of vegetation in which the species is expected to occur has been retained. Again, the area has a moderate abundance of weeds and the immediate surrounding areas are significantly modified such that the species is unlikely to occur.

Stratification and plot dimensions

During the field investigation, a vegetation survey was conducted in the patch of retained vegetation. The plot was conducted as per the BAM Method with 20x20 plots (400m²) for assessing structure and composition with a center line extending 50m to create a 20 x 50 plot (1000m²) to assess function. See Biodiversity Assessment Method Operational Manual – Stage 1 (OEH 2018) page 26-28 for methods used.

2.1.2 Surrounding land use

Land use in the surrounding area comprises of a mix of rural, waste and resource recovery activities within the RU2 land zone.

Figure 1 (below) shows the location of those waste management and resource recovery facilities within close proximity of the subject site. These include Suez Resource Recovery Park (off [REDACTED]), Brandown Quarries (off [REDACTED]), Hi Quality Group (off [REDACTED]), Australian Native Landscapes (Martin Road), Wanless Sydney Recycling Park (Clifton Avenue).

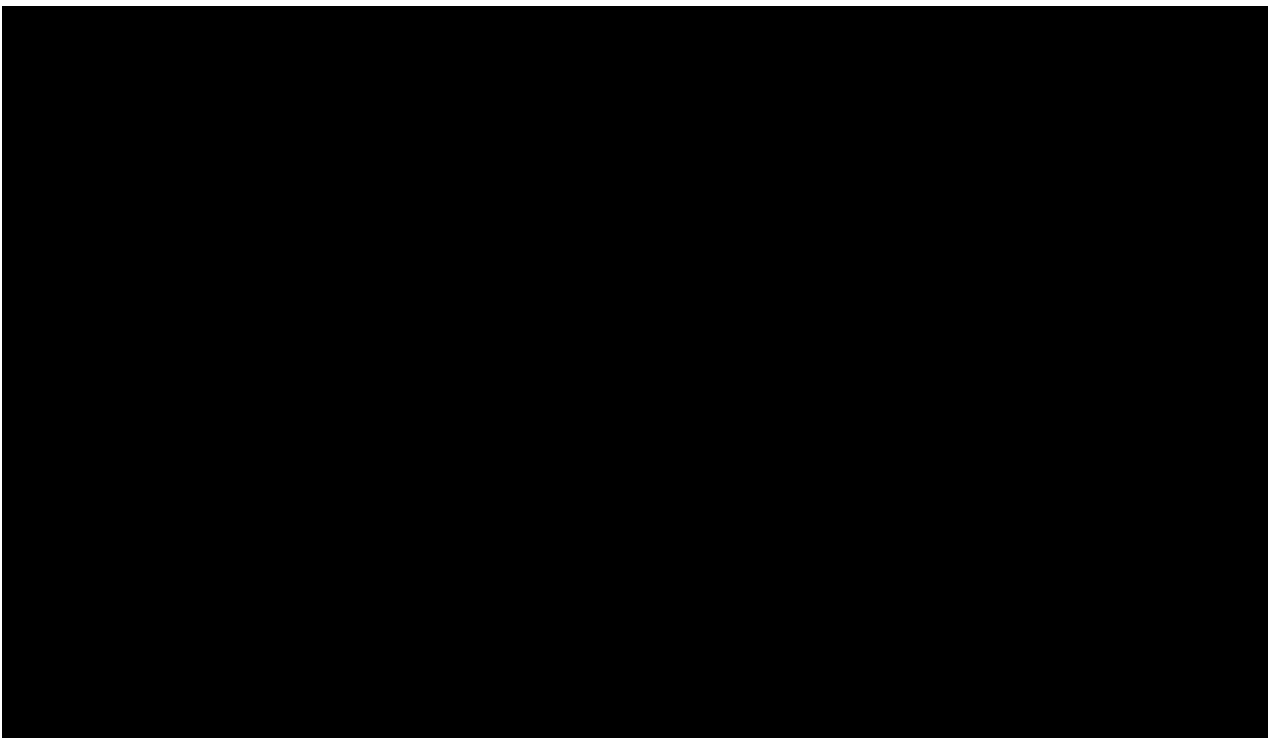


Figure 1 (below) shows the location of those waste management and resource recovery facilities within close proximity of the subject site. (Subject site – yellow arrow).

2.2 Discussion

Penrith City Council is continuing to investigate the clearing of vegetation on the premises. It must be noted that Penrith City Council has acknowledged substantial commencement of the DA in a letter dated 22/01/2008, see section 5. Therefore, any vegetation within the impact area for the approved DA had approval to be removed. As such, unauthorised clearing allegations are only applicable to areas outside of the approved DA footprint.

Ecologists have used this determination to conduct an impact investigation for areas effected by vegetation removal and modification in 2018. Ecologists have concluded that due to the condition of vegetation on site and surrounding land uses. It unlikely that the vegetation removed would have significantly contributed to the long-term survival of Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion.

The approved plan for the Poultry Processing Plant has been overlaid (via GIS geo-referencing) to determine the expected impact area of the approved DA. The expected impact area for the Poultry Processing Plant DA included; the building footprint, evaporation ponds, proposed landscaping areas and access roads. Estimates indicate that 8.59ha is approved for disturbance/removal as part of the DA 960082. Therefore, 1.51ha of vegetation would have been retained, outside of the approved disturbance/removal areas, see section 8 for the estimated disturbance zones for the approved DA.

In comparison, large areas of native vegetation have been retained on site and it had been concluded that the current area of retained vegetation is 1.55ha. As such, there is no significant difference in the net area of disturbance, when comparing the current condition of the site and the approved (expected) condition.

Additionally, ecologists have predicted that the current patches of retained vegetation are of higher conservation significance than the native vegetation which would have been retained under the Poultry Processing Plant DA. Historical aerial imagery shows a vehicle track divides the southern zone and the area also appears to lack mid and upper stratum diversity. It is expected that this area (if retained) would not have significantly contributed to the long-term survival of the vegetation community on site.

Figure 3.1 outlines the approved DA footprint, current areas of retained vegetation (1.55ha) and the disturbed areas, outside of the DA footprint (1.49ha).

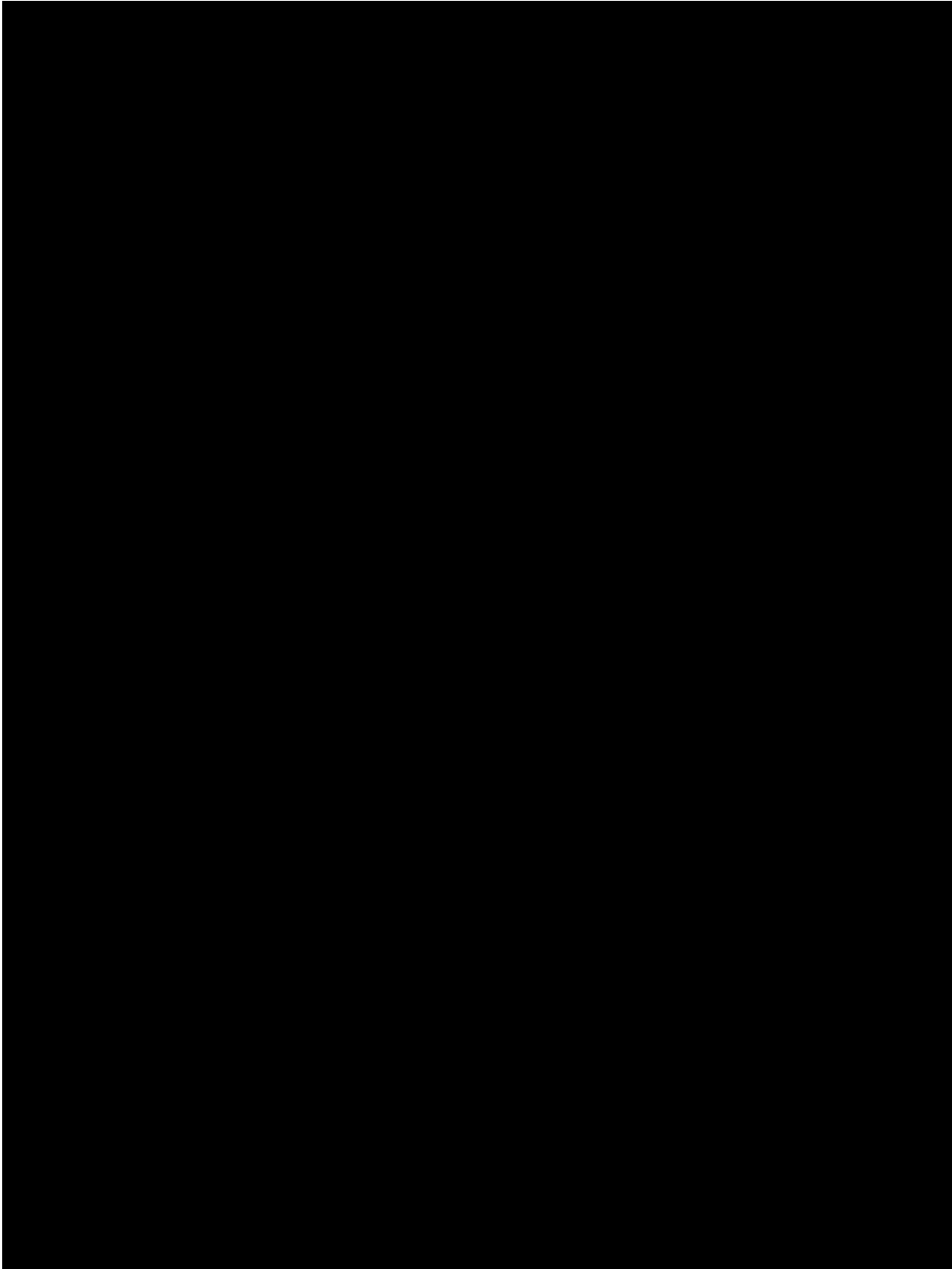


Figure 3.1. Approved plan for the Poultry Processing Plant, overlaid via GIS geo-referencing.

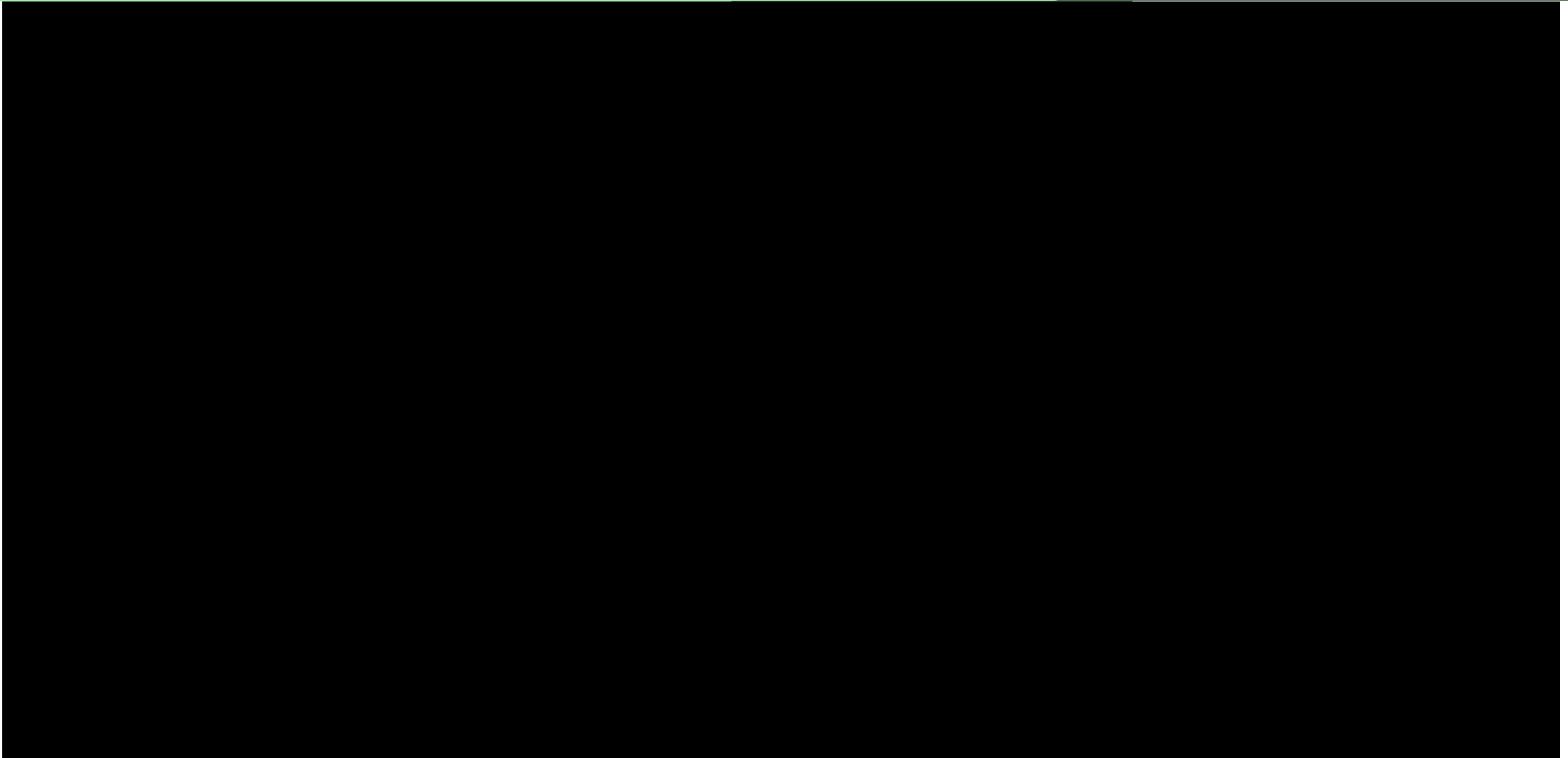


Plate 1: Historical imagery from 1998, 2006, 2009 and 2015 and Area 2 outlined in red. – Area 2 as per NOTICE TO PROVIDE INFORMATION AND RECORDS. [REDACTED]

Contact: Andrew Reece”

2.3 Impact Evaluation – BAM credit estimates

Field data was gathered using the BAM Method, with 20x20 plots (400m²) for assessing structure and composition with a center line extending 50m to create a 20 x 50 plot (1000m²) to assess function. See Biodiversity Assessment Method Operational Manual – Stage 1 (OEH 2018) page 26-28 for methods used.

This data enabled ecologists to determine the credit obligations which may be applicable in order to offset the unauthorised clearing, outside of the approved development footprint. Vegetation on site has been assessed as Cooks River/Castlereagh Ironbark Forest (TEC) in the Sydney Basin Bioregion (PCT725). This finding was concluded following desktop investigations and field assessments.

Vegetation now cleared (that was present at time of DA approval) but outside the DA approved footprint is approximately 1.49ha (figure 3.1). If the 1.49ha was quality vegetation (as per the plot taken on-site) the credit costs for off-setting this is around [REDACTED]. From plate 1, it can be seen that the vegetation in the zone is not dense vegetation (as represented by the plot data used in this study). Based on examination of nearby areas with current similar aerial imagery it is expected that this area was 30% of the value of the official plot conducted in 2020 in the quality remaining vegetation.

Based on this finding, the off-set value for the area cleared would be calculated at 30% of the [REDACTED]. Therefore, the expected off-set cost is [REDACTED].

3 Offset and Mitigation measures

To protect and enhance the viability and integrity of the remaining bushland on site, ecologists have recommended the following mitigation measures. It is recommended that impacts be offset either on site and/or within adjoining lots within the same vegetation corridor.

3.1.1.1 Exclusion zones and delineation of works zone

The vegetation which remains on site should be enclosed by exclusion zone fencing and signage erected to ensure personnel on site do not impact on the area. The fencing should ideally be an open mesh or bar type structure to allow air flow and light through and provide continuity with adjacent vegetation so as not to impede the function of a vegetation corridor. There must be openings underneath the barrier to allow for small fauna movements.

3.1.1.2 Native landscaping and bush regeneration

Activities including weed removal, removal of foreign materials, mulching and sediment controls and tube stock planting are recommended for the site. Replacement plantings are one of several best practice measures, to retain and support the long-term survival of the vegetation on site. It is recommended that seeds are collected from the site. Seedlings can then be propagated and planted once established. Landscaping across the site should be selected from locally native ground and shrub species.

Low impact bushland regeneration methods should also be utilised to meet weed control performance targets. The bushland on site displaying signs of resilience. The area is expected to recover naturally with appropriate and continuous maintenance of the native vegetation on site. Should tube stock be required, species should be selected from the Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion species list.

4 Site Photos

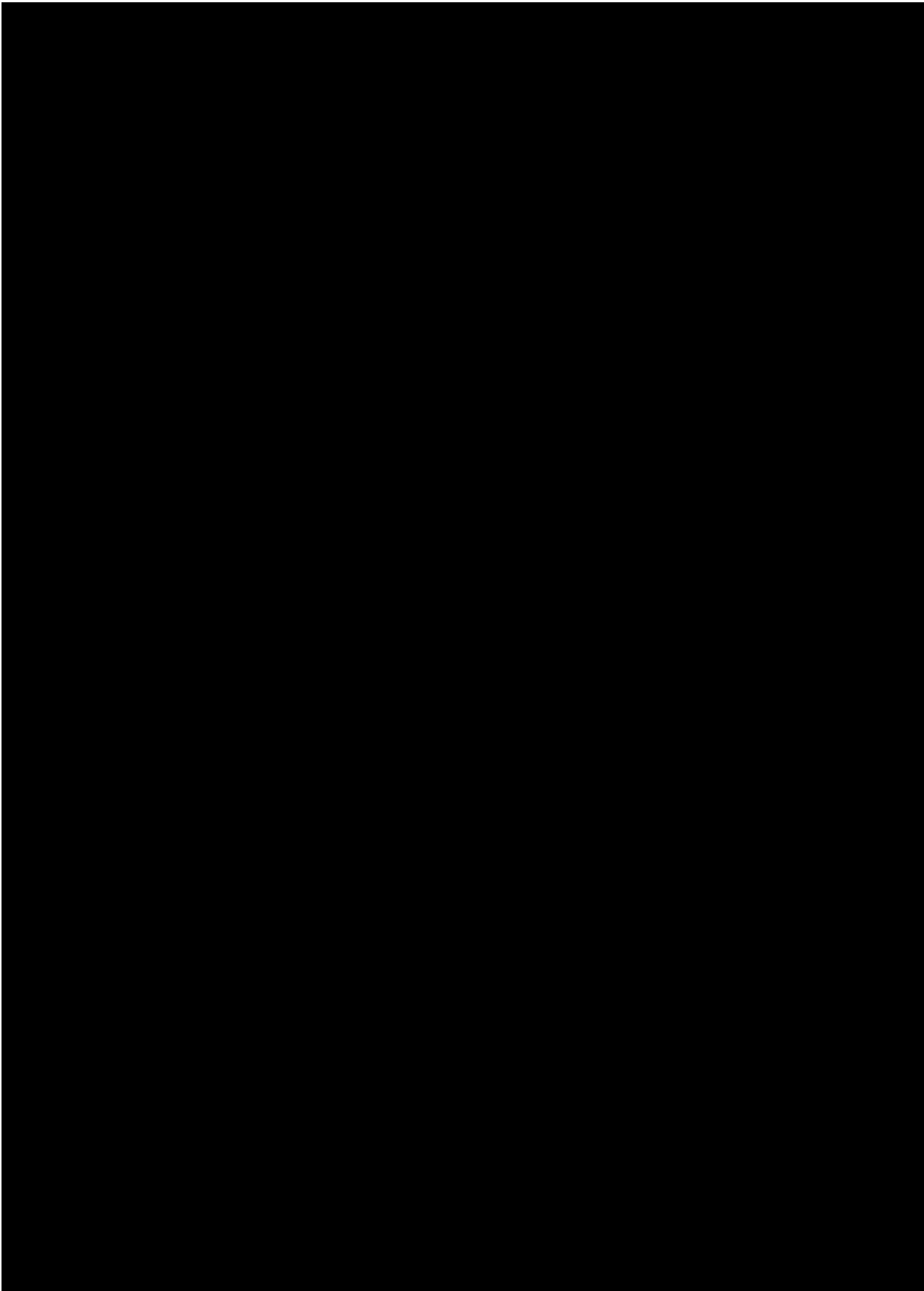


Plate 2: Native vegetation in the southern third of the site- retained.

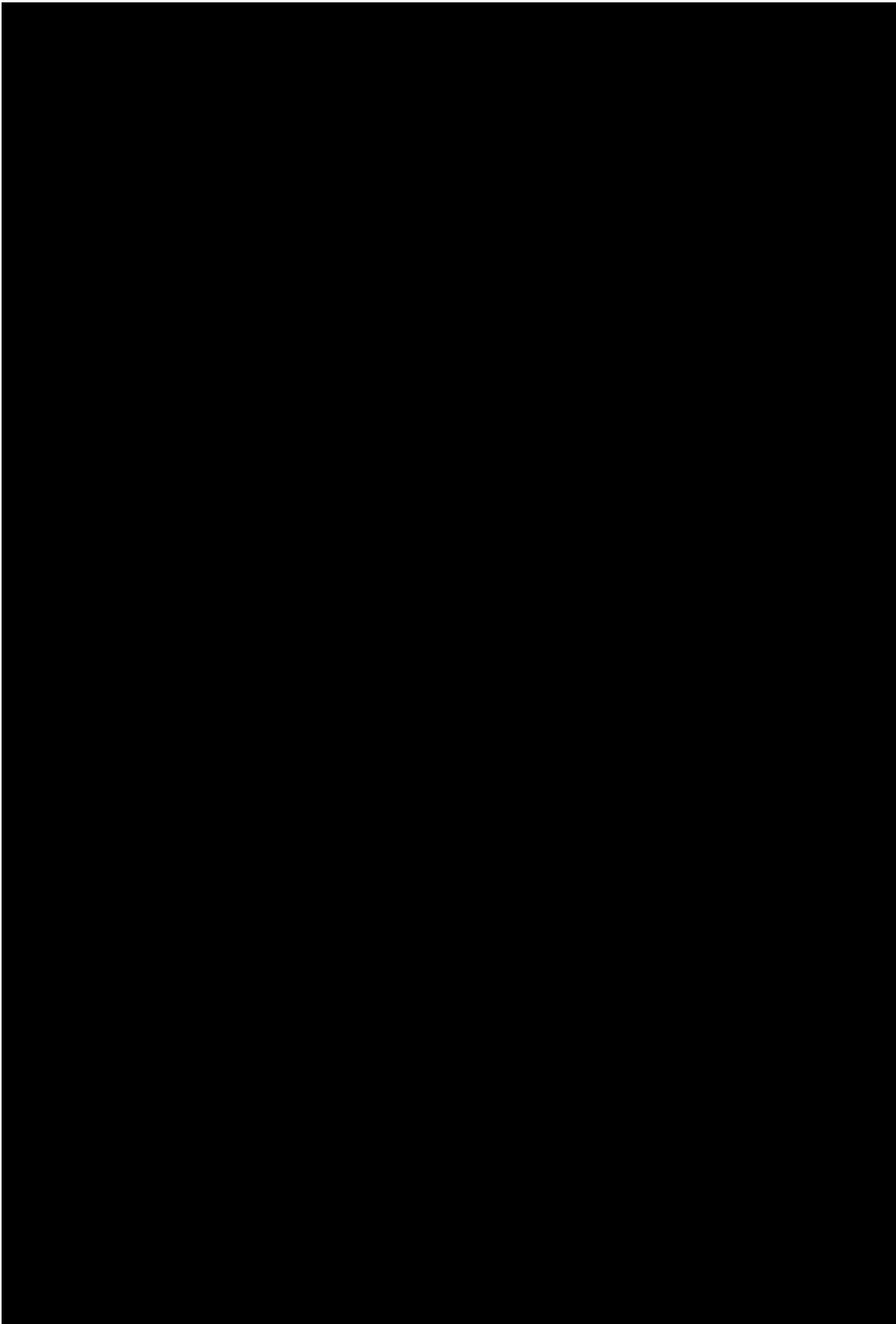


Plate 3: Current use of the site (top) and BAM Plot (bottom)

5 Penrith Council Letter – Substantial commencement of DA 960082



RECEIVED
30 JAN 2008

BY:.....

22 January 2008

PO BOX 279
FAIRFIELD NSW 2165

Dear Mr D'Onofrio,

for the Proposed Poultry Abattoir Processing Facility
at Badgery Creek

I refer to the above development application and your letter dated 7 November 2006 along with the submitted documentations to indicate that certain construction works were carried out prior to the expiry of the consent notice.

You are advised that Council's Officer has now inspected the site and noted that the footing excavation and reinforced concrete pours were carried out are still in place. In view of the site inspection and documentations provided by you which included

- a letter from Peter Marcus Consulting Engineers Pty Ltd dated 16 June 1999 to demonstrate that foundation works were carried out and were structurally sound,
- a facsimile sent by Rhodes Thompson Associates dated 12/3/1999 to indicate that earth works involving clearing of the pegged development area,

Council has now concluded that substantial construction works have been carried out on site in accordance with the approved plan prior to the expiry date of the relevant consent and advise that the consent issued for the above development has now been secured. You are reminded that all conditions of the Consent Notice No.960082 dated 28 August 1996 and Building Permit No. dated 11/02/1998 must be complied with prior to the occupation of the building and commencement of the use/business.

If you have any queries regarding this matter, please contact me on or Warwick Stimson on

Yours faithfully,

Pukar Pradhan
Senior Environmental Planner

6 Poultry Processing Plant - DA – Expected disturbance zone

Estimates indicate 8.59ha was proposed for disturbance/removal as part of the approved DA (red).

Therefore, 1.51ha of vegetation would have been retained, outside of the approved disturbance/removal areas (green).

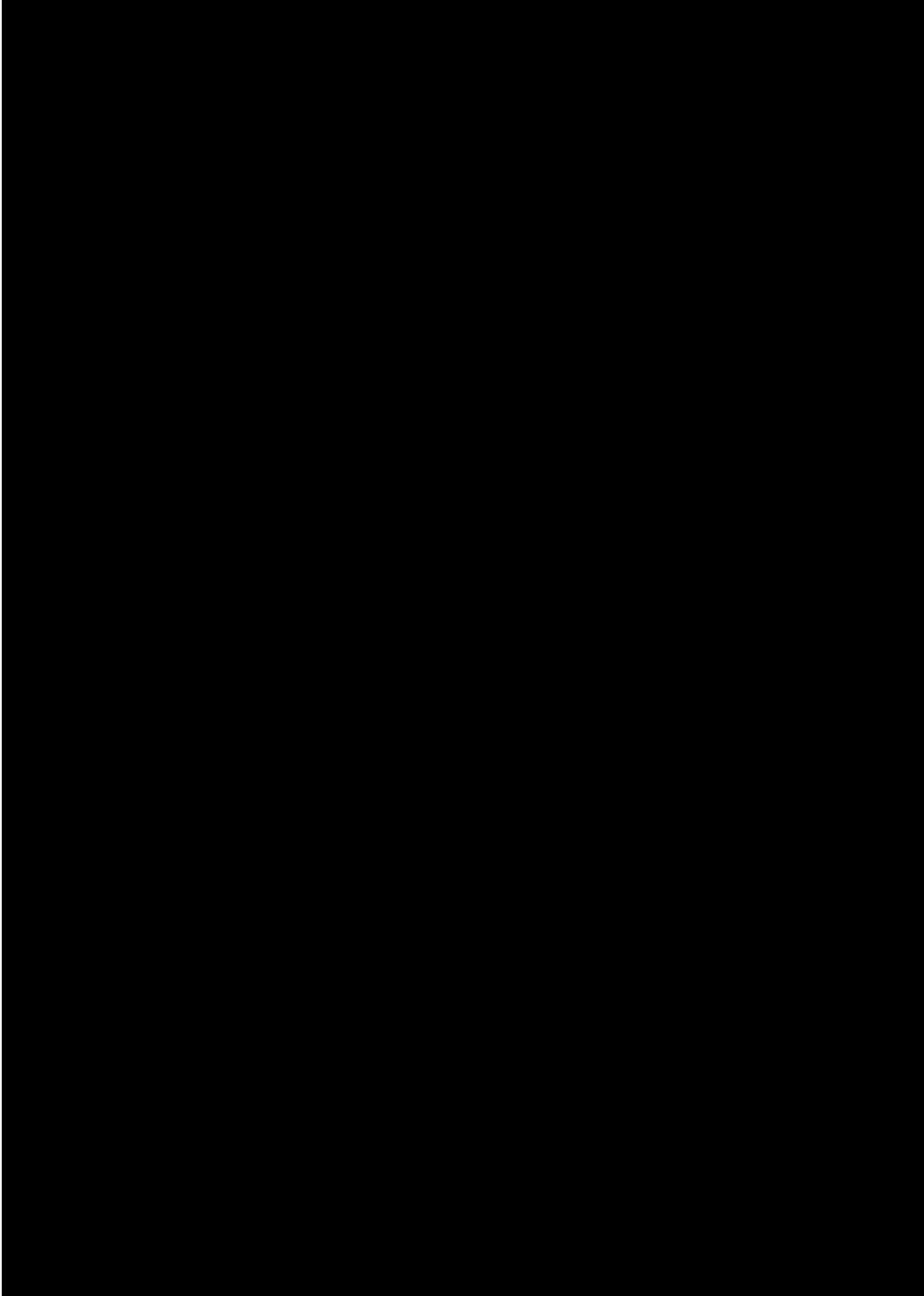


Figure 4.0. Poultry Processing Plant - DA overlay - Source: Nicolas Israel July 2020.

7 References

DPIE (2020). Atlas of NSW Wildlife (Bionet). New South Wales, Office of Environment and Heritage.

DPIE (2020). NSW Threatened Species Information.

DPIE (2020). PlantNET (The Royal Botanic Gardens and Domain Trust 2014).

(OEH, 2016) VIS_Vegetation_CumberlandPlainsWest_2013_E_4207

Ecoplaning (2020). Ecological Assessment, [REDACTED], Badgerys Creek, NSW, 2555.

Lesryk Environmental (2017). Flora and Fauna Survey and Assessment, [REDACTED] Badgerys Creek, NSW, September 2017. Prepared for National Integrated Creative Solutions on behalf of Crush and Haul Pty Ltd.

NSW Land and Property Information (2020). Six Maps Viewer.

Penrith City Council (8th May 2020). NOTICE TO PROVIDE INFORMATION AND RECORDS. DC17/0676.
Contact: Andrew Reece.

Penrith City Council (22/01/2008) – Attn ; Lino D’Onofrio. Ref= PP: 960082 DA.

8 Expertise of authors

With over 20 years wetland and urban ecology experience, a great passion for what she does, and extensive technical and on-ground knowledge make Geraldene a valuable contribution to any project.

Geraldene has over 8 years local government experience as manager of environment and education for Pittwater Council. Geraldene presented papers on the topic at the NSW Coastal Conference, Sydney CMA and Hawkesbury Nepean forums. Geraldene is a Technical Advisor Sydney Olympic Park Wetland Education and Training (WET) panel.

Geraldene has up to date knowledge of environmental policies and frequently provides input to such works. Geraldene was a key contributor to the recent set of Guidelines commissioned by South East Queensland Healthy Waterways Water Sensitive Urban Design Guidelines. Geraldene's role included significant contributions and review of the Guideline for Maintaining WSUD Assets and the Guideline for Rectifying WSUD Assets.

Geraldene is a frequent contributor to many community and professional workshops on ecological matters particularly relating to environmental management. She is an excellent Project Manager.

Geraldene is a joint author on the popular book Burnum Burnum's Wildthings published by Sainty and Associates. Author of the Saltmarsh Restoration Chapter Estuary Plants of East Coast Australia published by Sainty and Associates (2013). Geraldene's early work included 5 years with Wetland Expert Geoff Sainty of Sainty and Associates. Geraldene is an expert in creating and enhancing urban biodiversity habitat and linking People with Place.

Geraldene Dalby-Ball DIRECTOR



SPECIALISATIONS

- Urban Ecology – and habitat rehabilitation and re-creation.
- Urban waterway management – assessing, designing and supervising rehabilitation works
- Saltmarsh and Wetland re-creation and restoration – assessment, design and monitoring
- Engaging others in the area of environmental care and connection
- Technical Advisor – environmental design, guidelines and policies
- Sound knowledge and practical application of experimental design and statistics
- Project management and supervision
- Grant writing and grant assessment
- Budget estimates and tender selection
- Expert witness in the Land and Environment Court

CAREER SUMMARY

- **Director and Ecologist**, Ecological Consultants Australia. 2014-*present*
- **Director and Ecologist**, Dragonfly Environmental. 1998-*present*
- **Manager** Natural Resources and Education, Pittwater Council 2002-2010
- **Wetland Ecologist** Sainty and Associates 1995-2002

QUALIFICATIONS AND MEMBERSHIPS

- **Bachelor of Science with 1st Class Honors**, Sydney University
- WorkCover WHS General Induction of Construction Industry NSW White Card.
- Senior First Aid Certificate.
- **Practicing member and vice president** Ecological Consultants Association of NSW

Jack is a passionate ecologist who has worked with various stakeholders across both the public and private sectors to deliver sustainable environmental outcomes. He has worked on projects with major construction contractors and has been able to deliver tailored environmental solutions on time and within budget.

As an undergraduate student, he published a study that examined the cost of revegetation across the Richmond River Catchment in NSW. This study provided Jack with a deep understanding of urban and landscape ecology and the environmental factors associated with habitat restoration.

He has advanced communication skills and can deliver professional ecological assessments. He has a thorough understanding of current NSW and Commonwealth environmental legislation. He is also competent in the practical application of flora and fauna surveying and monitoring techniques.

Jack would be a valuable addition to any ecology project as he is committed to achieving the best possible outcome for both the client and the environment.

Key Projects Include:

- Monitoring of Endangered Species, various locations
- Environmental consultant for many civil developments throughout the Sydney region
- Researching the On-farm costs of revegetation in the Richmond River Catchment
- Sustainable business transformation proposal for a retail store.

Jack Hastings

ECOLOGIST



SPECIALISATIONS

- Urban and landscape ecology – design and re-creation
- Environmental Impact Assessments (EIA)
- Review of Environmental Factors for development applications
- Flora and Fauna management plans
- Habitat tree assessment, marking and mapping
- GIS mapping
- Sound understanding and practical application of experimental design
- Grant writing and grant assessment

CAREER SUMMARY

- **Ecologist**, Ecological Consultants Australia. *2019-present*
- **Environmental Consultant**, BBN Consulting. *2018-2019*

QUALIFICATIONS AND MEMBERSHIPS

- **Bachelor of Environmental Science**, Southern Cross University.
- **Certificate II Agriculture**.
- **WHS General Induction of Construction Industry NSW White Card**.

AH DAVID McNamara.

GOUGH PLANNING

11 February 2020

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

RE: Submission – Western Sydney Aerotropolis Plan & Western Sydney Aerotropolis Discussion Paper on the proposed State Environmental Planning Policy.

We are the consultant town planners for the Langway Pty Ltd, the registered proprietor of land legally identified as Lot [REDACTED] in Deposited Plan [REDACTED] and known as No. [REDACTED] Badgerys Creek (the subject property).

Summary of Objection

Our client objects to the proposed rezoning of the entirety of the subject property from RU – *Rural Landscape* under *Penrith Local Environmental Plan 2010 (LEP 2010)* to *Environment and Recreation* as depicted on the 'Structure Plan'¹ and on the "Land Zone" Map². Figure 1 below depicts the proposed zoning of our client's property.

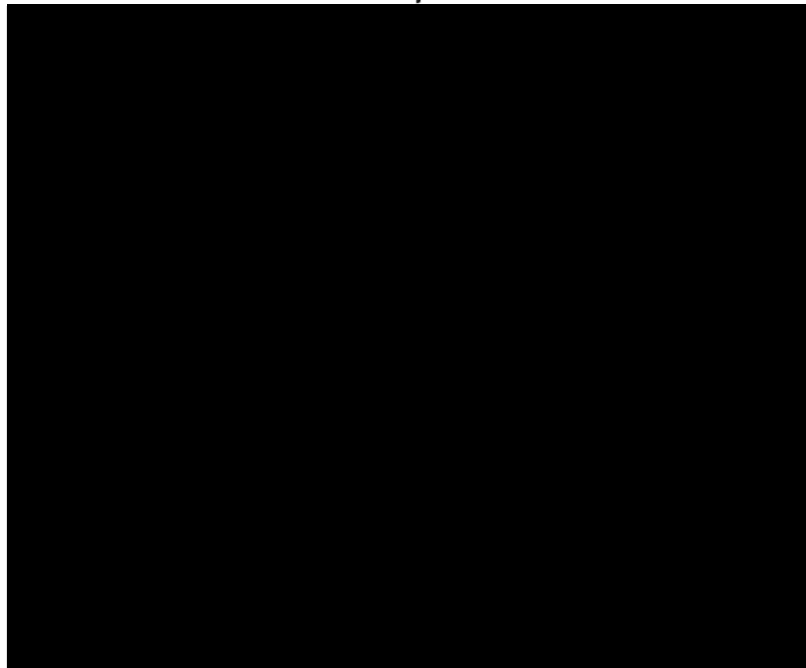


Figure 1: Proposed zoning of subject property under the SEPP

¹ Page 26 and 67 of the Aerotropolis Plan & p2 of the SEPP Discussion Paper

² Page 29 of the Aerotropolis Plan

Our client requests that the zoning of his property under the SEPP, be *Enterprise*.

The subject property

The subject property is located on the northern side of Elizabeth Drive in Badgerys Creek and addresses an unnamed road to its east. The site is regular in configuration having a width of approximately 180 metres, a depth of approximately 550 metres and a site area of 101,000m².

The subject property is cleared of vegetation with the exception of an area of shrubs and trees towards the southern portion of the site. This vegetated area does not form a connection with vegetation on adjoining properties, and is bisected by an unsealed vehicular track.

An aerial photograph of the subject property is below at **Figure 2**.



Figure 2: Aerial image of the subject property as at 22 January 2020 (source nearmaps)

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The subject property has been the subject of modification to its natural landform to accommodate two resource recovery facilities. Areas of the property have been levelled, whilst other areas have had embankments created.

The following development consent have been granted with respect to the subject property:

- Consent No. [REDACTED] for the *Erection and Operation of a Poultry Abattoir and Processing Facility*. This consent is operational, as development occurred pursuant to the consent before the lapsing period expired. Our client intends to develop its land for this purpose if the Aerotropolis Plan is not amended pursuant to this objection. We are instructed that this consent permitted the removal of trees which currently exist on the subject property.
- Consent No. 16/0722 for a *Resource Recovery Facility*. Development is currently occurring pursuant to this development consent.

The subject property:

- Is not environmental sensitive land pursuant LEP2010
- Is not land containing terrestrial biodiversity pursuant to LEP 2010
- Is not affected by the 1% AEP³ flood event
- Is not mapped as containing endangered ecological communities or having high biodiversity value.

The subject property is adjoined to the south, east and west by rural and residential land uses. To the north the subject property is directly adjoined by the Kemps Creek Resource Recovery Facility, which is a facility which accepts a variety of waste including asbestos.

Figure 3 is an aerial photograph of the site and surrounds.

³ Annual Exceedance Probability

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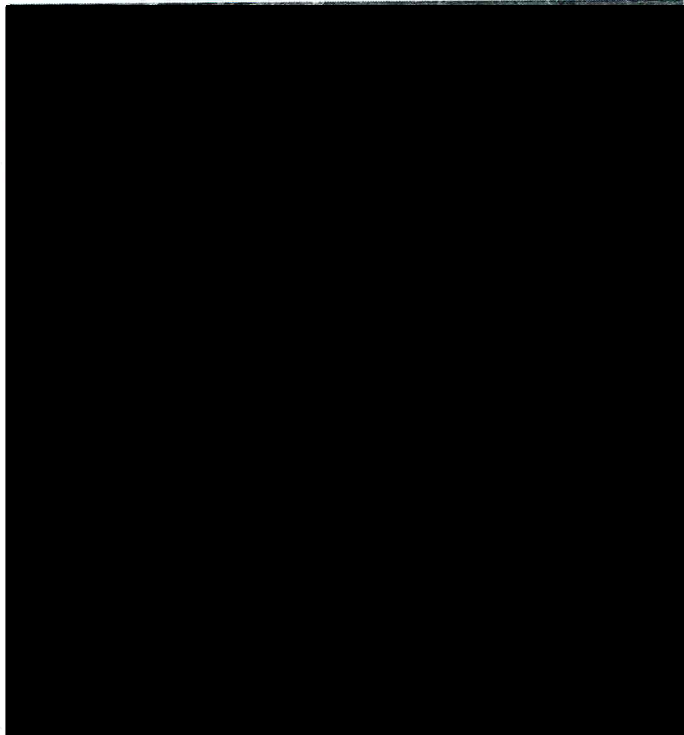


Figure 3: Aerial image of site and surrounds as at 22 January 2020

Details of Objection to Draft Masterplan

The proposed Environment and Recreation zoning applied to the subject property is objected to for the following reasons:

1. The subject property's unsuitability for conservation

The subject property is identified on the 'Blue Green Infrastructure' Map as having "Potential for Conservation".⁴ No explanation of justification is given as to why the subject property achieves this classification and in our submission the classification does not reflect the ecological significance of the subject property.

In our view the site is unsuitable for a zoning which seeks to promote environmental conservation for the following reasons:

- As described above, the subject property is devoid of bushland, with the exception of a small section of vegetation located towards the southern boundary. We are instructed that this bushland has been approved for removal by development consent No. DA960082. The subject property does not contain an endangered ecological community, nor does it not form part of a wildlife corridor. We note that the surrounding and nearby properties are completely absent of bushland or significant vegetation.

⁴ Page 34 Aerotropolis Plan.

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- The zoning of our client's entire property for conservation purposes would not achieve the Plan's objective of creating a new green linkage between Badgerys Creek and Wianmatta-South Creek.⁵ The site would be isolated by adjoining commercial/industrial uses and no visual connection would be achieved with the riparian corridors to the east or west.
- The historic and current use of the property has seen the natural landform modified. As such natural features such as rock outcrops and natural watercourses are no longer present on the property. The site has extremely limited opportunities for fauna habitat.
- The subject property is located within the ANEC/ANEF contours of 25-30⁶. In such areas noise sensitive landuses are prohibited due to the impact of significant aircraft noise. The creation of a natural area would be inappropriate.
- The subject property is located within the 3km wildlife buffer.⁷ Due to the risk of wildlife strike, the Aerotropolis Plan at clause 5.13 discourages "*parks or biodiversity conservation sites*" in close proximity to the airport. In addition the Plan discourages the planting of vegetation that could attract wildlife. The creation of an environmental conservation area on the subject property would be contrary to clause 5.13 of the Plan.
- The land is not effected by flooding and does not contain significant conservation values. The property does not satisfy the criteria for a biodiversity corridor identified in clause 2.10 of the Discussion Paper.

There is no strategic rationale for the creation of a conservation area on the subject property. The structure plan locates conservation and recreation areas generally along the axis created by Wianmatta-South Creek and Kemps Creek. These areas contain existing significant vegetation, are effected by flooding and provide a wildlife corridor. In contrast, the subject property is isolated, is devoid of significant vegetation, has experienced landform modification, is currently being used as a waste recovery facility and is adjoined to the north by a large tip, which we are advised emits a strong odour. From a strategic planning viewpoint, the subject property is completely unsuitable for environmental conservation purposes.

2. The subject property's unsuitability for recreation

The subject property is unsuitable for use as a park or recreation area . As stated above the land will be subjected to extreme aircraft noise levels, which would make the property unsuitable for passive or active recreational activities. Further the limitation on planting trees which could attract wildlife would mean that any recreation area would be barren.

Under the structure plan, the subject property would be surrounded by an extensive area zoned for enterprise purposes. Having regard to the proposed noise levels, development in the immediate vicinity to the subject property is likely to be for industrial purposes⁸ and due to its location at the end of the proposed runway uses such as "*storage*" or the *manufacture of*

⁵ Clause 7.2.4 Aerotropolis Plan

⁶ Page 44 Aerotropolis Plan

⁷ Page 48-49 Aerotropolis Plan

⁸ Page 44 Aerotropolis Pan

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certain dangerous goods" will be encouraged.⁹ The creation of a public recreation area or park surrounded by such industrial landuses is not a sensible strategic decision. Indeed the Plan specifically discourages such areas from containing landuses that encourage large numbers of people to gather, due to the public safety issues.

Whilst it is acknowledged that modern industrial and business precincts, should be supplemented with green areas and recreational facilities for the workforce, these uses would be more appropriately located away from the end of the runways and away from areas subjected to excessive aircraft noise.

3. Appropriateness of Enterprise zoning

The subject property is ideally sized, configured and located to accommodate a land zone that would encourage an industrial or commercial landuse. In our view such a zoning would be appropriate for the property and would assist in furthering the objectives and vision of the structure plan.

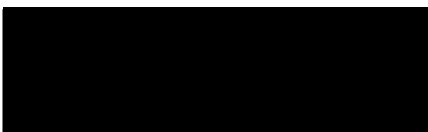
The property is not constrained by flooding or a steep gradient and does not contain heritage significance. The existing vegetation that does exist on the subject property could be conserved with any future development on the subject property.

Conclusion

On the basis of the matters contained in this submission we requests that the 'Land Zone Map' be amended to remove the proposed 'Environment and Recreation' zoning from our client's property and its replacement with an Enterprise zoning.

If you have any questions or require further information please contact the writer.

Yours faithfully
GOUGH PLANNING



Andrew Gough BTP (Hons), LLB

Our Ref:2001

⁹ Clause 5.1.5 Aerotropolis Plan

Submission to Western Sydney Aerotropolis
for
Langway Pty Ltd

12 March 2020

1. Introduction

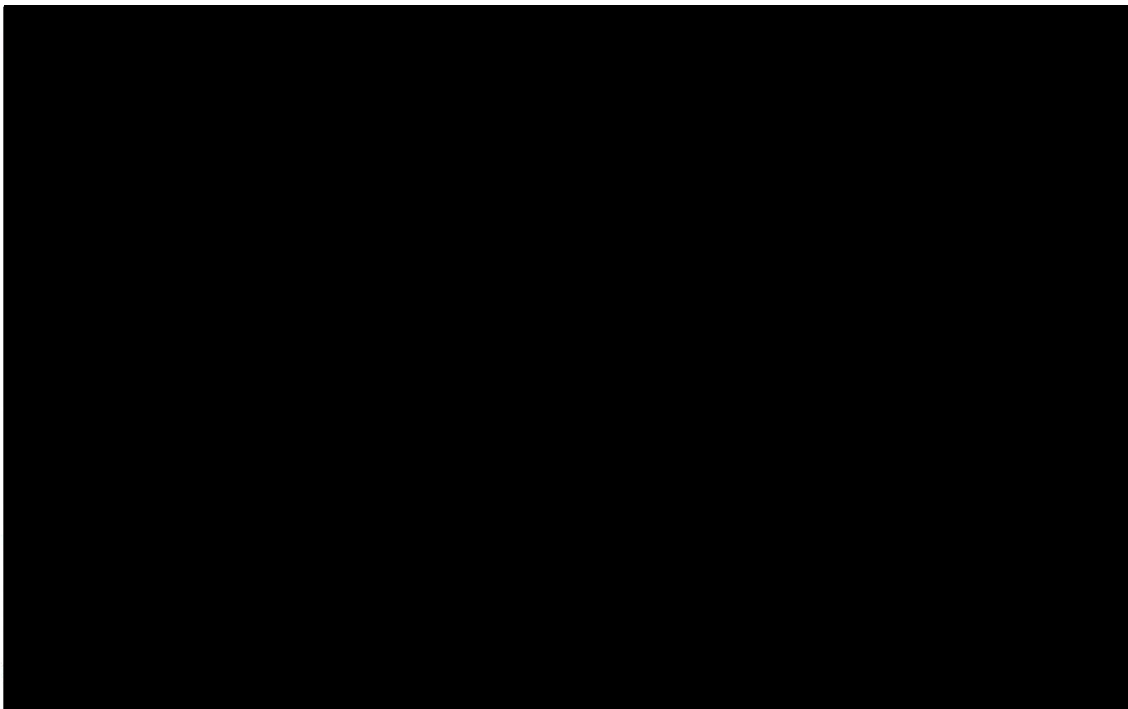
This submission is prepared on behalf of our client, Langway Pty Ltd, the registered owner of land formally identified as Lot 4 in Deposited Plan [REDACTED] and more commonly known as [REDACTED] Badgerys Creek (**subject site**).

The subject site is located within the Badgerys Creek Precinct (refer Figure 1) that forms part of the Western Sydney Aerotropolis boundary as identified in the *Draft Western Sydney Aerotropolis Plan*.

This submission is complimentary to an earlier submission lodged with the Department of Planning, Industry and Environment by Gough Planning dated 11 February 2020.

The following documents have been referenced in the preparation of this submission:

- Draft Western Sydney Aerotropolis Plan
- Draft Western Sydney Aerotropolis Development Control Plan Phase 1
- Western Sydney Aerotropolis proposed SEPP Discussion Paper
- Penrith Local Environmental Plan 2010
- Environment and Recreation Zone Fact Sheet



2. Summary of Submission

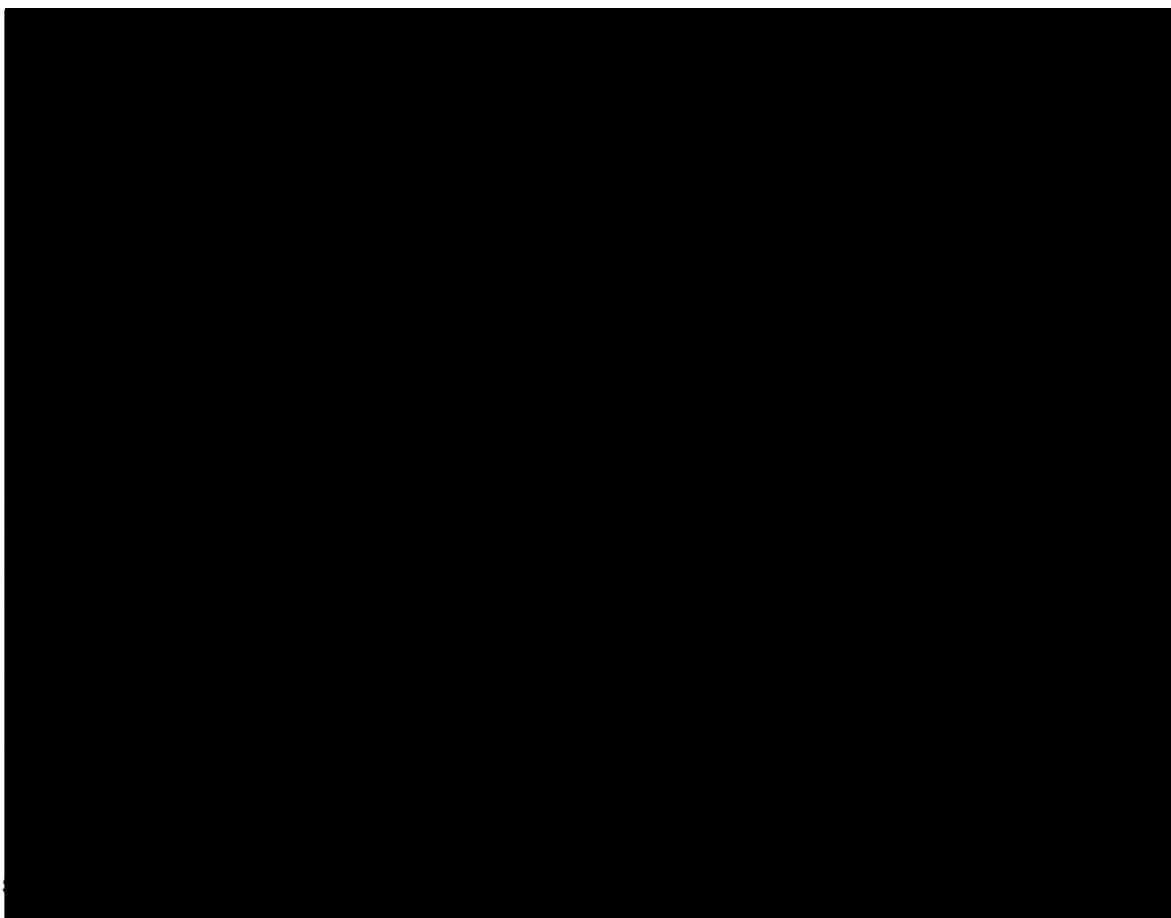
The Draft Western Sydney Aerotropolis Plan proposes to rezone the subject site (outlined in black in Figure 2) from 'R2 Rural Landscape' pursuant to *Penrith Local*

Environmental Plan 2010 to 'Environment and Recreation'.

Following a detailed and comprehensive review of the key *Western Sydney Aerotropolis* documents that are currently on public exhibition we are of the strong opinion that:

1. there is insufficient justification for the rezoning of the subject site to 'Environment and Recreation'; and
2. the subject site should instead be rezoned 'Enterprise', the same as the surrounding lands.

Figure 2: Proposed zoning of subject site



3. Subject site

The subject site, outlined in red in Figure 3, is located on the northern side of Elizabeth Drive, Badgerys Creek on the corner of an unnamed access road. The site is rectangular in shape with an approximate 180 metre frontage to Elizabeth Drive and approximate depth of 550 metres resulting in an area of around 99,000m².

To the north, the subject site is adjoined by the SUEZ Kemps Creek Resource Recovery Park that deals with waste types such as:

- Biosolids
- Contaminated waste
- Mixed putrescibles
- Non putrescibles

To the south, east and west the subject site is adjoined by rural/residential land uses.

It is understood that the subject site is currently occupied by:

- Crush and Haul Resource Recovery Facility; and
- BRM Recycling.

In addition, substantial work has commenced on the construction of a *poultry abattoir and processing facility* that was granted approval by Penrith Council. This approval also permits the removal of trees that currently exist on the subject site.

It is important to note that because of these existing and proposed land uses, the subject site has been substantially cleared of any significant vegetation as shown in Figure 3 and Figure 4 and will be cleared of more vegetation as a result of approved poultry abattoir and processing facility.

Pursuant to *Penrith Local Environmental Plan 2010* (LEP) the subject site is zoned *R2 Rural Landscape* with a primary objective “to encourage sustainable primary industry production”. In providing a mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith, the LEP:

- Does not identify the subject site as environmentally sensitive land;
- Does not identify the subject site as containing terrestrial biodiversity;
- Does not identify the subject site as being affected by the 1% AEP flood event; and
- Does not identify the subject site as containing endangered ecological communities or having high biodiversity value.

In addition, the subject site is not mapped on the Biodiversity Values (BV) Map prepared by the Department of Planning, Industry and Environment (DPIE) under Part 7 of the *Biodiversity Conservation Act 2016* (BC Act). The DPIE website notes the BV Map “identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing”.

Figure 3: Aerial view of subject site

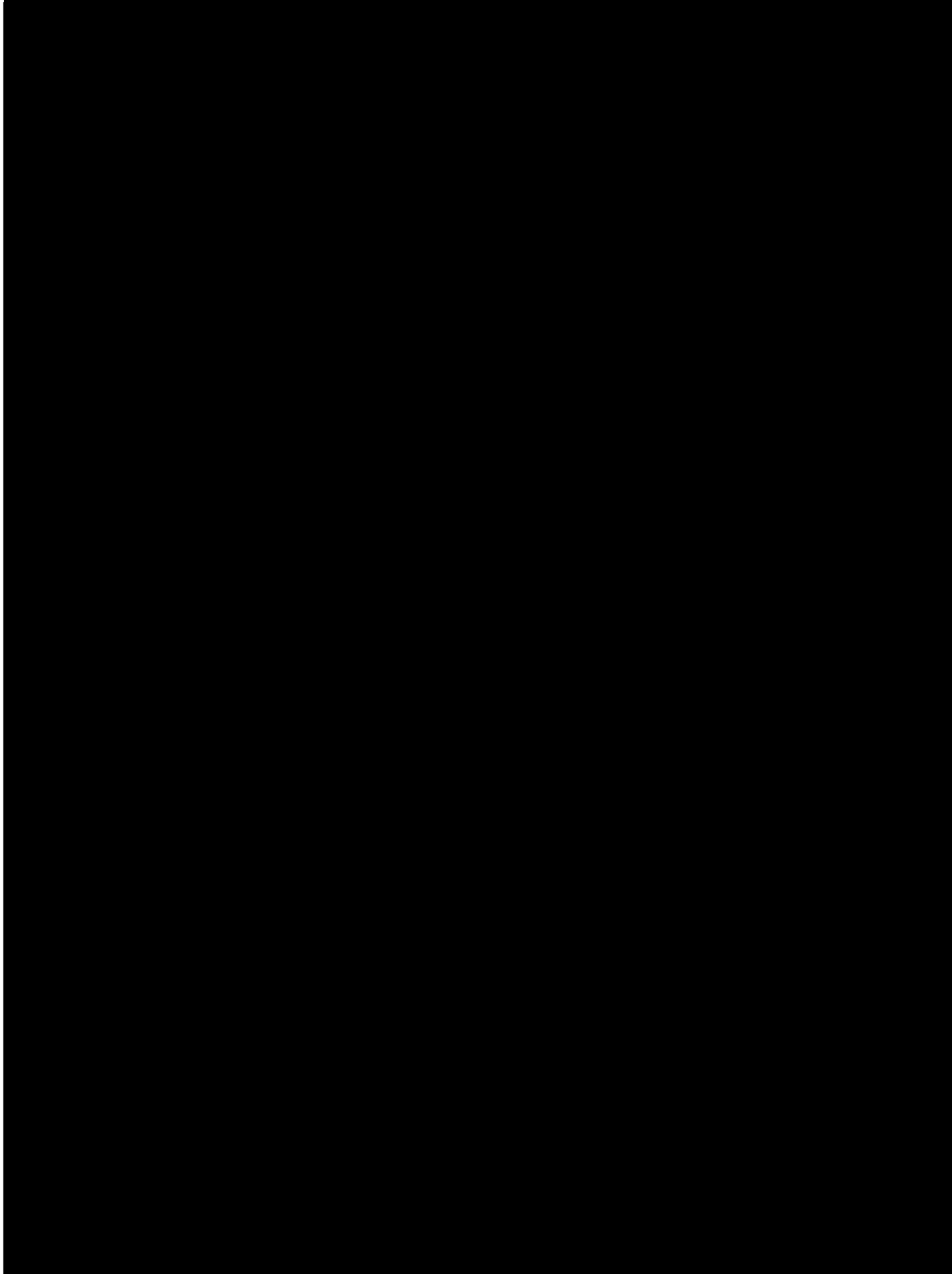
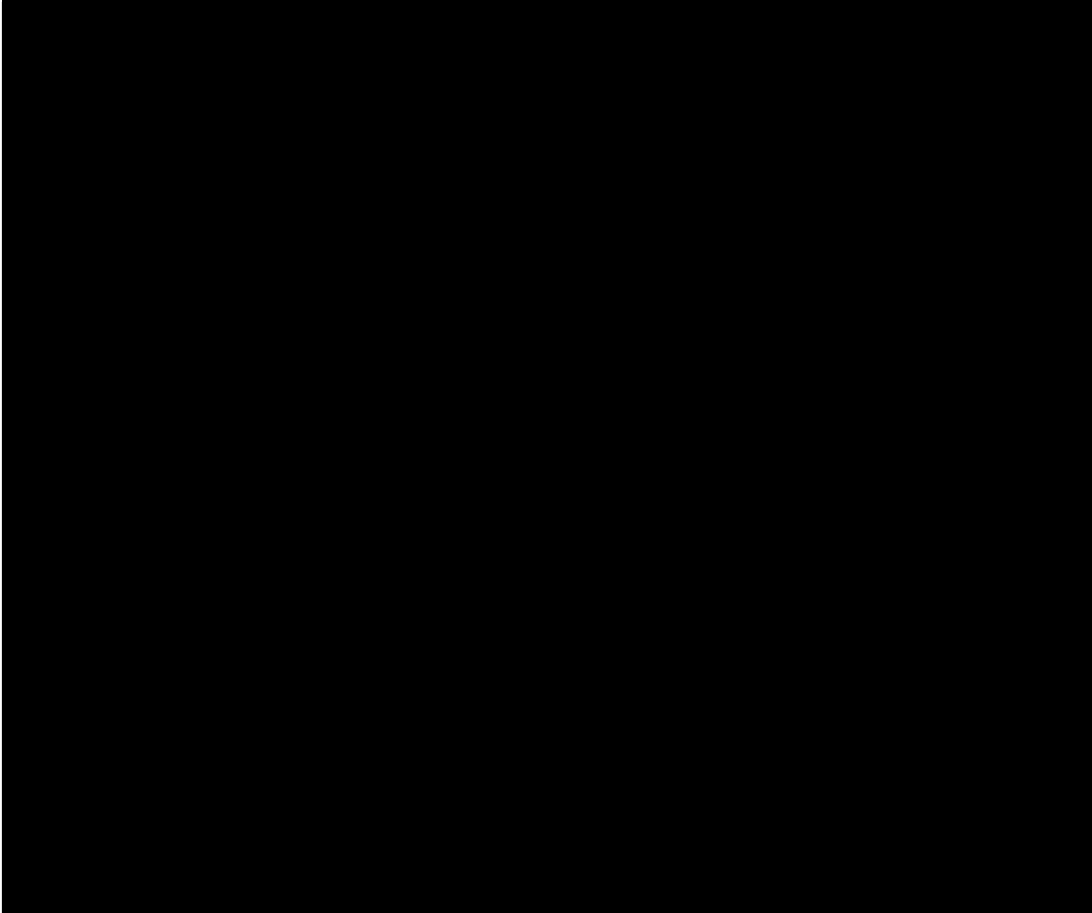


Figure 4: Images of subject site



4. Submission

The Draft Western Sydney Aerotropolis Plan proposes to rezone the subject site from 'R2 Rural Landscape' pursuant to *Penrith Local Environmental Plan 2010* to 'Environment and Recreation'.

Following a detailed and comprehensive review of the key *Western Sydney Aerotropolis* documents that are currently on public exhibition we are of the strong opinion that there is insufficient justification for the rezoning of the subject site to 'Environment and Recreation'.

This opinion has been formed from the following;

1. A review of the existing development approvals on the subject site and how they may impact on the proposed rezoning;
2. Assessment of the elements associated with the Blue-Green Grid in the *Draft Western Sydney Aerotropolis Plan*; and
3. An assessment of the purpose and location of the *Environment and Recreation* zone having regard to the *Environment and Recreation Fact Sheet* prepared by Western Sydney Planning Partnership (WSPP).

The opinions expressed in this submission are supported by an analysis of the ecological values present within the subject site undertaken by EcoPlanning (a copy of their report is attached to this submission);

1. Review of existing development approvals

As detailed in the attached EcoPlanning report, since 2015 substantial clearing of native vegetation and grassland has occurred across the subject as a result of existing development approvals on the subject site. While some native vegetation has been retained, it is considered to be too small and not sustainable.

2. Assessment of the elements associated with the Blue-Green Grid

Having due regard to the elements of the Blue-Green Grid described in the *Draft Western Sydney Aerotropolis Plan* the subject site is considered not well suited to being zoned *Environment and Recreation* because;

- it is not located within the setting of the Wianamatta-South Creek corridor that is embraced in the Draft Western Sydney Aerotropolis Plan as the central element of the urban design and water management of the Western Parkland.
- It is not located along a ridgeline that helps frame the Western Parkland City setting and can reduce the visual dominance of urban areas across the vast expanse of the Aerotropolis
- It is not located alongside infrastructure corridors and minor creeks that offer quality local open spaces for walking and cycling connections as well as recreation.

3. Assessment of the purpose and location of the *Environment and Recreation* zone

The *Environment and Recreation Fact Sheet* prepared by WSPP provides invaluable direction as to:

1. What is the purpose of the Environment and Recreation zone? and
2. Where is the Environment and Recreation zone?

In relation to purpose, the fact sheet states:

The Environment and Recreation Zone identifies land under the Structure Plans for purposes including regional parks, biodiversity conservation and flood management/mitigation.

and

The aims of the Environment and Recreation Zone are:

- *to protect, manage and restore areas of ecological, scientific, cultural or aesthetic values*
- *to encourage leisure, cultural and recreation facilities and support service to provide activation, and access, and enable areas for cafes, events, community celebrations and education/interpretative facilities*
- *to prevent development that could destroy, damage or otherwise have an adverse effect on those values*
- *to provide a range of recreational settings and activities and compatible land uses.*

In assessing the ecological values of the subject site, EcoPlanning has determined that:

- the study area has been the subject of considerable recent disturbance;
- most native vegetation has been cleared from the site: and
- remaining vegetation is not sustainable in the long term.

Having due consideration to the findings of the ecological assessment, it is fair and reasonable to conclude the subject site;

- is not suitable for the purpose of a regional park or for biodiversity conservation; and
- does not have the ecological values needed to justify applying the aims of the *Environment and Recreation zone*.

The subject site is also not well located to existing water bodies, flood plains etc to be considered suitable for flood management/mitigation use.

In relation to where, the fact sheet identifies three (3) pre-conditions for locating the Environment and Recreation zone. The zone is to apply specifically to:

- *all land affected by the 1:100 chance per year flood;*

and also apply to:

- *land covered by the Strategic Assessment and Biodiversity Certification for the Growth Centres; and*
- *land covered by the Cumberland Plain Conservation Plan (CPCP). The CPCP will address impacts on high value biodiversity from urban growth through a conservation program.*

The only exception is being made to along Thompsons Creek, within the Aerotropolis Core Precinct, where the South Precinct Boundary is to be extended beyond the

1:100 chance per year flood extent to create additional opportunities for green space and recreation.

The following addresses the stated preconditions for where the *Environment and Recreation* zone should be located:

Precondition 1 - All land affected by the 1:100 chance per year flood

As identified in Penrith Council Flood Maps, the subject site is not affected by the 1:100 year flood. Compliance with this precondition is considered critical because the fact sheet is, in the first instance, specific about locating the *Environment and Recreation* zone in this area.

Precondition 2 - Land covered by the Strategic Assessment and Biodiversity Certification for the Growth Centres

The subject site is outside any Growth Centre boundaries.

Precondition 3 - Land covered by the Cumberland Plain Conservation Plan (CPCP)

It is understood the *draft Cumberland Plain Conservation Plan* (DCPCP) will be publicly exhibited later in 2020, and community and stakeholders will have an opportunity to have their say on the Plan. The field surveys and biodiversity assessments that have been referenced in the Western Sydney Aerotropolis exhibition documents are currently not publicly available and are expected to be made available as part of the public exhibition of the DCPCP. In the absence of any detailed background biodiversity assessments, the attached ecological assessment undertaken by EcoPlanning is a site specific assessment that provides detail of the ecological values present within the subject site.

While the subject site is located within the study area for the CPCP this precondition relates directly to how the CPCP will address the impact of urban growth on areas identified as being high value biodiversity. The ecological assessment undertaken by EcoPlanning confirms the subject site is not an area that can be considered as being high value biodiversity.

The subject site does not meet any of the preconditions for locating the *Environment and Recreation* zone and is not located within the only area specifically identified as being exempt from these preconditions.

5. Conclusion

A detailed analysis of the purpose and aims of the *Environment and Recreation* zone, as defined in WSPP's fact sheet, has been undertaken in relation to the proposed rezoning of the subject site and forms part of this submission.

As can be seen from this analysis, the subject site:

1. Is not considered suitable for a regional park, biodiversity conservation or flood management/mitigation;
2. Does not have the ecological values needed to justify applying the aims of the *Environment and Recreation* zone.; and
3. Does not meet the specified pre-conditions for where the *Environment and Recreation* zone should be located.

Furthermore, the subject site is currently operating as a resource recovery facility and recycling facility and substantial works have also commenced on a Penrith Council approval for *poultry abattoir and processing facility*. This approval also permits the removal of trees that currently exist on the subject site.

In our opinion, there is insufficient justification for rezoning the subject site *Environment and Recreation* as proposed in the *Draft Western Sydney Aerotropolis Plan*. Subsequently, the subject site should be rezoned *Enterprise* in accordance with the surrounding lands in the Badgerys Creek precinct.

Comment Ref to rez. message
2 today - final