

8 October 2020

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

Dear Sir/ Madam

Submission: Draft Cumberland Plain Conservation Plan

Knight Frank Town Planning (KFTP) has been engaged by *Westfarmers Partnership* to prepare this submission on the Department of Planning, Industry and Environment's (DPIE) Draft Cumberland Plain Conservation Plan (hereinafter referred to as the Draft CPCP).

Our client's landholding is located at [REDACTED] Wallacia and [REDACTED] Luddenham. The landholding comprises circa 200 hectares and is legally known as – Lots [REDACTED]

The landholding contains farm buildings with the majority cleared and used for cropping to produce and store silage and the grazing of livestock.

Summary of this Submission

The purpose of this submission is to outline and confirm that:

- Our client does not support the proposed designation of almost the entirety of the landholding as a Strategic Conservation Area (SCA).
- The designation of the SCA based on lot boundary rather than identified high value vegetation is not supported by any site specific studies.
- As part of the SCA identification process, a detailed on-ground site investigation should be undertaken to ascertain the value of vegetation. This not been done. Accordingly, there is no basis for the designating of the SCA across our client's landholding
- A large portion of our client's landholding is cleared and used for farming including cropping and grazing. This existing farming area should be excluded from any applying of the SCA. An independent assessment by Ecological confirms that the existing farmed/cropped areas do not meet the criteria for conservation under the Draft CPCP.
- The continued and any future expansion of farming or other uses permitted by the zoning on our client's landholding will be unreasonably constrained by the applying of the SCA with no justification for it applying to the almost entirety of the landholding and.

It is not reasonable to impose such onerous development constraints on the use of landholdings without understanding the practical social and economic consequences. Prior to adoption of the SCA, an assessment of the social and economic impacts on landholdings should be undertaken, particularly those with existing farming or other potential uses.

In response to the Draft Cumberland Plain Conservation Plan (Draft CPCP), we provide the following comments:

1. Boundary of SCA

Almost the entirety of our client's landholding has been mapped as SCA, except for small areas where buildings are located – See Figure 1.

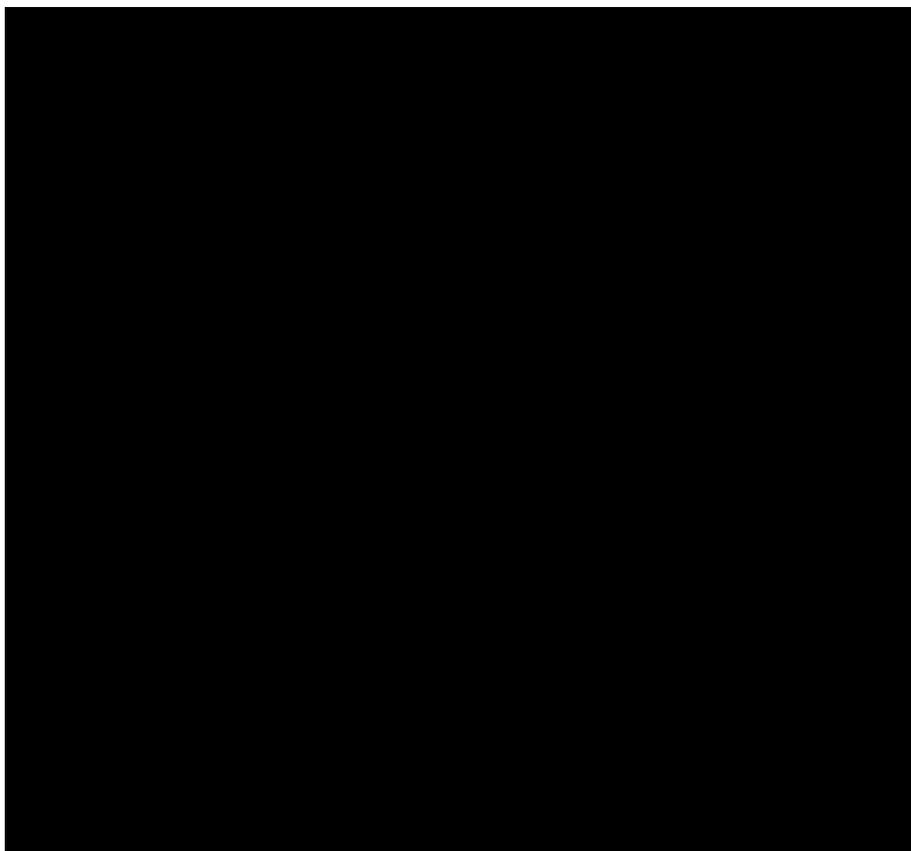


Figure 1: SCA with site outlined in red (Draft CPCP)

The proposed boundary of the mapped conservation land does not take the following into consideration:

- The overwhelming majority of our client's landholding is currently used for farming. Land used for cropping or grazing is unlikely to have conservation value or regeneration potential as has been confirmed by the independent assessment undertaken by Ecological which concludes that, "*those areas that are currently cropped do not meet the criteria that the draft CPCP used for*

identifying areas to be 'avoided' (i.e. conserved). Additionally, these areas will have significant reduction in the soil seed bank and so are unlikely to have regeneration potential".

- The location of existing vegetation on site is inconsistent with the lot boundaries that appear to have been partly the basis for determining the SCA. Our client does not support this blanket approach to the identifying of SCA which appears not to be based on any justifiable scientific basis.
- No site visit was undertaken of our client's landholding to examine the location and quality of the existing habitat as part of the designation of the SCA.

For the reasons outlined above and on behalf of our client, we strongly object to the proposed boundary of the SCA. We recommend that the Draft CPCP be amended to remove the SCA from our client's landholding until there is a reliable site specific evidence based approach that does not restrict the ongoing agricultural use of the land.

2. Existing and Permissible Uses

Our client's landholding is currently zoned RU1 Primary Production under Liverpool LEP 2008, with the following land uses permitted with consent:

Agriculture; Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Building identification signs; Business identification signs; Cemeteries; Community facilities; Crematoria; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Hazardous storage establishments; Health consulting rooms; Helipads; Heliports; Home businesses; Home industries; Landscaping material supplies; Offensive storage establishments; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Secondary dwellings; Veterinary hospitals; Water recreation structures

With almost the entirety of our client's landholding shown as SCA land – See Figure 1, the ability to continue or expand the existing farming uses or otherwise undertake other uses permitted with consent will be unreasonably burdened by having to address onerous and excessive biodiversity considerations. Those considerations are set out in the *Explanation of the Intended Effect* of the proposed State Environmental Planning Policy and are extracted below. Those considerations, as set out below, are matters that will be required to be taken into account before granting development consent in the Strategic Conservation Area. They will apply even if our client intends to undertake agriculture on those already cleared and disturbed areas of its landholding.

- Impacts on the biodiversity values of the site, such as:
 - ecological function of ecological communities.
 - species habitat and population numbers.
 - habitat connectivity and:
 - ecosystem resilience.

- Whether the development will cause a negative impact on the condition and ecological function of vegetation, or else result in a detrimental change to the distribution of native flora and fauna communities, either on or adjacent to the site.
- Whether the development will disturb a site's native fauna, cause a loss of habitat, or else impact a threatened species, habitat connectivity or links to wildlife corridors and restoration areas.
- Whether the development is likely to adversely impact the integrity and resilience of the surface and groundwater (hydrological) environment, or else adversely impact the quality or natural flow of water in a wetland or riparian corridor.
- Whether the development will result in cumulative impacts to existing biodiversity values, or to the land's potential for ecological restoration, including impacts that fragment, disturb or diminish the land's biodiversity structure, function and ecological composition and;
- Whether sections of the development site need to be avoided for biodiversity purposes, including identified habitat or vegetated areas.

Matters that a consent authority must also be satisfied of before granting development consent will include:

- Development being designed, sited and managed to minimise vegetation clearing, and to avoid adverse impact to high-value vegetation or potential vegetation restoration areas.
- That the height, bulk, scale, size and proposed use of the development would not disturb habitat or disrupt the surrounding natural environment.
- That any setback, asset protection zones or infrastructure required for the development would not adversely impact the environmental values or result in the removal of vegetation.
- That the development has minimised any impact on native species; and
- That the development has minimised any loss of habitat or potential impact on threatened species, habitat connectivity or links to wildlife corridors and restoration areas.

Compliance with the above will be a complex, costly and onerous burden on the ongoing use of our client's land. This is even more so considering there is no site specific justification for the mapping of our client's land as SCA. This will have a significant adverse social and economic cost on our client and the ongoing use of their landholding.

The proposed 'planning laws', both the State Environmental Planning Policy and the proposed Local Planning Direction, will have a direct and adverse social and economic impact on our clients' and the use of their land. By way of reference to the *Draft Cumberland Plan Assessment Report (Summary Report)* August 2020, there appears to be no assessment of the social or economic impact. It is understood that for significant new and amending regulatory proposals, a *Better Regulation Statement (BRS)* must be prepared. We would contend this is a significant new regulatory proposal. We note the *Better Regulatory Impact Assessment Checklist* as issued by the Department of Premier and Cabinet. requires in part the following to be addressed:

1. *Has sufficient evidence/data been provided to support this initial assessment?*
2. *What are the assumptions employed in this assessment?*
3. *Are the assumptions robust?*

4. *Is the probability/risk of the problem occurring sufficiently high to warrant action or intervention?*
5. *Have all costs and benefits of the options been adequately considered and evaluated?*
6. *Have all the groups in the community likely to be affected by each option been identified?*
7. *Have the various impacts (economic, social, environmental, equity and other relevant impacts) on them been specified?*
8. *Have the direct and indirect impacts of the proposed regulation for business, community and government (including economic, competition, social and environmental impacts) been considered and quantified?*

We would contend that the above matters have not been adequately addressed and need to be prior to any further consideration being given to the proposed planning controls. We seek confirmation as to whether the introduction of the proposed planning controls will include the preparation of a Regulatory Impact Statement.

While we understand it is not proposed to rezone our client's landholding as part of the SCA process, it will effectively result in the E2 Environmental protection zoning status due to the strict controls against development that will be applied.

We note the Draft CPCP states that *The planning controls outlined in the proposed SEPP for the strategic conservation area do not affect the current zoning or the land uses permitted under this zoning*. This implies that landowners can potentially develop their land in accordance with the land uses permitted under this zoning. This is entirely inconsistent with the following extracts which imply that further development will be restricted on these lands:

- *The proposed SEPP will include "controls to manage identified high-value biodiversity in the strategic conservation area and minimise the impacts from any development".*
- *The Ministerial Direction will restrict the ability to rezone avoided land, increase development, or intensify land uses in the strategic conservation area.*

We would contend that it is not correct to suggest that the proposed SEPP will not affect the land uses currently permitted. The excessive burden of detailed ecological assessment will practically affect the use of our client's land. We also strongly object to the proposed Ministerial Direction that has the potential to unacceptably limit the future use of our client's holding despite there being no scientific basis to doing. This restriction is neither equitable nor reasonable.

3. Social and Economic Impacts

The suitability of our client's landholding for continued use as farmland and potential for expansion of this use into areas which will be severely compromised by the identification of this land as SCA and the value of our client's land significantly reduced as a result.

It is not reasonable to impose such a significant burden on the use of landholdings without understanding the practical social and economic consequences. It appears from the Draft CPCP that it is proposed to monitor the outcomes of the conservation actions at the implementation phase of the Plan. The Evaluation criteria (*Sub-Plan A: Conservation Program and Implementation, Appendix F. Draft evaluation questions*) do not include an assessment of social and economic outcomes on landowners. This is not acceptable and as otherwise mentioned, we recommend that prior to the adoption of the

SCA, an assessment of the social and economic impacts on landholdings be undertaken. This is of particular importance with regards to the implication for private landholders with an existing agricultural enterprise that will be severely impacted as a result of the proposed planning controls.

Furthermore, in noting that the Draft CPCP (*Sub-Plan A: Conservation Program and Implementation*) states that “greater than 75% of the remaining native vegetation in the Cumberland subregion is in private ownership” it is even more important to properly take into account the real and practical implications of Government’s plans to conserve private lands.

4. Site Testing / Inspection

The Draft CPCP conservation priorities refers to the method for determining conservation lands, including an assessment of the biodiversity value of vegetation. We note that there was no site visit undertaken of our client’s landholding to examine the existing habitat as part of the designation of the land as SCA.

Following the site specific assessment by Ecological, the following is in response to the Strategic Conservation values:

Strategic Conservation values	Our Response
<p>Threatened Species and Communities The Draft Cumberland Plan designates land that have important biodiversity value as Strategic Conservation Area (SCA). The conservation area includes areas with high biodiversity value, including threatened species and communities, and large remnants of native vegetation.</p>	<p>Only parts of our client’s landholding contain species of this value. The site specific mapping by Ecological referred to as <i>Vegetation ELA Validated</i> confirms that majority of the holding is <i>Disturbed/Non native</i> See Figure 2.</p>
<p>Areas with good landscape connectivity The SCA includes land with good connectivity, or potential to enhance connectivity.</p>	<p>A significant part of our client’s landholding is cleared and has been used for a number of years for grazing, cropping and improved pasture. As confirmed by Ecological “<i>those areas that are currently cropped do not meet the criteria that the draft CPCP used for identifying areas to be ‘avoided’ (i.e. conserved). Additionally, these areas will have significant reduction in the soil seed bank and so are unlikely to have regeneration potential</i>”.</p> <p>Accordingly, it is not land with the potential to enhance connectivity. There is no basis for identifying the land as SCA.</p>
<p>Potential for Ecological Restoration The SCA includes areas with ecological restoration potential.</p>	<p>It is noted that some parts of our client’s landholding have ecological value and it is acknowledged that they warrant protection. They however are limited in area and do not justify the applying of the SCA to the whole property. The landholding has been and continues to be principally used as working farm.</p>

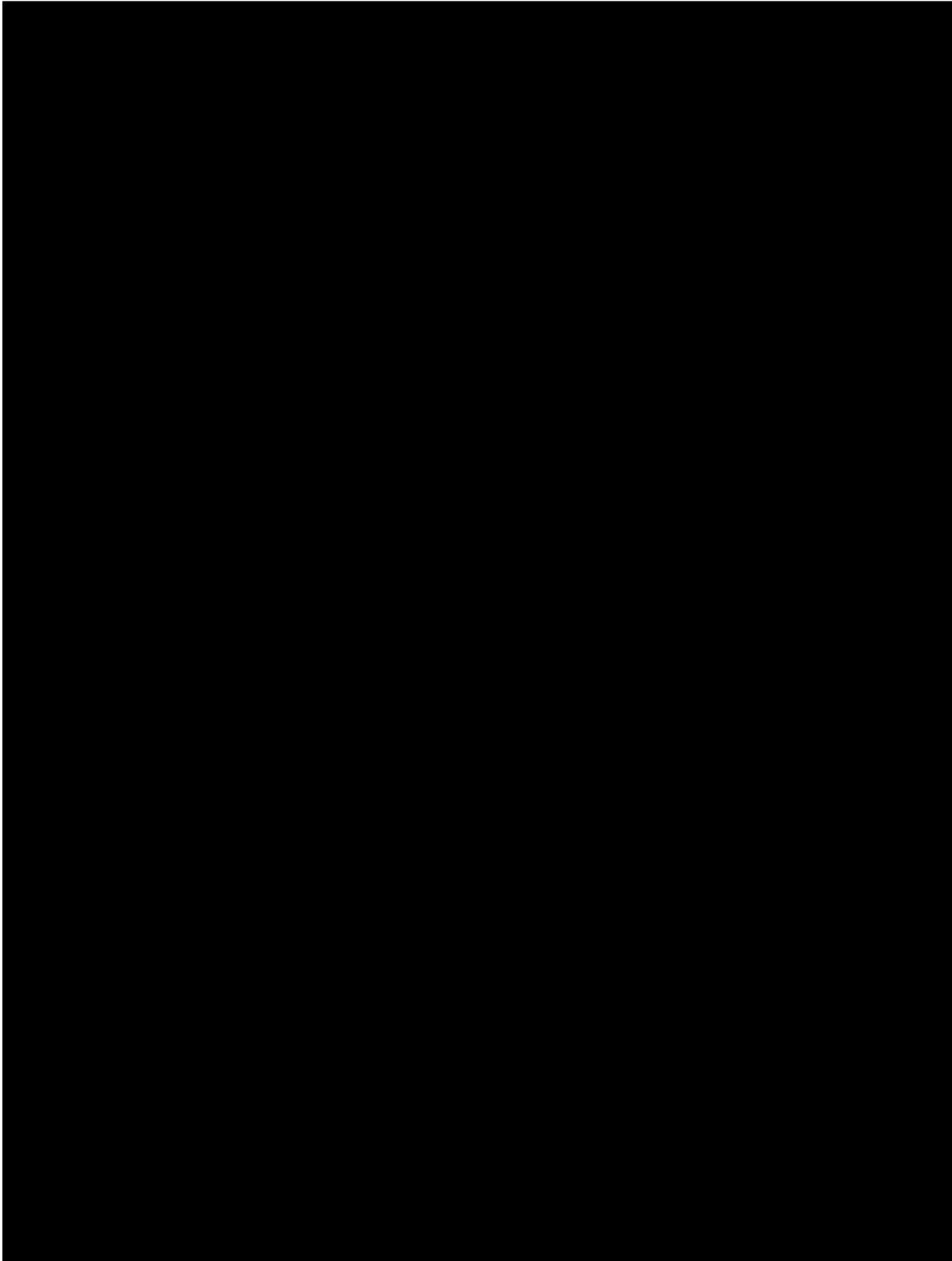


Figure 2: Disturbed/ Non-Native Land Confirmed on Landholding

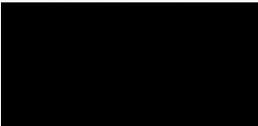
Recommendations

In summary, it is recommended that:

- The Strategic Conservation Area should be either removed or at the very least modified as it relates to our client's landholding considering there is no site specific assessment to justify its current extent.
- Agricultural uses should be exempt from the requirement to undertake the ecological assessment set out in the draft SEPP.
- No Plan nor planning controls should be adopted until a comprehensive social and economic impact assessment and Regulatory Impact Statement has been undertaken to better understand the implications of the proposed SEPP and Local Planning Direction on private landholdings. Once undertaken the social and economic impact assessment should be publicly exhibited.

We thank you for the opportunity to comment. Should you have any queries, please do not hesitate to contact me.

Yours sincerely



Mark Grayson
Director
Knight Frank Town Planning

