

7 October 2020

The Department of Planning Industry & Environment
12 Darcy Street
Parramatta NSW 2150

RE: SUBMISSION ON THE DRAFT CUMBERLAND PLAN CONSERVATION PLAN AND SUPPORTING DOCUMENTS

1. INTRODUCTION

Macroplan has prepared this submission on behalf of the [REDACTED] who own a [REDACTED] Gilead.

This subject land comprises of 3 titles:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The land was acquired in the early 1970's, and contains two substantial residential dwellings. An adjoining area of [REDACTED] acquired by the Government in about 1975 for the Georges River Parkway, is now owned by the Office of Strategic Lands, and has been leased to the family and managed by them since that acquisition. It is noted that the proposed use of the land is not the purpose for which it was acquired.

The whole of the subject land (and [REDACTED] ha of the OSL land) is cleared pastured land that has been utilised for grazing for all of that time. It is understood the land was used for agriculture purposes, including horticulture for decades prior to that.

The family have diligently maintained both the subject land and the leased land throughout that almost 50-year period and have never at any time cleared any significant native vegetation. Throughout that period the family have never seen Koalas on the land and the cleared land has never been identified as Koala habitat.

Our clients support the Governments objective of protecting the Koala population and critical habitat, but they strongly object to the identification and inclusion of their land in either the proposed Koala Reserve or the Environmental Conservation Zone on the grounds that:

- a. The documents do not provide any scientific evidence, or evidence adduced to support such inclusion
- b. That our previous submissions including expert Koala advice are not addressed or even acknowledged or referenced in the reports. James Warren and Associates 'assessment of Koala issues for the Gilead Appin Rd Planning Proposal' October 2018
- c. The conclusions are inconsistent with the recently approved Campbelltown Koala Plan of Management which has been based on a much finer grained analysis and do not include the subject land as Koala habitat
- d. The Chief Scientists Koala Report Recommendation and Analysis is heavily focused on the Mt Gilead Stage 2 Planning Proposal (MGS2) Site, the significance of the east west corridors and "what if any site specific measures for Koala species should be incorporated into the Cumberland Plain Conservation Plan (CPCP) for the Greater Macarthur Growth Area". In that respect the report has considered the adequacy of the measures proposed by OEH, essentially taking these as a given rather than testing the logic or science underpinning them
- e. Given that we have pointed out in multiple previous submissions to the Department the inconsistency between their own mapping and the conclusions, we do not consider this an adequate review of the scientific evidence. This is compounded by the fact that the primary response for the Chief Scientist Report is provided by the same section of the Department as acknowledged on Page 29 and Page 65.
- f. None of the analysis in any of the above reports has considered the economic impact and likely high cost to Government of the recommendations, or:
 - The lack of analysis of North South Corridor options (e.g. land to the East of the Nepean River) or benefit / cost analysis of alternatives
 - The inappropriate expenditure of public funds, or the potential economic loss to Government of developing cleared land they own and what habitat acquisition that could achieve
 - The poor planning logic and inefficient use of major infrastructure that results from developing on only one side of a major arterial
 - The visual impact in a future urban setting of Koala fencing immediately adjacent to both sides of Appin Road
 - The loss of housing potential in the Greater Macarthur Growth Area which will already be severely impacted by proposed East – West corridors.

2. **HISTORY**

The subject land is part of an area first identified as future urban in the Sydney Region Outlined Development Plan 1968, then in the 'Three Cities Plan' of the 1970's culminating in the Greater Macarthur Growth Area Plan. The fact that the OSL land at the rear was acquired from our clients in 1975 for the Georges River Parkway is indicative of both long-term strategic intent and that the land was largely cleared and considered suitable for such a major road.

Our clients have previously (June 2018) submitted a Planning proposal for the development of this land and the cleared portion of the OSL land (to demonstrate how this landlocked portion could be developed in the Government interest). Such a proposal would have yielded approximately 500 homes and protected all the vegetated land habitat, but did not proceed under the current circumstances.

A major Melbourne based and highly credentialled developer has previously made an offer of \$38M in the form of a development agreement for this land, which our client chose not to proceed with the current uncertainty. That developer is still keen to enter into a formal agreement to develop this land.

Should the current CPCP proposals for a Koala Reserve or E2 zone proceed our client is anticipating a major compensation case will ensue for what is effectively the “reservation” of their land.

3. THE DRAFT CUMBERLAND PLAIN CONSERVATION PLAN

3.1 Inconsistencies:

The CPCP contains inconsistencies in relation to the subject land. The Spatial Viewer shows the land is in:

- Georges River Koala Reserve
- Strategic Conservation Area
- Proposed Environment Conservation Zone
- Stage 1a, first 5 years Restoration of Georges River Koala Reserve

However, Sub Plan B Koalas Figure 8 on page 30 clearly excludes part of the land (surrounding the residences) from the area identified as ‘important Koala Habitat Restoration’ which would be consistent with the final point on Page 166 of Sub Plan A: Conservation Program and Implementation to ‘Extract houses and other major buildings (including 50 metres fire related asset protection zones)’.

3.2 Boundary Issues:

The CPCP uses the Georges River as its eastern boundary. This has resulted in a very ‘blinkered’ consideration of the Koala issues in that none of the reports give due consideration to the contiguous habitat on the Eastern (Wedderburn) side of the Georges River. Figure 4 on Page 30 of the Chief Scientists Report (which is sourced from OEH / DPIE 2019) does give some indication but if this is compared to Figure 5.3, Page 31 of the Campbelltown Koala Plan of Management (CKPOM) it is very evident that there is far more extensive habitat and key strategic corridors for the east of Georges River. There appears to have been a selective assembling and interpretation of information primarily to justify a position around what appears to be predetermined boundaries, rather than logical boundaries standing out and being determined on the back of scientific analysis and fact. A position and conversation which had already been assembled by a selective group of environmental planners and marketed out to the government scientist in a deliberate manner before his analysis even commenced. Coming across as being a contrived position and orchestrated interpretation as opposed to demonstrating a real value, functionality and role as core koala habitat between Appin Rd and the boundary of the Georges River. A narrow small ribbon only illustrated in mapping on the western edge of the Georges River corridors are not one side and display similar characteristics both sides.

This deliberate positioning exercise is evident:

Firstly, in the way there has been an arbitrary selection of land only on one side of the Georges River, logic would tell you the characteristics on one side of the River are generally the same on the other side of the River. Vegetation

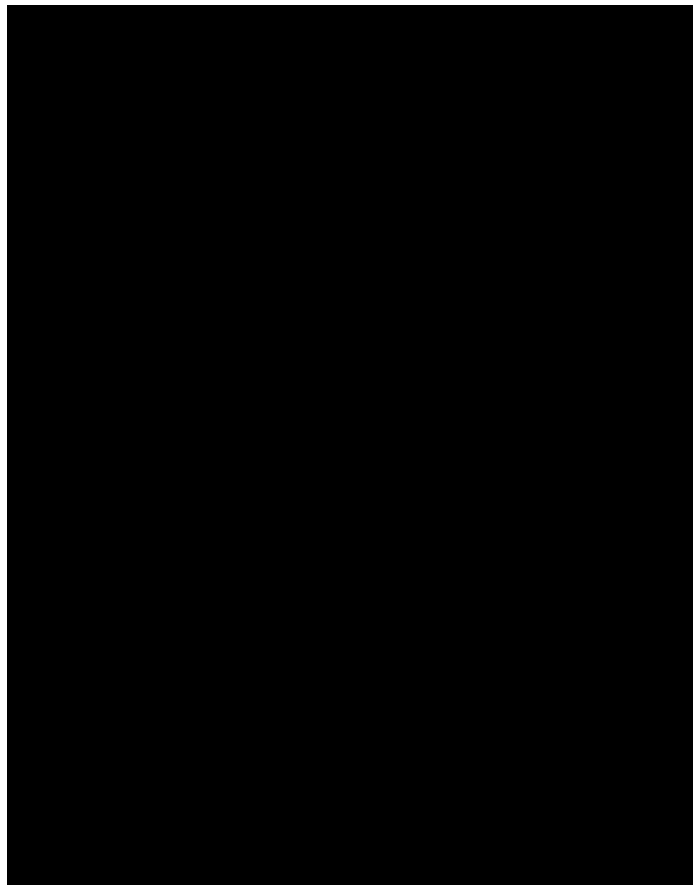
on the eastern side of the Georges River and that which moves into the numerous creeks streams and drainage tributaries feeding eastward towards the coast are a logical extension of habitat. Koalas are likely to exist at this general locality not because of the arbitrary selection of the centreline of a Creek but because of a mosaic of habitat which includes areas East of the Georges River. It is ironic that land already protected east of Georges River apparently has no Habitat value, only that land not already under protection status now plays such a high and valuable habitat role.

Secondly, the above mentioned first point is complemented by research silence on koala numbers and sighting in areas of East of the Georges River. Not because Koalas do not necessarily exist in numbers east of the Georges River but primarily because this remoteness and lack of accessibility does not readily expose Koalas to sightings on a regular basis. In contrast it is a known fact that Koala count numbers are usually high in rural residential/ exclusive rural living areas because this is where people live, and koalas exist. Where regular sightings occur and count numbers can become high because Koalas are being observed on a number of occasions and by different people and reported.

‘It is notable that neither of the above figures show our clients land contained within primary, secondary or tertiary corridors (Figure 4), or key Koala HLA’s or any of the categories of preferred Koala habitat (Figure 5.3).’



Source: Figure 4, Conserving Koalas in the Wollondilly and Campbelltown Local Government Areas 2019



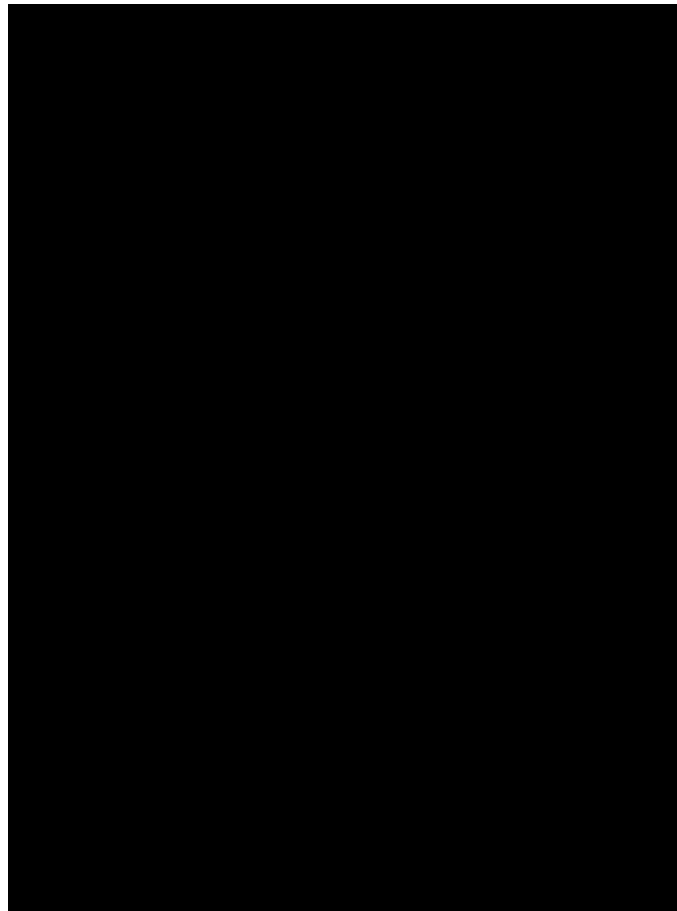
Source: Figure 5.3, Campbelltown Comprehensive Koala Plan of Management 2018

The Chief Scientists Report in discussing the Campbelltown Koala Population on Page 28 notes that “the likely extent of the population has been estimated to be east to the coast, south from Holdsworthy...”

Diagrams such as Figure 8 on Page 30 of Sub Plan B Koalas Report therefore portray a quite misleading representation of the extent of the North South corridor and therefore, the significance of the cleared land that is proposed for inclusion in the reserve.

It is noted that Commitment 12 (Page 40) of that report, in point 4 refers to the need to ‘ensure at least 390m wide, and that the existing vegetation on the OSL land adjoining our clients land already generally meets that requirement. Our clients land would be a minimum of 600m from the river.

It is noted that the National Parks Association of NSW in their 2017 report ‘Draft Proposed Upper Georges River National Park’ did not propose the park boundary extending to Appin Road but only to the limits of the Georges River Parkway Land (Page 6), and also their map of reported Koala sightings (Page 8) shows only one sighting (20/8/02) on Appin Road adjacent to our clients land, but none of the land itself.



Source: Page 6, Draft Proposed Upper Georges River National Park 2017

3.3 Subplan A: Appendix B Avoidance Criteria (Page 132 – 133)

There is nothing in The Specific Avoidance Criteria that justifies inclusion of the subject land. The discussion in the section 'Development of avoidance criteria' demonstrates that exclusion of the land is essentially a bureaucratic departmental process that overrides the avoidance criteria, which is reflected in the final statement (Page 133) that:

'Applying the avoidance criteria resulted in avoided land that includes non-vegetated areas such as small wetlands and waterbodies, land that is strategically important to protect or enhance corridors, or small enclosed clearings that are surrounded by native vegetation.'

The subject land does not fit any of those other than 'strategically important to protect or enhance' and in our submission there is nothing in the multiple reports that actually supports or demonstrates its strategic importance.

3.4 Exclusion Fencing

The desirability of preventing Koalas from accessing major roads is totally accepted. However as was pointed out in our previous submission was that James Warren and Associates in their October 2018 report 'Assessment of Koala Issues for the Gilead, Appin Road Planning Proposal' stated that:

'There appears to be no scientific basis for preventing the exclusion fence from deviating east from Appin Road, traversing the perimeter of the subject site and then linking up with Appin Road again on the Southern boundary of the subject site'.

The report appears to accept this as a satisfactory approach for isolating other urban capable areas in the Greater Macarthur Growth Area so it should work equally as well here.

The suggestion in the reports that both sides of Appin Road should be fenced would create an undesirable visual outcome on what would be a major urban road, unlike Picton Road or Hume highway which are major rural roads.

Extending the vegetated area to the whole length of Appin Road on the east side would also appear to increase the risk of accidental or deliberate bushfire, compared to a properly buffered residential area.

4. GIPA REQUEST

A GIPA request was lodged by Mr [REDACTED], a member of the family on 28/08/20 requesting the following information:

'Documentation, studies, reports, surveys, intelligence, information, notes or other records used or relied upon by the Department of Planning Industry & Environment in the determination, assessment and application of Avoidance Criteria – specific to the land parcel identified by the Department as Identified [REDACTED] Land' located at 894 Appin Road Gilead NSW 2560.

Any documentary evidence of any person – involved in the assessment and application of Avoidance Criteria having visited, considered or assessed the site, on-site or in person and any evidence of permissions granted for such access.

All documents that inform the decision by the Department of Planning Industry & Environment to use 'East of Appin Road' as the demarcation line for the proposed Georges River Koala Reserve including and document that identifies the rationale that the road surface itself is not a demarcation line for convenience but holds some ecological relevance as a strict border.

All documents that inform the decision by the Department of Planning Industry & Environment to consider the proposed changes to the 'Identified [REDACTED] Land' that the proposed changes will support the Draft Cumberland Plain Conservation Plans objectives with a specific request as to how this particular parcel contributes.

All correspondence, emails, letters, or otherwise between the Department of Planning Industry & Environment and Campbelltown City Council or any other third party relative to the decision to include the 'Identified [REDACTED] Land' as Non certified – Avoided for Biodiversity.

All correspondence, emails, letters or otherwise between the Department of Planning Industry & Environment to and from Lend Lease relative to the land holding known as 'Identified [REDACTED] Land'.

All documents pertaining to the assessment of the 'Identified [REDACTED] Land' as it relates to the Avoidance Criteria – specifically documents supporting the assertion that this land holding is surrounded by native vegetation.

All documents used in calculating the avoidance outcomes for the land known as 'Identified [REDACTED] Land'.

All documents supporting the baseline ecological position for the land known as 'Identified [REDACTED] Land' as it relates to a 'net change to impact on threatened ecological communities'.

The response has advised of an extension of the statutory deadline to 13th October 2020. As the questions raised are critical to the issues in this submission, we would request the opportunity to amend or supplement this submission following receipt of that information.

A copy of the documentation is attached as Appendix A.

5. GOVERNMENT REVIEW OF KOALA PROTECTION POLICY

It is noted from media reports (NCA Newswire October 7th 2020) that Ministers had agreed to changes to the policy in looking to redefine the definition of 'core Koala habitat', and to other measures including:

'Strengthening landholder rights when a Council creates a Koala Plan of Management by extending minimum exhibition time frames, introducing clear dispute pathways for landholders and ensuring they can access ecologists or use their own to appeal or object to what a council has put forward'.

In this instance the recently approved Campbelltown Koala Plan of Management does not preclude our clients land from development, however the CPCP set of documents go well beyond that in proposing their inclusions within a Koala Reserve without any of the above means of redress.

In particular, the total failure to acknowledge, address, or even reference the report prepared by James Warren and Associates and presented to the Department on numerous occasions is particularly concerning.

This represents a continuation of the failure of due process that has characterised the way in which the Department (and RMS) have dealt with our clients over recent years.

6. CONCLUSION

Our clients are extremely concerned that their land which has been cleared and farmed for probably at least a century has been included in the proposed Koala Reserve based on arbitrary administrative decisions when there is clearly no intrinsic qualities that differentiate it from adjoining urban capable land.

The failure of any of the analysis to consider the benefits of costs of such a proposal demonstrate a total lack of balance in the decision-making process. This and similar cleared lands, are inherently highly valuable and the cost of acquisition by Government is likely to be many hundreds of millions of dollars. For such a marginal addition to the Koala corridor this could be used beyond the scope of any affordable SIC contribution and place an irresponsible burden on Government that will achieve nothing.

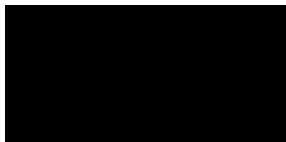
The proposal is inequitable to both the landowners and the Government, given the lack of applicable evidence and analysis, failure of consultation and consistent lack of due process.

Government policy on this matter is still clearly evolving from a hard line black and white approach hopefully to a more mature policy that accounts for local nuances and the benefits and costs.

It is important to protect Koala habitat, but it is also important to protect all of the potential urban capable land, given that Greater Macarthur is really the last resource of that in the Sydney basin.

We look forward the response to our GIPA request and your careful consideration of our submission and some meaningful future consultations.

Kind regards,



Gary Prattley

Chief Planner

RIPA (Life Fellow)

APPENDIX A

Gary Prattley

From: [REDACTED]
Sent: Tuesday, 22 September 2020 1:06 PM
To: Gary Prattley
Subject: Re: GIPAA - DPIE - 21 - 1368 - Extension of Statutory Deadline

Ok thanks

Sent by [REDACTED] - I Phone

On 22 Sep 2020, at 10:19 am, Gary Prattley <gary.prattley@macroplan.com.au> wrote:

Thanks Jason,
I had an email from them asking if I had an objection to the release of a submission we did for Gilead landowners group [REDACTED]

[REDACTED] | General Manager, ACT

[REDACTED] a: PO Box 589, Canberra ACT 2600

[REDACTED]
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From: [REDACTED]
Sent: Monday, 21 September 2020 3:41 PM
To: [REDACTED]
Subject: Fwd: GIPAA - DPIE - 21 - 1368 - Extension of Statutory Deadline

Sent by [REDACTED] - I Phone

Begin forwarded message:

From: [REDACTED]
Date: 21 September 2020 at 3:34:16 pm AEST

To: [REDACTED]
Subject: RE: GIPAA - DPIE - 21 - 1368 - Extension of Statutory Deadline

Dear Mr Breton

Thanks again for the payment of the processing charges in full. As the processing of your application requires consultation in accordance to Section 54 of the GIPA Act, the statutory deadline is extended by working days. Accordingly, your application must be completed by **13 October 2020** at the latest.

My best regards

Racho

From: [REDACTED]
Sent: Monday, 21 September 2020 12:28 PM
To: [REDACTED]
Subject: Re: GIPAA - DPIE - 21 - 1368 - Request of advance deposit

Appreciated

Sent by [REDACTED] I Phone

On 21 Sep 2020, at 12:24 pm, Racho Donef
[REDACTED] wrote:

Thank you. I have been informed.

I will let you know the statutory deadline by the end of the day. I am working on the records.

My best regards

[REDACTED]

From: [REDACTED]
Sent: Monday, 21 September 2020 12:17 PM
To: [REDACTED]
Subject: Re: GIPAA - DPIE - 21 - 1368 - Request of advance deposit

Racho

Paid in full this date

Sent by [REDACTED] - I Phone

On 18 Sep 2020, at 3:32 pm, Racho Donef

Dear [REDACTED]

**Government Information (Public Access)
Act 2009 application – GIPAA**

21 - 1368

Request for advance deposit

I refer to your request received which was transferred to the Department of Planning, Industry and Environment on 28 August 2020 under the *Government Information (Public Access) Act 2009* (GIPA Act). You requested the following information:

Documentation, studies, reports, surveys, intelligence, information, notes or other records used by the Department of Planning Industry & Environment in the determination, assessment and application of the Criteria - specific to the land parcel identified by the Department as 'Identified Brticevich Land' Road Gilead NSW 2560.

Any documentary evidence of any person - involved in the assessment and application of the Criteria - visited, considered or assessed the site, on-site or in person and any evidence of permission to access.

All documents that inform the decision by the Department of Planning Industry & Environment to include the 'Identified Brticevich Land' as the demarcation line for the proposed Georges River Koala Reserve including any other documents that hold the rationale that the road surface itself is not a demarcation line for convenience but holds relevance as a strict border.

All documents that inform the decision by the Department of Planning Industry & Environment to include the proposed changes to the 'Identified Brticevich Land' that the proposed changes will support the Plain Conservation Plans objectives with a specific request as to how this particular parcel is to be managed.

All correspondence, emails, letters, or otherwise between the Department of Planning Industry & Environment and Campbelltown City Council or any other third party relative to the decision to include the 'Identified Brticevich Land' as 'Non certified - Avoided for Biodiversity'.

All correspondence, emails, letters, or otherwise between the Department of Planning Industry & Environment and the Lend Lease relative to the land holding known as 'Identified [REDACTED] Land'.

All documents pertaining to the assessment of the 'Identified [REDACTED] Land' as it relates to the 'Identified Brticevich Land' specifically documents supporting the assertion that this land holding is surrounded by native vegetation.

All documents used in calculating the avoidance outcomes for the land known as 'Identified Brticevich Land'.

All documents supporting the baseline ecological position for the land known as 'Identified Brticevich Land' relates to a 'net change to impact on threatened ecological communities'.

Under s. 68(1) of the *GIPA Act*, the Department may request an advance deposit where, in its opinion, the cost of dealing with an application is likely to exceed the amount of the application fee and I have determined this to be the case in relation to your application. Twenty 28 records were captured by your request and considerable time was spent to retrieve files. Twenty of the records are emails most of which are emails with many attachments, including emails. The total number of records is therefore considerably higher.

On that basis, the Department is requesting an advance deposit of **\$360** towards the cost of completing your application. Payment of an advance deposit should be made by **16 October 2020**.

Payment can be made in the form of a cheque or money order made out to the Department of Planning, Industry & Environment and sent to Locked Bag 5022, Parramatta, NSW, 2124. In the alternative, if you want to pay by credit card please pay online through the following portal: <https://www.environment.nsw.gov.au/gipaapp/Advanceddeposit>.

A breakdown in the estimated processing time is as follows:

Task	Estimated Hours	Cost (\$30.00 per
File searches locating and retrieving documents.	7h	\$210
Converting to pdf, numbering and watermarking records	4h	\$60
Third party consultation	4h	\$60
Scheduling records	2h	\$30
Redaction of personal information of third parties	4h	\$120
Notice of Decision	4h	\$120
TOTAL	>25h	>750
Less application fee	1h	-\$30
TOTAL	24h	>720

Please note that if you fail to pay the advance deposit by the due date, we may refuse to progress your application. You will also forfeit your application fee of \$30.

If you do not agree with this decision, you can ask for it to be reviewed. You have 20 working days from the date of this letter to apply for an internal review, or 40 working days to apply for an external review.

The period of time between the date of this request and receipt of payment of the advance deposit is not taken into account in calculating the number of days taken to deal with your application.

If you wish to discuss this issue or have any questions relating to your request, please do not hesitate to contact me on [REDACTED]

Regards

[REDACTED]

[REDACTED]

Senior Information Access and Privacy Officer

Governance | Department of Planning, Industry and Environment

T 02 9995

6080 | E [REDACTED]

Locked Bag 5022, Parramatta NSW 2124

www.dpie.nsw.gov.au

<image003.jpg>

Our Vision: Together, we create thriving environments, communities and economies.

The Department of Planning, Industry and Environment acknowledges that it stands on Aboriginal land. We acknowledge the traditional custodians of the land and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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