

Our Ref: 20-0138

9 October 2020

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

By email: biodiversity@planning.nsw.gov.au

Dear Sir or Madam,

**Draft Cumberland Plain Conservation Plan 2020 (on Exhibition)
Re Submissions**

We act for the registered proprietors of [REDACTED] Luddenham [REDACTED] in connection with the Draft Cumberland Plain Conservation Plan (**Draft Plan**).

We refer to the Draft Cumberland Plain Conservation Plan Viewer (**Plan Viewer**), which sets out the numerous mapping layers that pertain to the area covered by the Draft Plan, from which we can assess the precise impact of the Draft Plan on our clients' property. Relevantly:

- Approximately 55% of the land is classified as Non-Certified – Avoided for Biodiversity (being land avoided for biodiversity purposes)
- Approximately 5% of the land is classified as Non-Certified – Avoided for Other (being land comprising riparian corridors or steep slopes).
- Approximately 40% of the land is classified as Certified – Urban Capable (being land designated for urban development).
- 40% of the land is identified as Strategic Conservation Area.
- 60% of the land is identified as Proposed Environmental Conservation Zoning.

Supporting Documentation

We attach the following documents in support of this submission:

1. Ecological Report prepared by Eco Logical Australia, dated 8 October 2020.
2. Planning Report prepared by Think Planners, dated 9 October 2020.

T. 02 9025 0808
E. law@projectlawyers.com.au
W. www.projectlawyers.com.au

St James Centre
Level 11, 111 Elizabeth Street
Sydney NSW 2000

Project Lawyers Pty Ltd
ABN 34 608 111 404

Observations

Having reviewed the details available on the Plan Viewer in relation to our clients' property, we make the following observations.

Firstly, it is patently clear from the mapping available via the Plan Viewer that, as it pertains to our clients' land, the mapping represents broad and imprecise brush strokes over the landscape, presumably taken from satellite imagery and desktop analysis of "existing databases" (p.40 Draft Plan), often bearing little reality to the extent and quality of vegetation on the specific properties.

Our clients acknowledge and accept that the eastern part of the site, comprising approximately 40% of the site, contains relatively healthy vegetation, such that may warrant a classification recognising the biodiversity credentials of that part of the site.

That assessment does not apply to the central part of the site or the western part of the site, leaving aside any required setback for a riparian corridor along the creek line to the western part of the site.

We refer to the findings of the Ecological Report submitted with this application. Moreover, a cursory physical inspection of the property would support these observations.

Secondly, leaving aside the merits or otherwise of the classifications imposed by the Draft Plan (regarding the biodiversity credentials of the western part of the property), of primary concern to our clients is the "Proposed Environmental Conservation Zone" to be applied. The reference here to Proposed Environmental Conservation Zone in the Draft Plan is a clear reference to E2 Environmental Conservation (p.47 Draft Plan).

To support the protection of these areas, the department is proposing to apply environmental conservation zoning (E2) except for land owned by LALCs or under claim by LALCs.

While the precise scope of land uses available under the proposed E2 Environmental Conservation zone to apply in this precinct is yet identified, we can safely assume they will follow the land use restrictions adopted in other environmental planning instruments. For example, clause 11 of State Environmental Planning Policy (Western Sydney Employment Area) 2009 (**WSEA SEPP**) sets out the permissible land uses available under the E2 Environmental Conservation zone, relevant to that SEPP, comprising:

Artificial waterbodies; Environmental facilities; Environmental protection works; Flood mitigation works; Roads.

All other uses are prohibited under the WSEA SEPP.

On any view, these same restrictions will apply to land zoned E2 Environmental Conservation under the Draft Plan. Those restrictions effectively limit development to public purpose type uses, having no utility for nongovernment authorities or the non-government market. This highly restrictive land use zone will render a significant part of our clients' land relatively worthless to the development market in the months and years ahead.

The future application of the E2 Environmental Conservation zone over our clients' land will also properly be characterised as a de facto acquisition of land for a public purpose, albeit retained in private ownership, without any prospect of compensation.

The Department of Planning has previously cautioned government authorities and other decision makers (including itself) about highly restrictive uses associated with the application of the E2 Environmental Conservation zone. Relevantly (p.6 NSW Department of Planning LEP Practice Note PN 09-002, dated 30 April 2009):

Councils should be aware that uses [under the E2 Environmental Conservation zone] should not be drawn too restrictively as they may, depending on circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the need for the Minister to designate a relevant acquiring authority.

In our view, the proposed application of the E2 Environmental Conservation zone to a large part of our clients' land meets the precise circumstances cautioned against by the Department.

Thirdly, the property is currently partly zoned Environment and Recreation under State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 (**Aerotropolis SEPP**). We acknowledge that the Environment and Recreation zone places restrictions on the use of the land. However, importantly, it is a zone of considerably greater flexibility than the E2 Environmental Conservation zone contemplated by the Draft Plan. Further, relevantly, the Aerotropolis SEPP makes express provision for development in the Environment and Recreation zone, including the removal of vegetation for the purposes of development, where certain conditions are met, pursuant to clause 27(4) of the Aerotropolis SEPP. That important merit-based provision available under the Aerotropolis SEPP, permitting development in certain circumstances, is not available under the E2 Environmental Conservation zone.

Fourthly, and arguably one of the more misleading representations in the information package provided with the Draft Plan, whether guided by ecological ultraism or ignorance, is the assertion that landholders with high biodiversity value will profit from their land. The representation is presented in several guises. For example (at p.5 of FAQ):

*Private landholders that have high biodiversity values present on their land **may** enter into a biodiversity stewardship agreement to realise the economic value of these biodiversity attributes and **potentially** generate monetary income to protect and manage the environment on their land.*

[emphasis added]

That assertion is made without any foundation in fact or experience. The reality is that landowners subjected to an E2 Environmental Conservation Zone under the Draft Plan will be left with land incapable of further development and incapable of generating income associated with its purported biodiversity values.

Leaving aside the criticisms that could fairly be levelled at the Draft Plan regarding its complexity, voluminous size and dizzying array of land categorisations, the point remains that the Draft Plan rides roughshod over individual property rights in so far as it contemplates imposing an E2 Environmental Conservation zone over substantial part of our clients' landholding for what could only be characterised as a public purpose zoning, without any recourse to compensation.

In short, having regard to the forgoing comments, the submission we present on behalf of our clients is a succinct one – the Draft Plan must be amended to exclude any power to impose an E2 Environmental Conservation zone (or similarly restrictive zone) over land within the precinct, including our clients' property.

Yours faithfully,



Anthony Perkins

Partner

Email: 

Freya Johnson

Lawyer

Email: 

8 October 2020

Our ref: [REDACTED]

[REDACTED]
Cecil Park, NSW 2178

Attention: Louis Borg and Victoria Borg

Dear Louis and Victoria,

Draft Cumberland Plain Conservation Plan

Eco Logical Australia (ELA) was engaged to undertake the following tasks to assist your consideration of the draft Cumberland Plain Conservation Plan:

- literature review to understand what the site has been mapped as in the draft CPCP
- site visit to validate vegetation communities
- provide recommendations for changes if field survey confirms the draft CPCP is based on incorrect information.
- Identify a potential developable footprint based on ecological constraints

The following sections provide detailed responses on the above. In summary the vegetation on site differed from what was mapped in the draft CPCP, however all areas that ELA mapped as Cumberland Plain Woodland, Shale Gravel Transition Forest, River-flat Eucalypt Forest or Freshwater Wetland still met the definition of either an Endangered Ecological Community (EEC) or a Critically Endangered Ecological Community (CEEC).


The assessment report for the draft CPCP used terms such as 'intact, thinned, isolated paddock trees and derived native grassland' to describe the vegetation condition. Much of the vegetation on site did not easily fit into these categories as the growth forms were quite unusual compared to typical vegetation communities in western Sydney – presumably due to the grazing regime. In general, the Cumberland plain Woodland, River-flat Eucalypt Forest and Freshwater Wetlands were in good condition. Other areas were highly modified and would not be considered to be in good condition.

ELA understands that the client is seeking to determine if any parts of the site have lower biodiversity values that may justify an alternative land use. The eastern part of the site contained a significant amount of EEC and CEEC, mostly in good condition. This vegetation generally met the criteria that the draft CPCP used for identifying areas to be 'avoided' (i.e. conserved) and therefore would be considered to have high biodiversity value.

The western part of the site contained grassland that did not meet the definition of an EEC or CEEC. This area has the potential to allow development without impacting significant areas of EEC or CEEC. We have provided a map of this area.

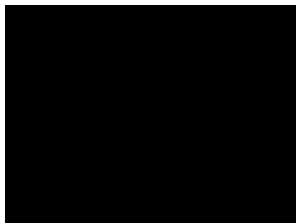
ELA notes that the draft CPCP proposes a significant area of 'Certified – Urban Capable' land through the middle of the site. This approximates the land that was recently zoned Enterprise under the Western Sydney Aerotropolis SEPP (2020). Assuming this area becomes Certified under the final CPCP, we have provided a map that shows a combined 'potential developable area that includes the area of low biodiversity value and the proposed Certified – Urban Capable land.

The protection of the eastern part of the site via a Stewardship Agreement may provide offsets for the smaller areas of vegetation that may be impacted in the west of the site.

Please do not hesitate to contact me to discuss the contents of this letter. I can be contacted on 



Regards,



David Bonjer
Principle Planner, NSW

1. Literature Review

The draft CPCP was released for public comment between 26 August and the 9 October 2020. The plan intends to provide certainty regarding biodiversity impacts and conservation outcomes within the study area. The draft CPCP maps the site as containing Cumberland Plain Woodland over the eastern part of the site and Riverflat Eucalypt Forest / Swamp Oak Forest along the riparian zone of Cosgrove Creek.

The plan provides for a central corridor of certified land through the middle of the site presumably to allow for a transport corridor, with all land either side of it being non-certified with either biodiversity or riparian values. The implication of the draft CPCP is that these lands would not be available for development. The non-certified lands to the east of the corridor are then also identified as being of strategic conservation value which are high priorities for the establishment of Stewardship Agreements that generate biodiversity credits. Credits can then be sold on the market.

Appendix B of the draft CPCP details the 'avoidance criteria' of the plan, which are essentially the criteria for what was considered to have sufficient conservation value to warrant its 'avoidance' or protection. The sections below compare this criteria to what ELA found on site.

Appendix B also describes what flexibility there is for changing the maps in the draft CPCP.

The Implementation and Assurance chapter of the draft CPCP includes mechanisms for establishing conservation lands as offsets. The process includes

'(1) Secure offsets from priority areas within the Plan's strategic conservation areas, with a preference for (in order):

(a) target TECs with the greatest impact, based on the 2019 impact assessment (Cumberland Plain Woodland, Shale Sandstone Transition Forest, Riverflat Eucalypt Forest

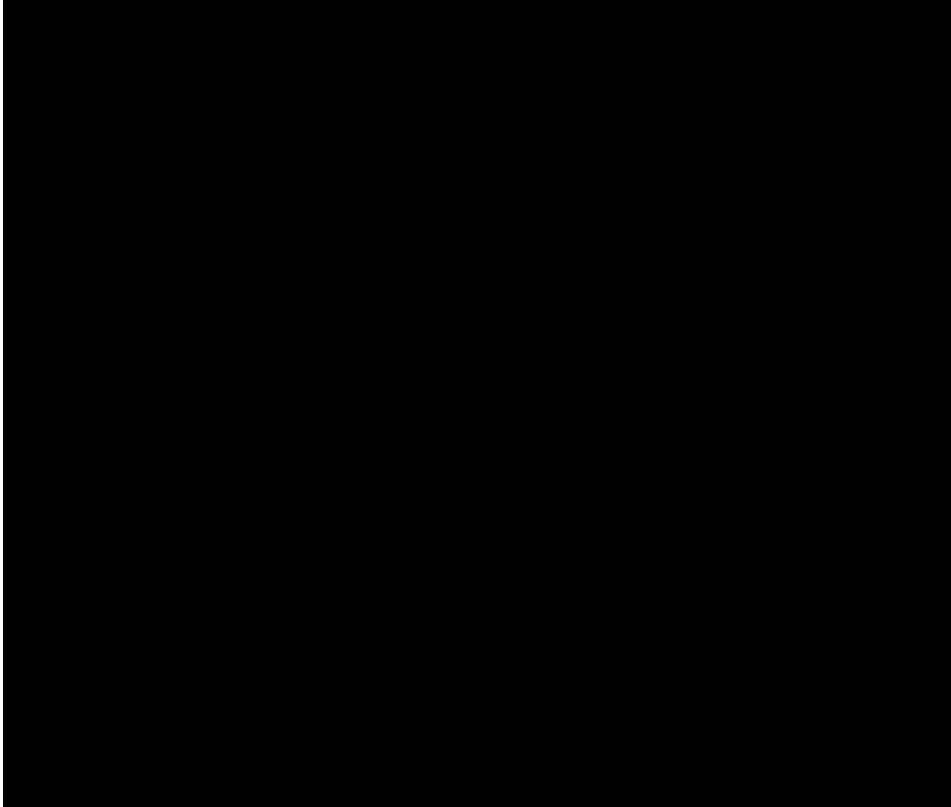


Figure 1 Vegetation Mapping from the CPCP Interactive Map accessed 7 September 2020 showing most of the site as Cumberland Plain Woodland

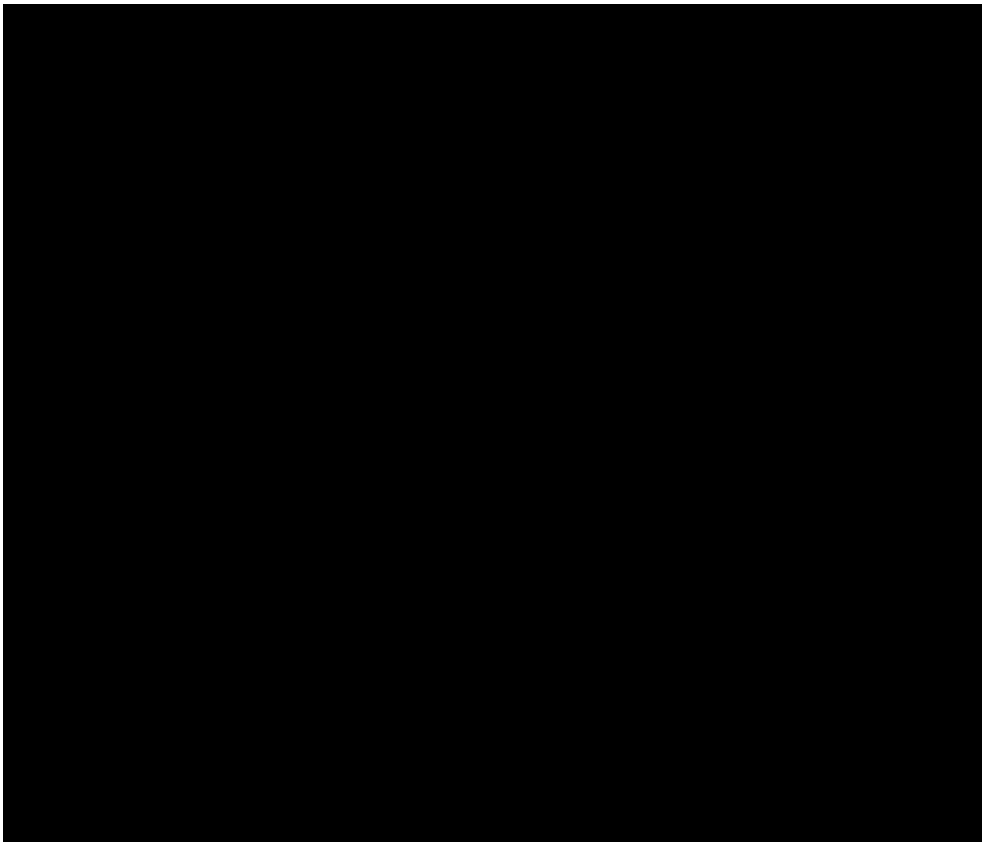


Figure 2 Land Category from CPCP interactive map accessed 7 September 2020 showing the transport corridor as certified and remainder of land as non-certified (and therefore conservation).

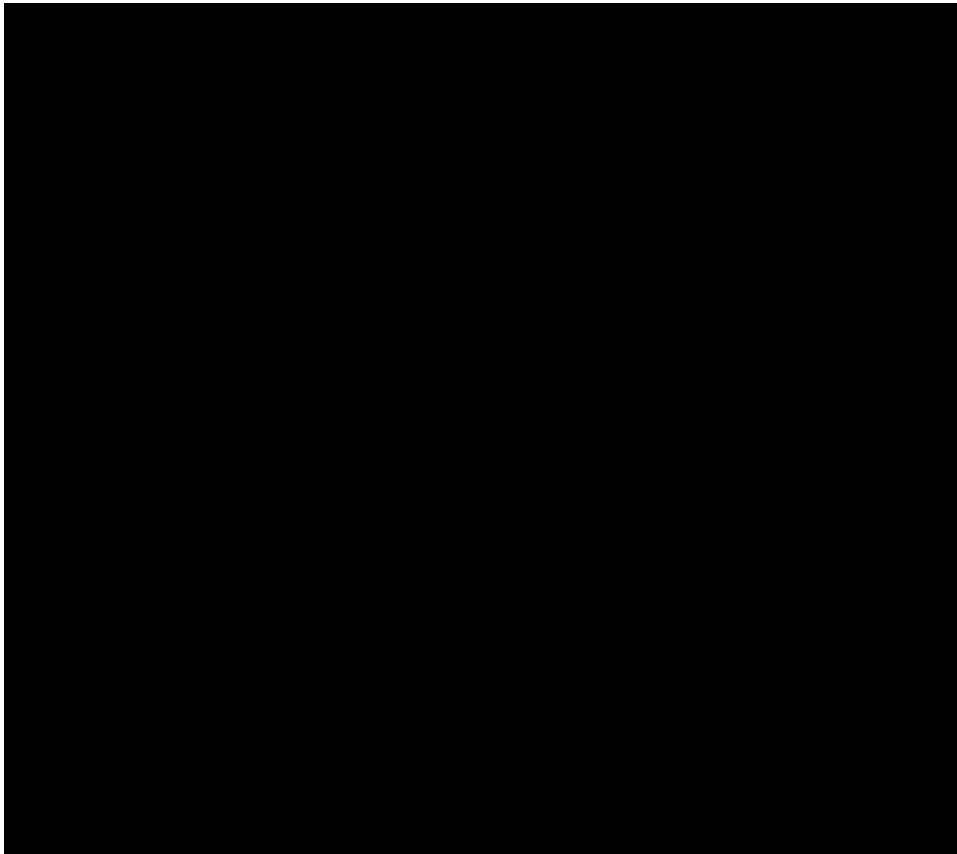


Figure 3 Strategic Conservation Area and Proposed Conservation Areas from the CPCP interactive map

2. Field survey results

2.1 Methods

ELA ecologists Toni Frecker and James King undertook two days of site survey September 2020. Toni Frecker is an accredited ecologist under the BAM system (██████████). No plot data was collected as the intention was to confirm whether the vegetation on site met the description of the vegetation that the CPCP uses for the 'avoidance'.

2.2 Vegetation Communities (Preliminary Assessment)

Vegetation within the site has been impacted by long term grazing which has led to limited species within some areas and a regenerated mid-storey dominated by a limited number of species. Four Plant Community Types (PCTs) were identified during the field survey. Two vegetation assemblages were also identified, however further assessment including floristic plots are required to assign this vegetation to a PCT. The communities identified are given in Table 1, mapped in Figure 9 and a detailed description of these is provided below.

Table 1: Vegetation communities

PCT code	PCT Scientific Name	NSW Biodiversity Conservation Act	EPBC Act Name	Percent of original extent	Cleared original
849	Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Critically Endangered: Cumberland Plain Woodland in the Sydney Basin Bioregion	Critically endangered Cumberland Plain Shale Woodland and Shale-Gravel Transition Forest	93%	
835	Forest Red Gum - Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion	Endangered River-Flat Eucalypt Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions	N/A	93%	
835	Forest Red Gum - Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion	N/A No canopy species present, however native understorey species present	N/A		
724	Broad-leaved Ironbark - Grey Box - Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion	Endangered Shale Gravel Transition Forest in the Sydney Basin Bioregion	Critically endangered Cumberland Plain Shale Woodland and Shale-Gravel Transition Forest	75%	
724	Broad-leaved Ironbark - Grey Box - Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion	N/A No canopy species present, limited midstorey species and native groundcover species present	N/A		

PCT code	PCT Scientific Name	NSW Biodiversity Conservation Act	EPBC Act Name	Percent of original extent
781	Coastal Freshwater Lagoons of the Sydney Basin Bioregion and South East Corner Bioregion	Endangered Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions	N/A	74%

2.2.1 Cumberland Plain Woodland (PCT 849)

Cumberland Plain Woodland (CPW) within the study area includes the canopy species, *Eucalyptus moluccana* (Grey Box) and *Eucalyptus tereticornis* (Forest Red Gum), and a mid-storey dominated by *Bursaria spinosa* (Blackthorn). The groundcover includes the grass species, *Microlaena stipoides* (Weeping Grass), *Chloris ventricosa* (Tall Chloris), *Aristida vagans* (Threeawn Speargrass), *Aristida ramosa* (Purple Wiregrass), *Themeda triandra* (Kangaroo Grass) and *Austrostipa ramosissima* (Stout Bamboo Grass).

Beyond the canopy area of this community the vegetation includes both the mid-storey of *Bursaria spinosa* and native grass species. No exotic species are present.

This vegetation is listed as an CEEC under the BC Act. Only a limited section of vegetation in the south satisfies the conditions for listing as a CEEC under the EPBC Act, with a dominant canopy tree cover of greater than 10%.

This community was generally found to be in good condition.

2.2.2 River Flat Eucalypt Forest (PCT 835)

This vegetation community is present in a continuous band along the western and northern boundaries of the study area within riparian corridors. Several fragmented patches were also present throughout the north-south central zone of the study area. The canopy of this community consists of *Eucalyptus amplifolia* (Cabbage Gum), *Eucalyptus tereticornis* (Forest Red Gum), *Angophora subvelutina* (Broad-leaved Apple) and *Casuarina glauca* (Swamp Oak). The mid-storey was sparse throughout this community with some *Bursaria spinosa* regrowth. Forbs and native grasses including *Dichondra repens* (Kidney Weed), *Microlaena stipoides* and *Lobelia purpurascens* (Whiteroot) dominate the understorey. Additional species include *Solanum prinophyllum* (Forest Nightshade) and *Einadia trigonos* (Fishweed). Canopy species regrowth is also present within this vegetation community.

This vegetation is listed as an EEC under the BC Act and was generally in good condition.

A number of small patches of vegetation have been assigned to this PCT, however these do not conform to the listed TEC. These areas lack canopy cover but do include a native groundcover consistent with this PCT including *Microlaena stipoides*.

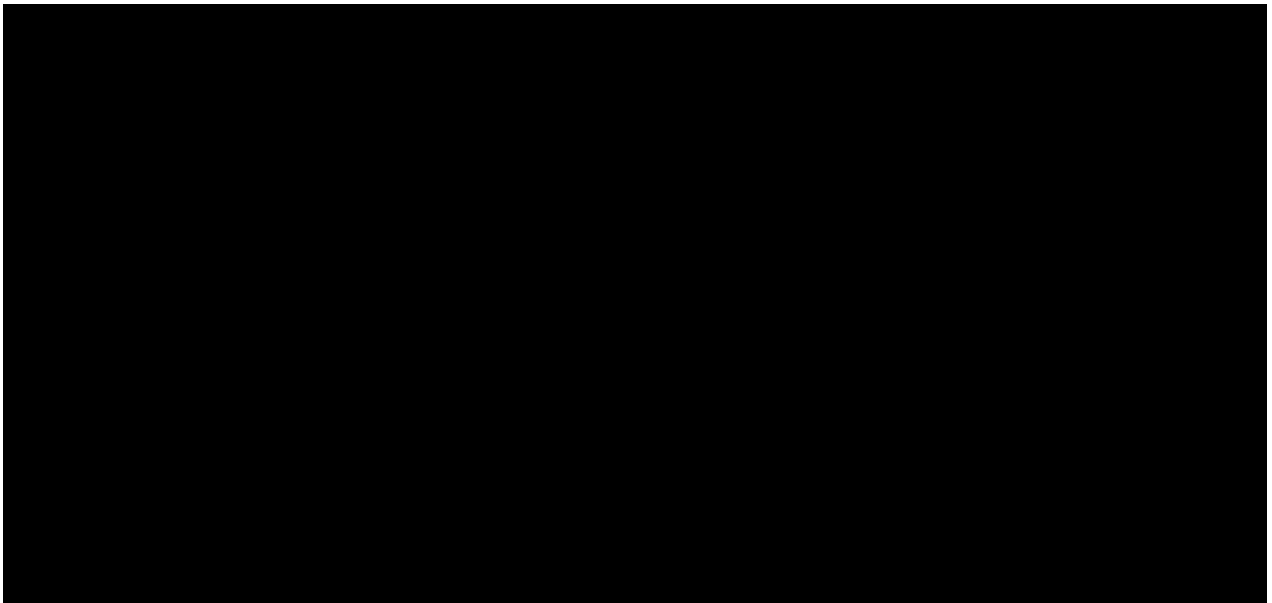


Figure 4 Example of River-flat eucalypt forest on site

2.2.3 Freshwater Wetlands (PCT 781)

This vegetation community is present in the northern section of the study area with the dominant species being *Juncus usitatus* and *Cycnogeton procerum* (Water Ribbons). Additional species in lower density include *Philydrum lanuginosum* (Woolly Frogmouth), *Nymphoides germinata* (Yellow Marshwort) and *Hydrcotyle* sp.

This wetland is in good condition and is not restricted by an constructed farm dam.

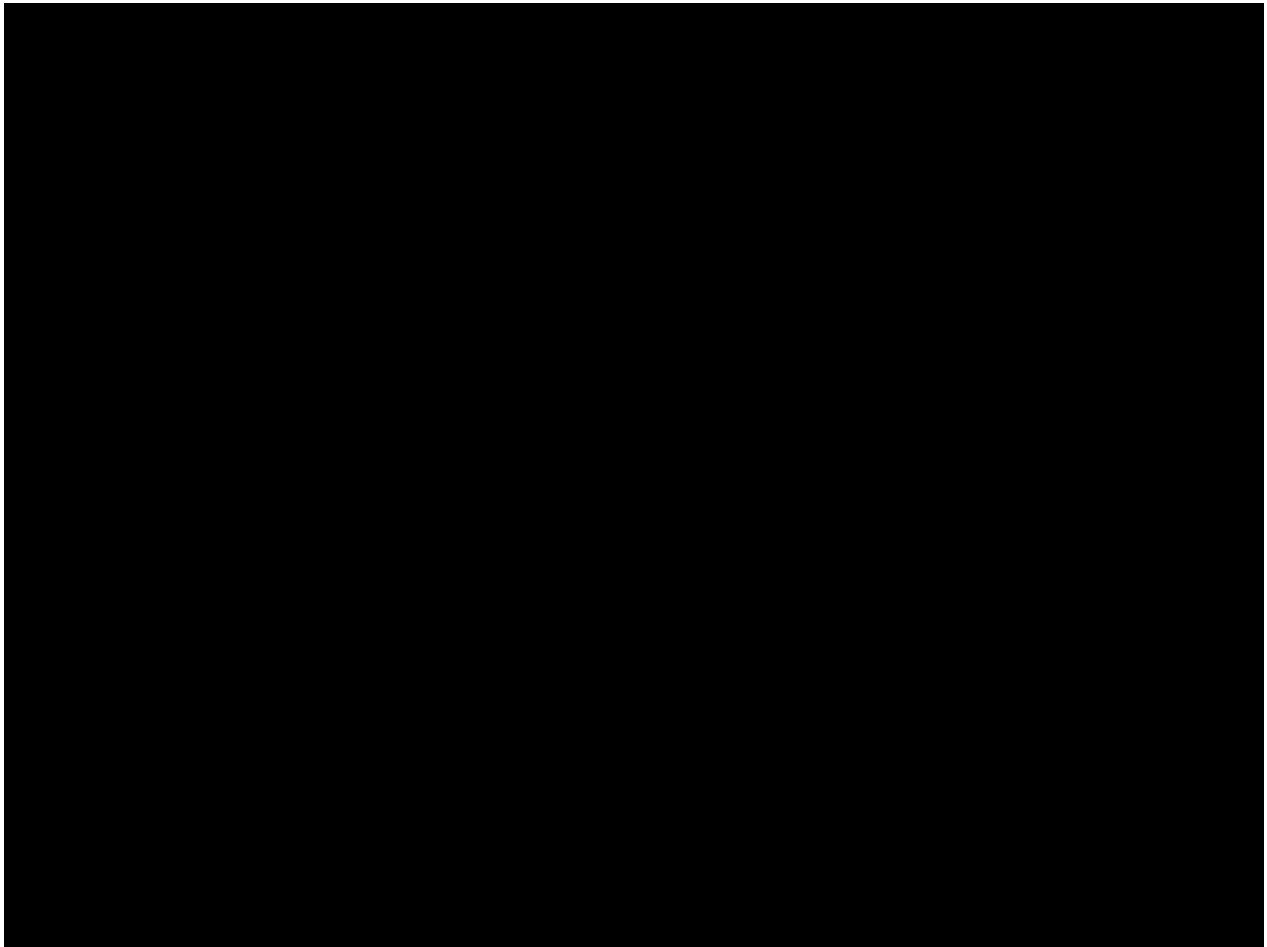


Figure 5 Freshwater wetlands that may have started as farm dams

2.2.4 Shale-Gravel Transition Forest (PCT 724)

Shale-Gravel Transition Forest (SGTF) is present across the south eastern half of the study area. This vegetation zone includes *Eucalyptus fibrosa* (Red Ironbark) as a scattered dominant canopy species, and a lower tree layer dominated by *Melaleuca decora*. A limited number of *Eucalyptus eugenioides* (Thin-leaved Stringybark), scattered *Casuarina glauca* (Swamp Oak) and *Acacia decurrens* (Black Wattle) are also present.

This zone is mapped as Cumberland Plain Woodland in the CPCP, however this assessment has identified it as SGTF due to the presence of *Eucalyptus fibrosa* (Red Ironbark) as the dominant canopy species, scattered *Eucalyptus longifolia* (Woolybutt) and an extensive lower tree layer of *Melaleuca decora*. These species are indicative of SGTF not CPW.

The mid-storey is sparse in those sections with canopy, however mid-storey species are abundant between areas of canopy. These species include *Astroloma humifusum* (Native Cranberry), *Hakea sericea* (Needlebush), *Kunzea ambigua* (Tick Bush), *Acacia falcata* (Hickory Wattle), *Bursaria spinosa*, *Lissanthe strigosa* (Native Cranberry), *Dillwynia sieberi*, *Daviesia ulicifolia* (Gorse Bitter Pea), *Melaleuca nodosa* (Prickly-leaved Paperbark). *Dillwynia tenuifolia*, a vulnerable species listed under the BC Act, is present in this community near the southern boundary of the study area.

The ground layer includes a good diversity of species including *Lomandra multiflora* (Many-flowered Mat-rush), *Lomandra filiformis* (Wattle Mat-rush), *Cheilanthes sieberi* subsp. *sieberi* (poison rock fern), *Wahlenbergia* sp., *Glycine* sp., *Aristida ramosa*, *Aristida vagans*, *Themeda triandra*, *Drosera* sp., *Eragrostis brownii* (Brown's Lovegrass) and *Eragrostis leptostachya* (Paddock Lovegrass).

This vegetation is listed as an EEC under the BC Act. Only a limited section of vegetation in the south satisfies the conditions for listing as a CEEC under the EPBC Act, with a dominant canopy tree cover of greater than 10%. The northern areas of SGTF were generally in good condition, whilst the southern areas were moderate or poor.

Additional areas have been assigned to this PCT however these do not conform to the listed TEC. These areas lack canopy cover, are characterised by a dense shrub layer dominated by *Hakea sericea* and *Kunzea ambigua*, and a sparse groundcover due to the midstorey density. The groundcover includes both native and exotic species including *Aristida ramosa*, *Juncus usitatis*, *Drosera peltata*, *Microlaena stipoides*, and *Microtis parviflora* (Slender Onion Orchid). Exotic species occur primarily at the edges of these shrub dominated areas and include *Eragrostis curvula* (African Lovegrass) and *Andropogon virginicus* (Whiskey Grass)

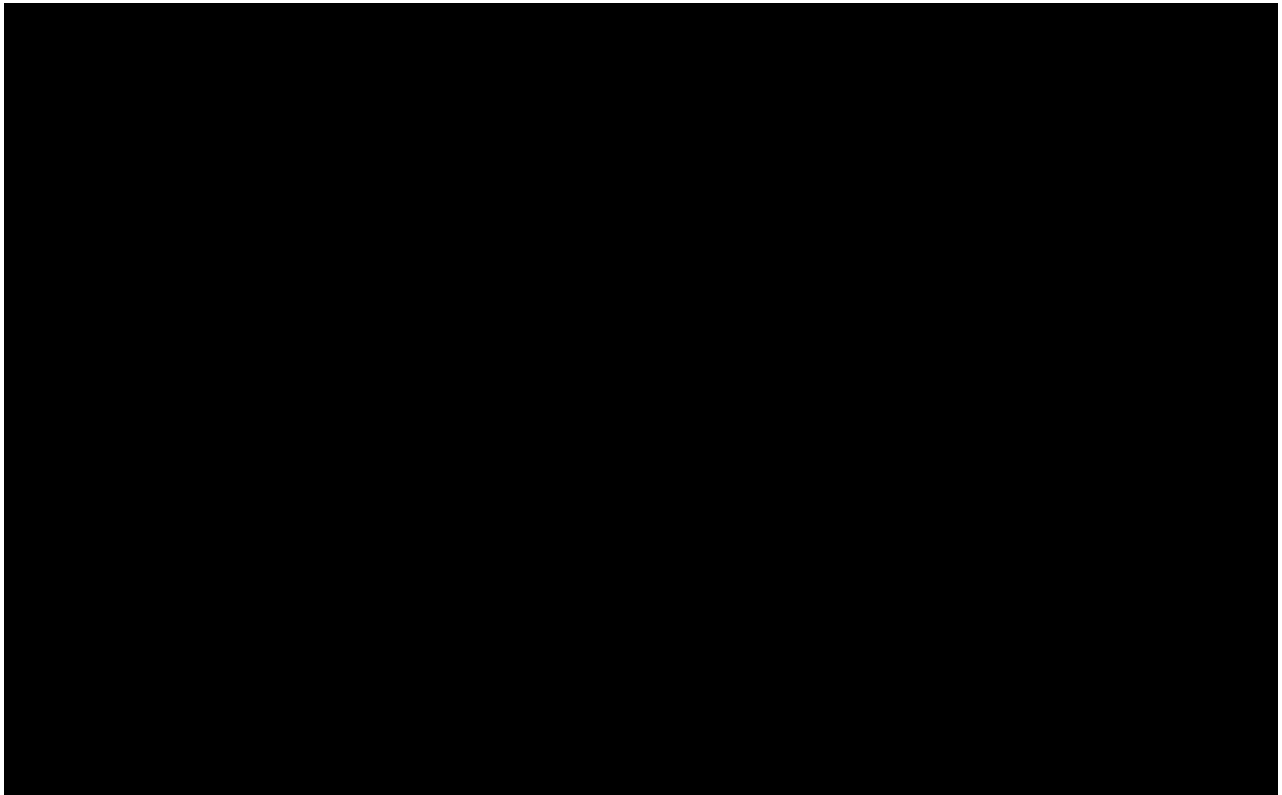


Figure 6 Example of Shale Gravel Transition Forest on site

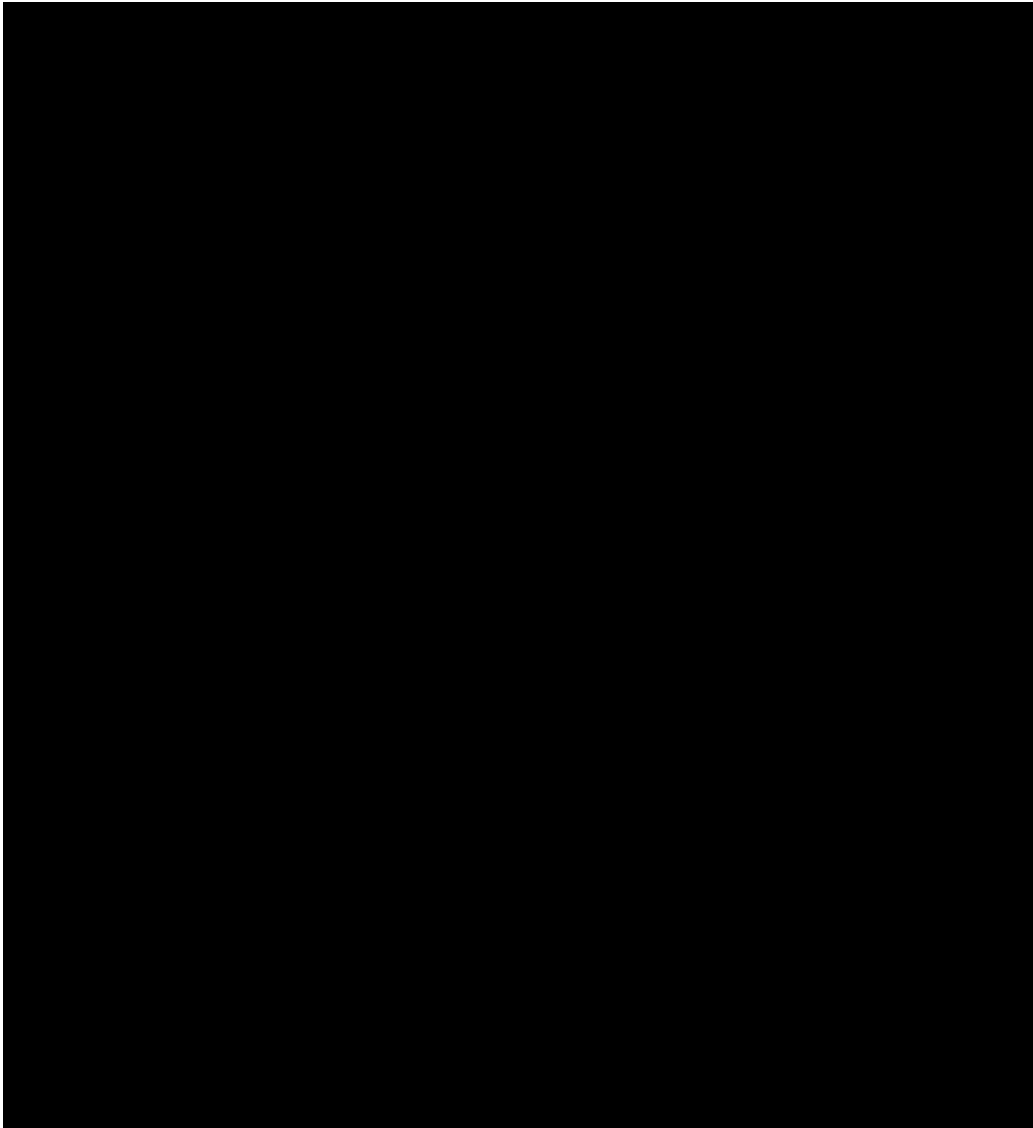


Figure 7 Example of Shale Gravel Transition Forest on site

2.2.5 Grassland – Exotic dominated

The vegetation identified as ‘Grassland’ is a mosaic of both exotic grassland dominated by *Eragrostis curvula* and native grasslands including species such as *Aristida* spp.

Floristic plot data collection has demonstrated that these grasslands do not include greater than 50% native cover and so do not conform to the classification of Derived Native Grassland. Dominant exotic species include *Eragrostis curvula*, *Paspalum dilatatum*, *Senecio madagascarensis* (Fireweed) and broadleaf weeds such as *Taraxacum officinale* (Dandelion) and *Gamochaeta* sp. (Cudweed). The scattered native species include *Sporobolus creber* (Slender Rats Tail) and *Imperata cylindrica* (Blady Grass).



Figure 8 Grassland on the site

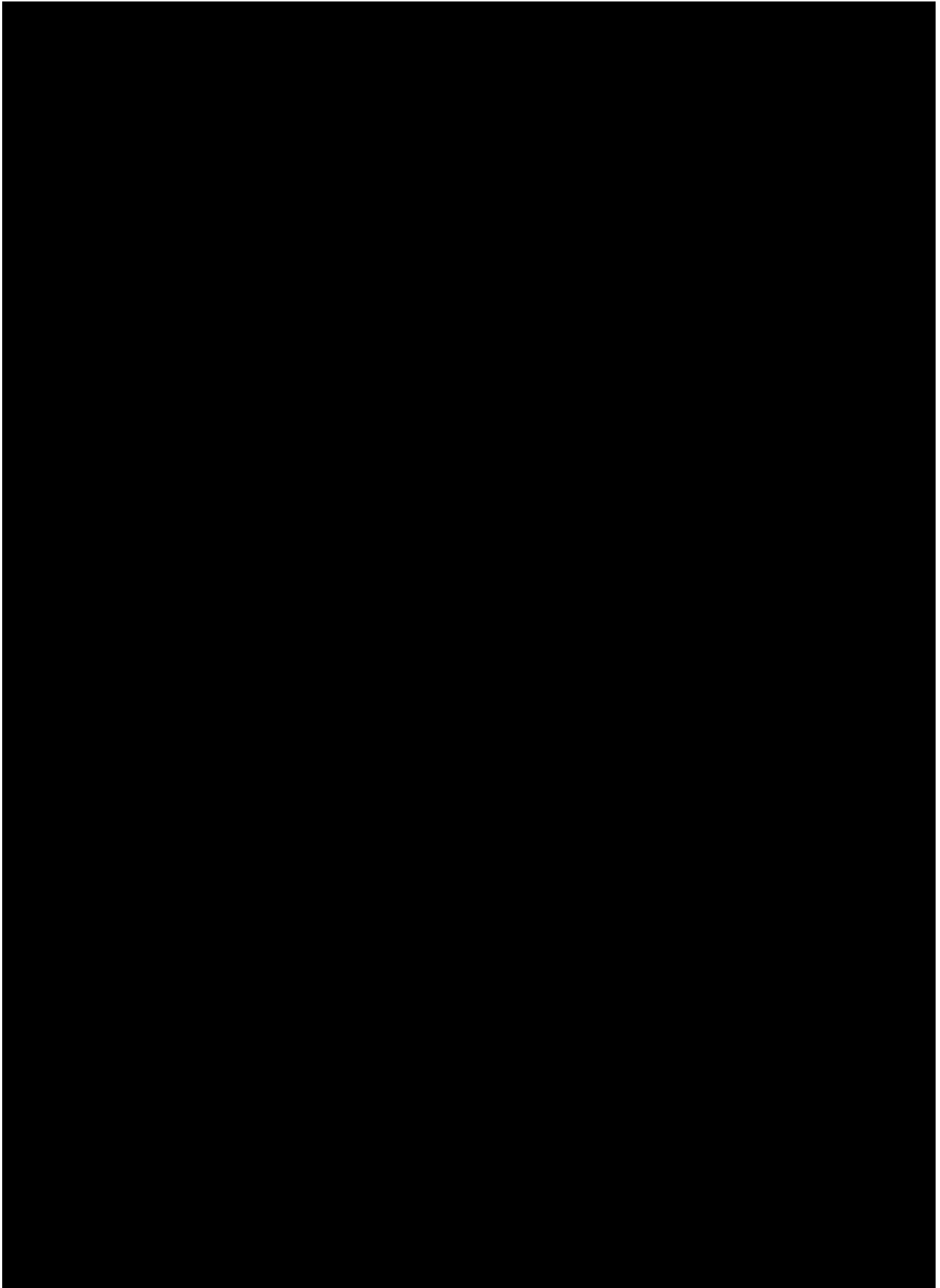


Figure 9 Preliminary Vegetation Communities validated by ELA

3. Analysis

The Draft CPCP contains the following criteria for identifying areas of vegetation to ‘avoid’ (i.e. conserve). The criteria below refers to vegetation in ‘good condition’, however no definition is supplied. The Cumberland Plain Assessment Report which is also exhibited with the CPCP uses condition terms ‘Intact, thinned and scattered trees’ (see chapter 19) but also does not describe which of these are considered being ‘good condition’. The Cumberland Plain Assessment Report (Table 11-6) does however indicate Endangered and Critically Endangered Ecological Communities were mapped in all condition states.

Box 1 Avoidance criteria	ELA assessment
(a) TECs and PCTs	
1. Critically endangered ecological communities (CEECs) or PCTs ≥90% cleared in large patches and in good condition; or serious and irreversible impact (SAIL) entities (TECs)	The mapped areas of PCT 835 and 849 fall into this category.
2. EECs or PCTs ≥70% to <90% cleared in large patches and in good condition	<p>PCT 781 and 724 fall into this category.</p> <p>PCT 724 mapped in the dark green in Figure 9 would clearly meet the ‘good condition’ definition.</p> <p>The PCT 724 mapped in light green in Figure 9 is less clear due to the lack of clarity in definitions of ‘good condition’. This area has native shrub layer, but has exotic groundcover and no native canopy. There may be an argument that it is not in good condition, however it is contiguous with larger areas in good condition and therefore does have biodiversity value. These areas are also generally within the proposed ‘certified lands’ and therefore how they are classified may not be critical.</p>
3. PCTs ≥50% to <70% cleared in large patches and in good condition	NA to this site
4. PCTs <50% cleared in large patches and in good condition	NA to this site
(b) Threatened species	
1. Known habitat [^] for critically endangered species, SAIL entities (species), Saving Our Species (SOS) species polygons (where species-specific habitat is present), or large populations of threatened species (relative to typical size for that species); or known primary koala habitat	ELA did not undertake threatened species survey
2. Known habitat [^] for endangered species or known secondary koala habitat	ELA did not undertake threatened species survey
3. Known habitat [^] for vulnerable species	ELA did not undertake threatened species survey
(c) Ecological processes	

Box 1 Avoidance criteria	ELA assessment
1. Land identified as priority conservation lands, BIO Map core areas, or important local habitat corridors for key species including koalas	The site is not on the BioMap core areas. Being 50+ hectares it is likely to provide foraging habitat for threatened species, but would not currently provide habitat for koala.
2. Land identified as BIO Map regional corridors or as areas that provide significant opportunities to support important local habitat corridors for key species, including koalas	The site is not on the BioMap.
3. Areas identified on the Biodiversity Values Map	Some vegetation on site is identified on the Biodiversity Values Map.
Boundary rationalisation	
Consider removing:	
<ul style="list-style-type: none"> • small nodes or isolated patches of features identified in (a), (b) or (c) if future land use change will lead to significant edge effects and low viability over the timeframe identified, and there is no feasible opportunity to enhance connectivity and extent • corridors that do not link important areas of habitat, including 'blind corridors'. 	
^ As indicated by BioNet records or recent survey data	

The draft CPCP provides the following criteria for proposals to change the urban capable (or 'certified') boundary.

During public exhibition, landholders may seek to have the urban capable boundary amended prior to the finalisation of the Plan. The urban capable land boundary will only be updated in line with this Criteria, namely if:	ELA recommendation
<ul style="list-style-type: none"> • creeks and water features are mapped incorrectly, in which case they must be updated to match the topography and vegetation indicating movement of water through the landscape 	The draft CPCP mapped Cosgroves Creek as a water feature. Whilst ELA have not undertaken a watercourse survey, based on aerial photos and a brief site visit, the mapping does not appear to be incorrect.
<ul style="list-style-type: none"> • on-site data collected by accredited assessors supports updating the boundaries 	Land generally in the west of the site to the west (other than the riparian zone of Cosgrove Creek) is cleared and does not meet the definition of Endangered or Critically Endangered Ecological Community. These areas are justified for boundary updating.
<ul style="list-style-type: none"> • there is no net change to impact of threatened ecological communities, SAI entities or vegetation in an intact condition state 	The grassland areas do not meet the definition of the EEC or CEEC and therefore their change to 'certified' would not result in an increase impact to EEC or CEEC.
<ul style="list-style-type: none"> • there is no impact on an identified landscape corridor 	This term is not described or mapped in the draft CPCP.

During public exhibition, landholders may seek to have the urban capable boundary amended prior to the finalisation of the Plan. The urban capable land boundary will only be updated in line with this Criteria, namely if:	ELA recommendation
<ul style="list-style-type: none"> • authorised clearing has occurred. (The relevant Council will review cleared areas and determine if the clearing was permitted. The urban capable land boundary will not be changed if the clearing was unauthorised.) 	We are not aware of any recent clearing on the property.

4. Potential Developable Areas

The eastern part of the site has extensive areas of Endangered and Critically Endangered Ecological Communities which has been identified as a Strategic Conservation Area in the draft CPCP. Whilst the condition of the vegetation may not be good in some areas, this eastern portion represents a significantly large tract of native vegetation and its protection does have strategic merit.

The western half however has large areas of grasslands that are less than 50% native. Figure 10 below shows an potential developable area based on ecological and riparian considerations. This provides for approximately 39 hectares of land. It has a minimum 40m setback from Cosgroves Creek – and is wider in some areas where there is existing vegetation. The developable area does include some patches of native vegetation. We have included these as there is sufficient vegetation remaining on the site to offset some losses to allow a logical development footprint.

The recent Enterprise zoning of the site under the Western Sydney Aerotropolis SEPP (2020) approximates the area proposed under the draft CPCP as ‘Certified - Urban Capable’. This area is also assumed to be developable.

5. Recommendations

ELA believes there is a case for updating the maps in the draft CPCP as follows:

- 1) Update the vegetation maps to reflect the ground-truthed vegetation map in this report. ELA can provide shapefiles to the DPIE on request.
- 2) Update the proposed certification map to show the western grassland areas as Certified.

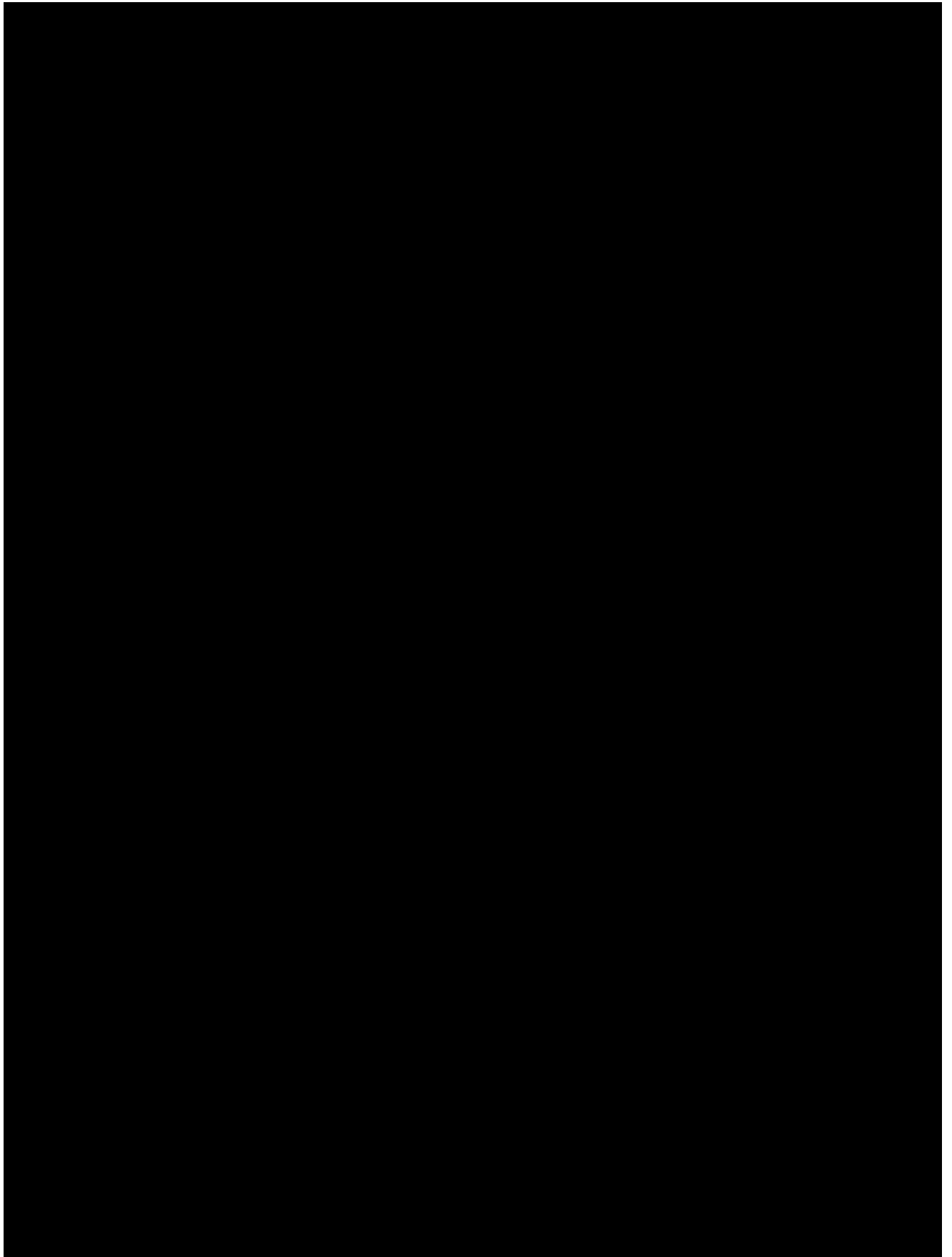


Figure 10 Potential developable land based on low low biodiversity value

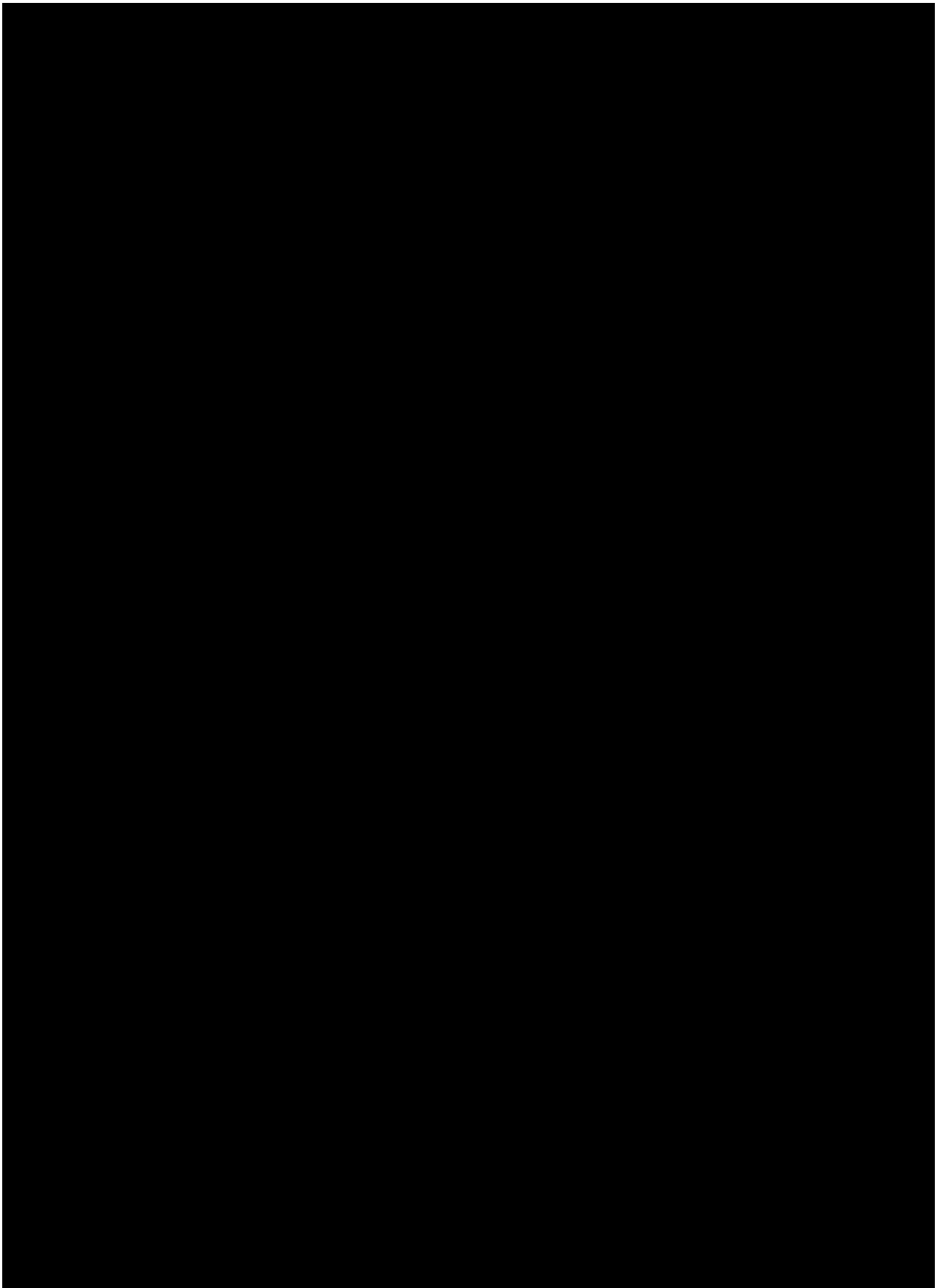


Figure 11 Proposed developable area (low biodiversity value + proposed Certified - Urban Capable)

CUMBERLAND PLAIN CONSERVATION PLAN SUBMISSION


LUDDENHAM

9 OCTOBER 2020



QUALITY ASSURANCE

PROJECT: Submission: Draft Cumberland Plain Conservation Plan

ADDRESS: [REDACTED] Luddenham

COUNCIL: Penrith City

AUTHOR: Think Planners Pty Ltd

Date	Purpose of Issue	Rev	Reviewed	Authorised
8 October 2020	Draft Issue for client comment	Draft	SF	SF
9 October 2020	Submission	Final	SF	SF

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PURPOSE

This submission is prepared by Think Planners Pty Ltd on behalf of the land owners of [REDACTED] Luddenham, in response to the August 2020 publication of the draft Cumberland Plain Conservation Plan by the NSW Department of Planning, Industry and Environment.

The Borg Families (joint ownership) owns land which is identified as Lot [REDACTED] which is more commonly known as [REDACTED] Luddenham.

The subject site is situated within an existing rural area, the subject land parcel can be best described as an irregular shaped allotment which is located on the north eastern side of Luddenham Road. The subject land parcel is approximately 128.89 hectares in total area and gains access from Luddenham Road. The site's western boundary is generally formed by Cosgroves Creek with Twin Creeks located to the site's north east and predominantly rural land surrounding the site to the south and east. The Western Sydney Airport (WSA) is currently under construction and is located to the south west of this site.

The subject site is presently zoned ENZ Environment and Recreation and ENT Enterprise under the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. The site is also subject to the provisions of State Environmental Planning Policy (Major Infrastructure Corridors) 2020. The site is subject to a minimum lot size of 40 Hectares under Penrith LEP 2010.

The subject site is located within the Northern Gateway Precinct as identified in the Aerotropolis Structure Plan, which will be a major airport interface, serving as a key strategic centre within the Western Economic Corridor. The Northern Gateway is to link the Airport with the Western Parkland City Metropolitan Cluster through high frequency public transport, freight, road and rail connections. The site itself, is assigned for rail and motorway (North South Railway Link) to pass through the property.

The family have owned the land parcel for over 40 years. This property has historically been used for cattle grazing. The proposed impacts of the classifications introduced under the draft Cumberland Plain Conservation Plan will significantly affect the property owners and will also serve to limit any future potential development opportunities.

The draft Cumberland Plain Conservation Plan is supported in principle, as it provides opportunity, vision and guidance to landowners and the investment community to continue to see biodiversity conserved for future generations.

However, the subject site has now been considered in detail by an ecologist (see accompanying report by Eco Logical Australia) which has revealed the classifications

included in the draft Cumberland Plain Conservation Plan require adjustment to truly reflect the ecological characteristics of the site. Specifically this submission requests that the vegetation maps included in the draft Cumberland Plain Conservation Plan be updated to reflect the ground-truthed vegetation map included in this submission and the proposed certification map be updated to show the western grassland areas as Certified.

The land owner seeks to work collaboratively with the NSW Government to return the land to permit development of the site as it is inherently located in a prime position to provide supportive flexible employment land to service the Northern Gateway Precinct.

SITE AND CONTEXT

LEGAL DESCRIPTION

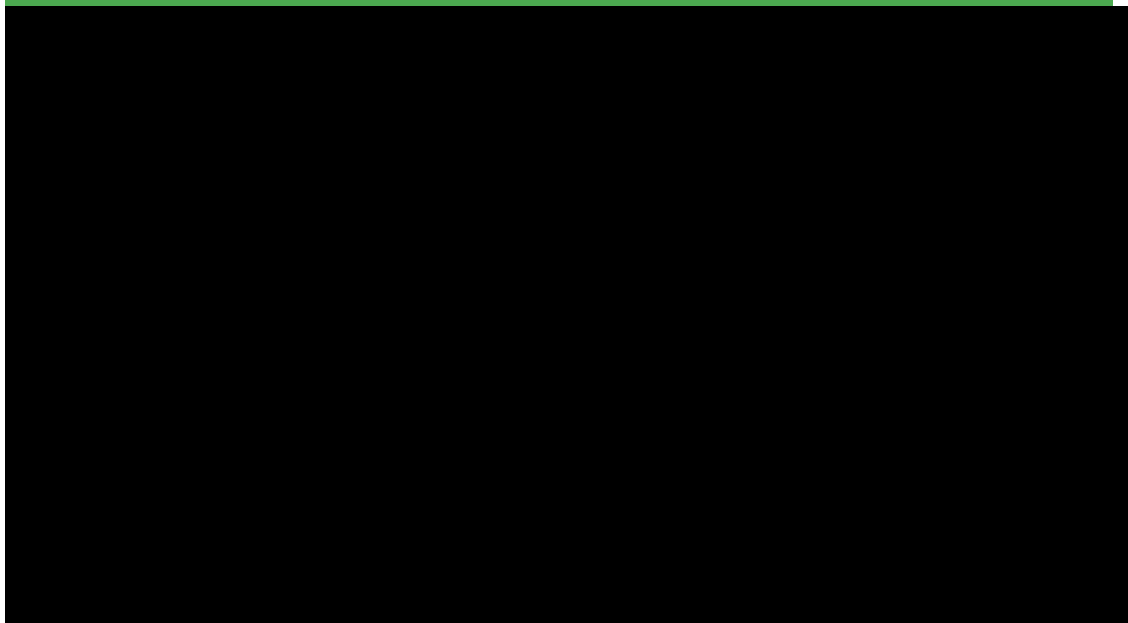
The subject site is legally described as Lot [REDACTED] though more commonly known as [REDACTED] Luddenham.

LOCATION

Situated within the existing rural area, the subject land parcel can be best described as an irregular shaped allotment with a total site area of 128.89 hectares which is located on the north eastern side of Luddenham Road. The site is bound by Cosgroves Creek to the west and Twin Creeks to the north east.

An aerial photograph and photograph of the subject site is provided below which shows the site in its current context.

Figure 1: Aerial Map Extract of the Subject Site (Source: Six Maps 2019)



CUMBERLAND PLAIN CONSERVATION PLAN 2020

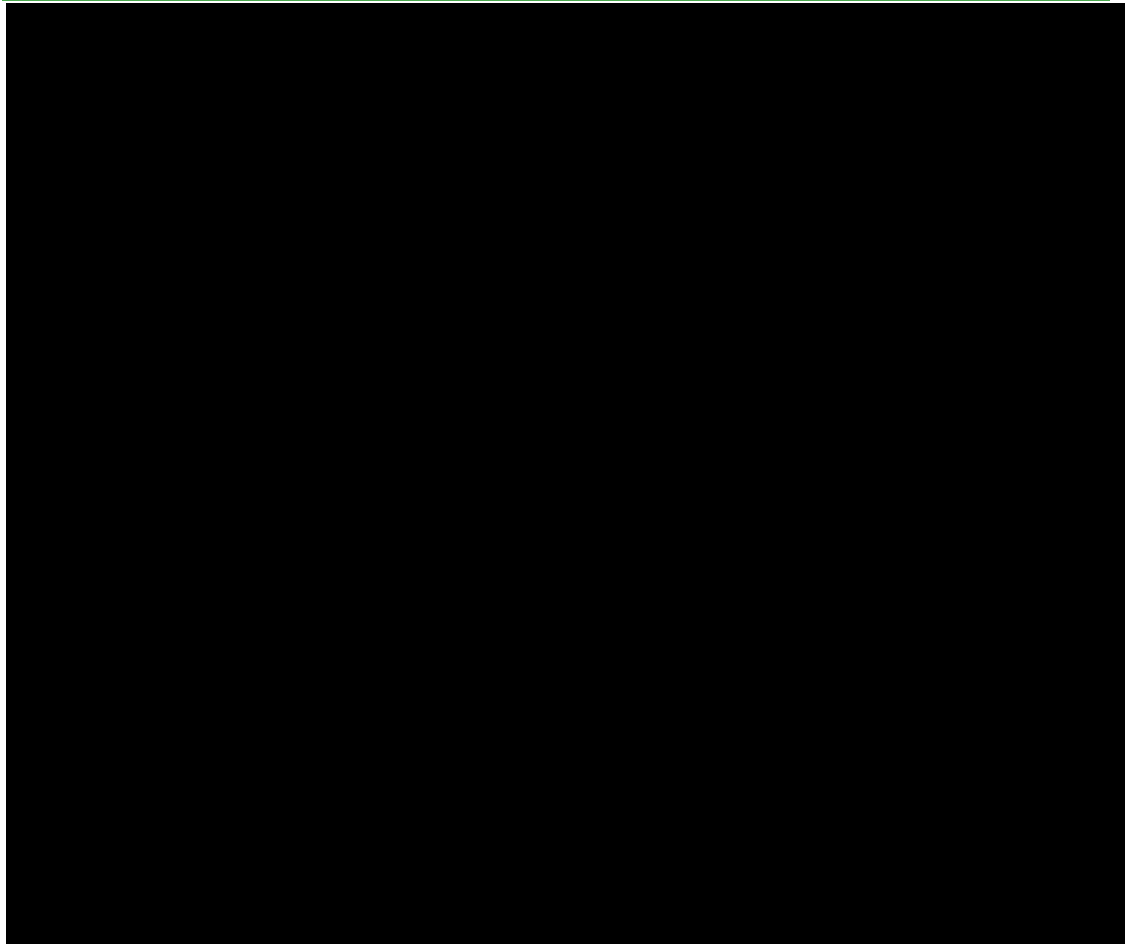
The draft Cumberland Plain Conservation Plan (CPCP) was published for public comment on 26 August 2020. The draft CPCP seeks to provide certainty regarding biodiversity and conservation outcomes within the land affected by the Plan. The draft CPCP provides maps of the subject site as containing Cumberland Plain Woodland within the eastern part of the site and Riverflat Eucalypt Forest/Swamp Oak Forest along the riparian zone of Cosgrove Creek. See Figure 2 overleaf.

The draft CPCP provides a central corridor of certified land through the middle of the subject site which is assumed to be to facilitate delivery of a transport corridor with all land either side of the corridor being non-certified with either biodiversity or riparian values. See Figure 3 in the following pages.

The result of the land identification under the draft CPCP is that this land will not be available for development. The non-certified land to the east of the corridor is also identified as being of strategic conservation value, see Figure 4 in the following pages.

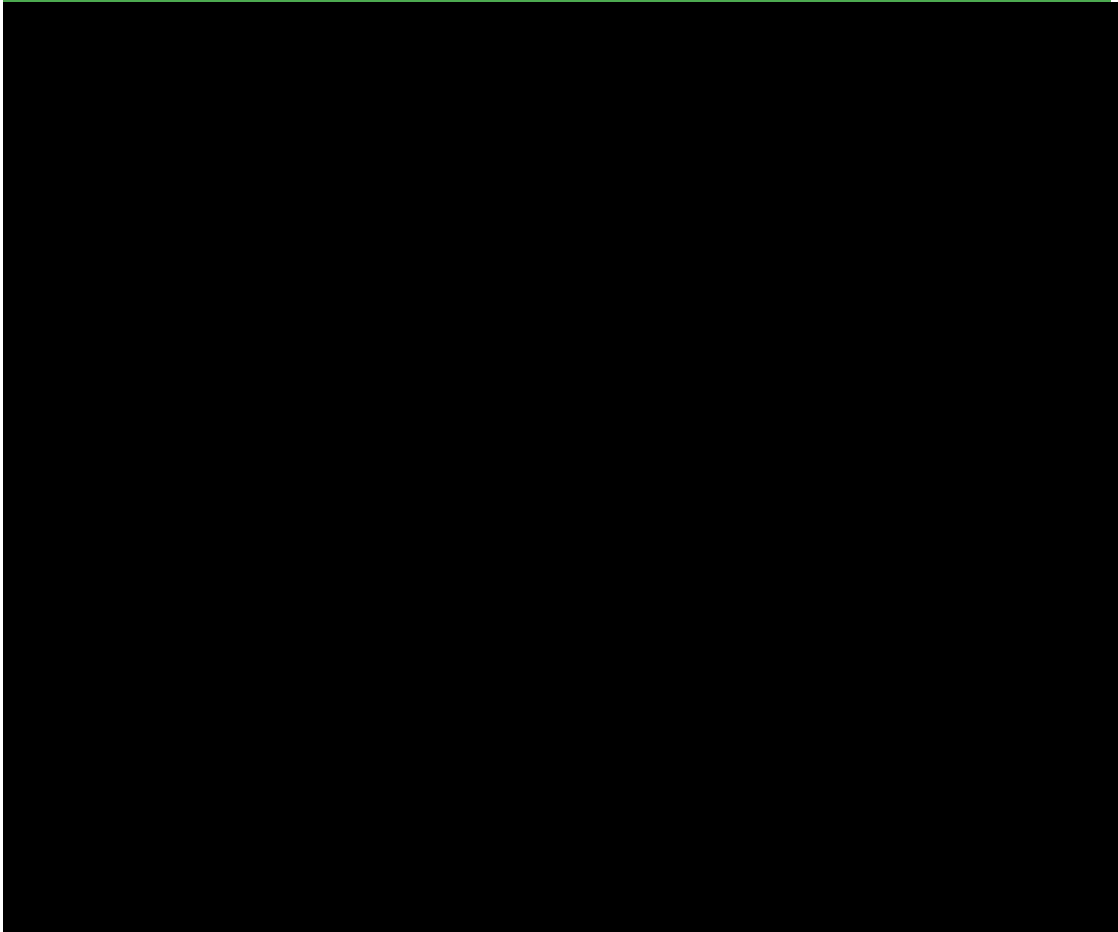
The draft CPCP sets up details of “avoidance criteria” within the plan which essentially is the criteria for what was considered to have sufficient conservation value to warrant its “avoidance” or protection. The draft CPCP also described the flexibility that is available for changing the maps in the draft CPCP.

Figure 2: Vegetation Mapping for the CPCP (Source: Interactive Map draft CPCP 2020)



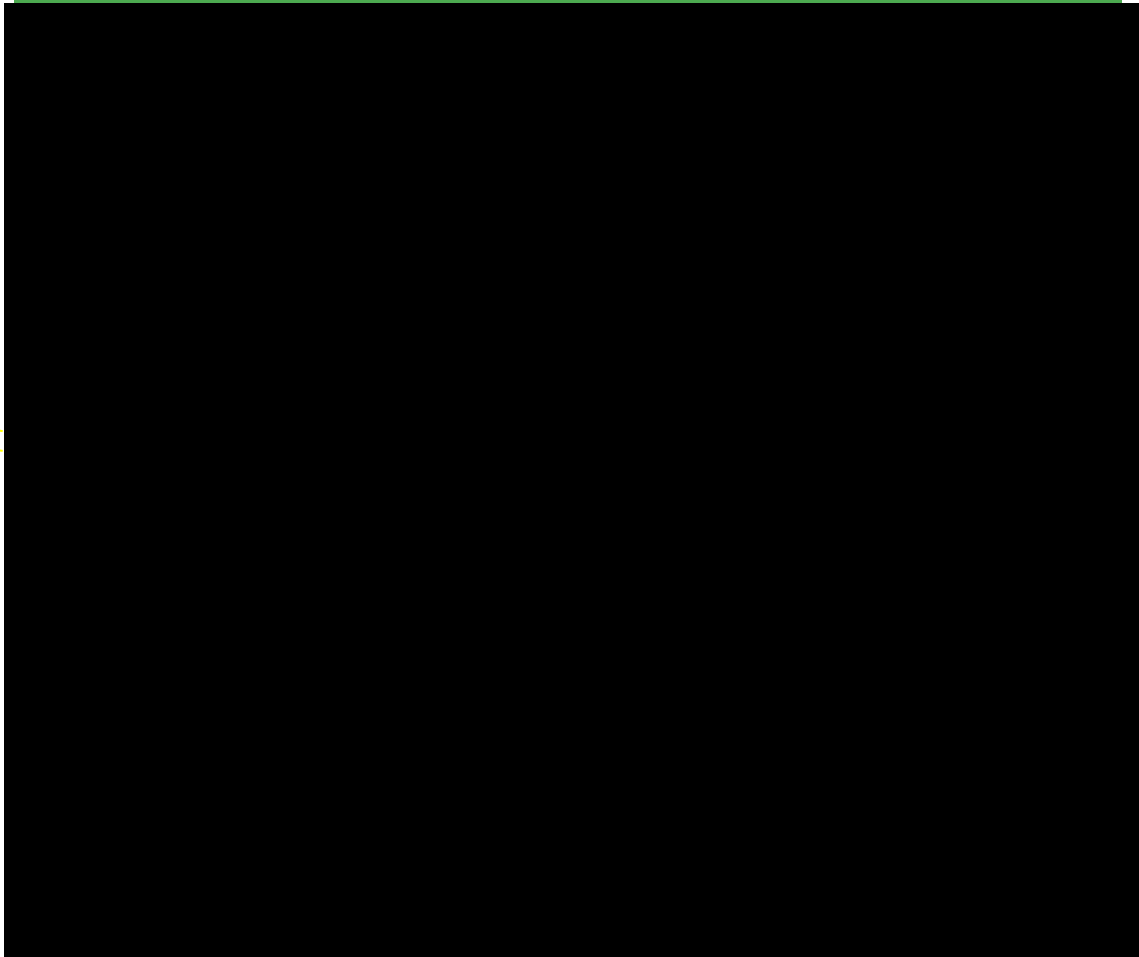
The site (the majority of the site is Cumberland Plain Woodland)

Figure 3: Land Category for the CPCP (Source: Interactive Map draft CPCP 2020)



The site (certified land shown in orange and non certified land shown in green)

Figure 4: Strategic Conservation Area for the CPCP (Source: Interactive Map draft CPCP 2020)



The site

ECOLOGICAL SURVEY

The land owner has engaged ecological consultants from Eco Logical Australia to complete a two day site survey. The survey has been completed by accredited ecologists under the BAM system (BAAS19074). The purpose of the site survey was to confirm whether the vegetation on the site meets the description of the vegetation published in the draft CPCP that categorises as “avoidance”.

One of the initial findings of the survey was that vegetation on the site has been impacted by long term grazing which has led to limited species within some areas and a regenerated mid-story dominated by a limited number of species.

Further details of the ecological matters are provided in the report prepared by Eco Logical Australia and included with this submission. A copy of the vegetation mapping is provided at Figure 5 overleaf.

The report prepared by Eco Logical Australia provides a technical assessment of the draft CPCP “avoid” criteria against the areas of vegetation found on the subject site.

The following are the key recommendations and conclusions that are drawn from this details ecological analysis of the site.

There is a case for updating the maps in the draft CPCP as follows:

1. Update the Vegetation Maps to reflect the ground-truthed vegetation map in this report at Figure 5. Eco Logical Australia can provide shapefiles to the DPIE on request.
2. Update the Land Category Map to show the western grassland areas as Certified -Urban Capable in accordance with the developable area in Figure 6.
3. Updated the Strategic Conservation Area map to remove proposed Environmental Conservation from the eastern portion of the lot in accordance with the developable area in Figure 6.

Figure 5: Vegetation Mapping (Source: Eco Logical Australia Mapping)

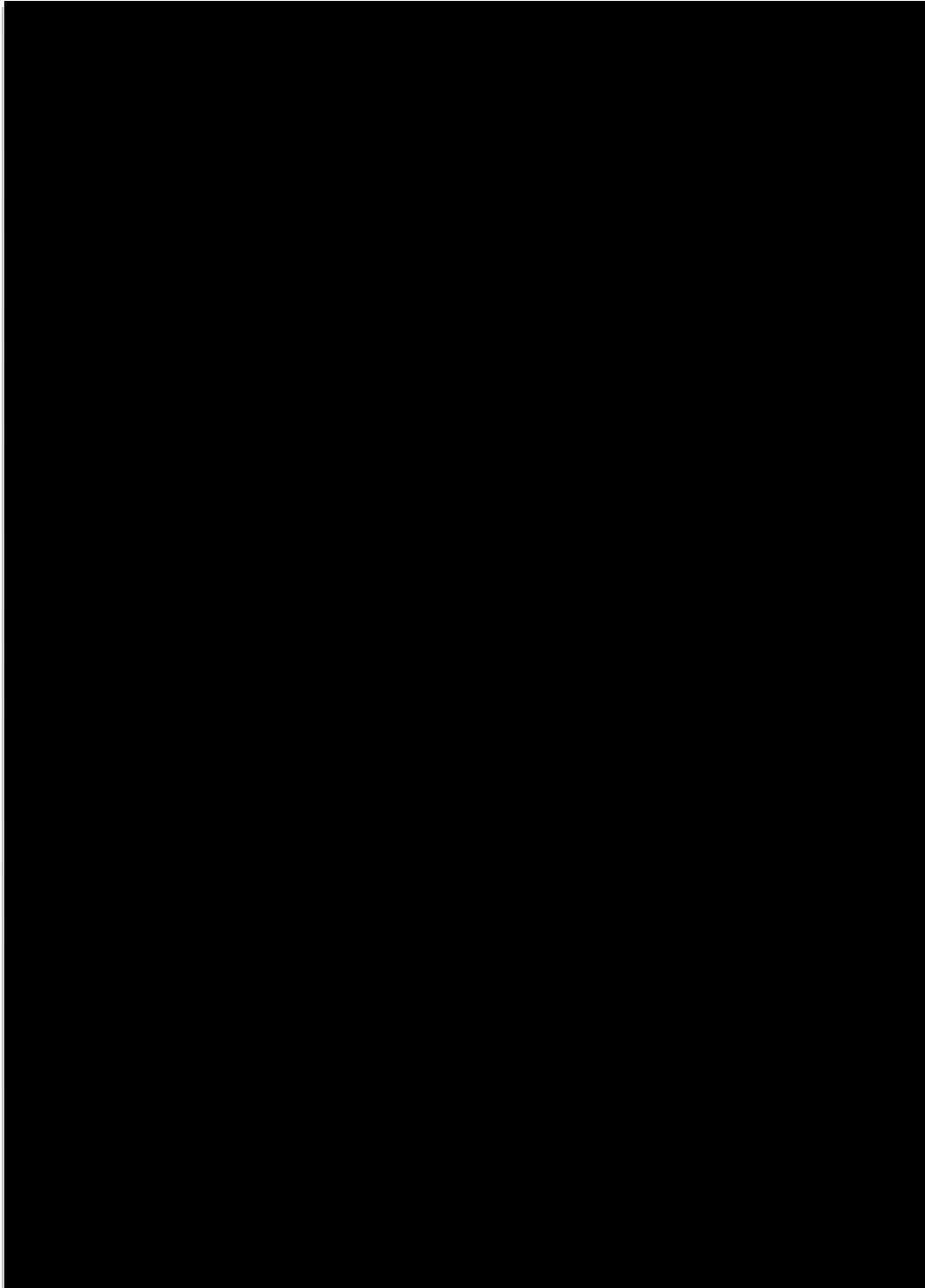
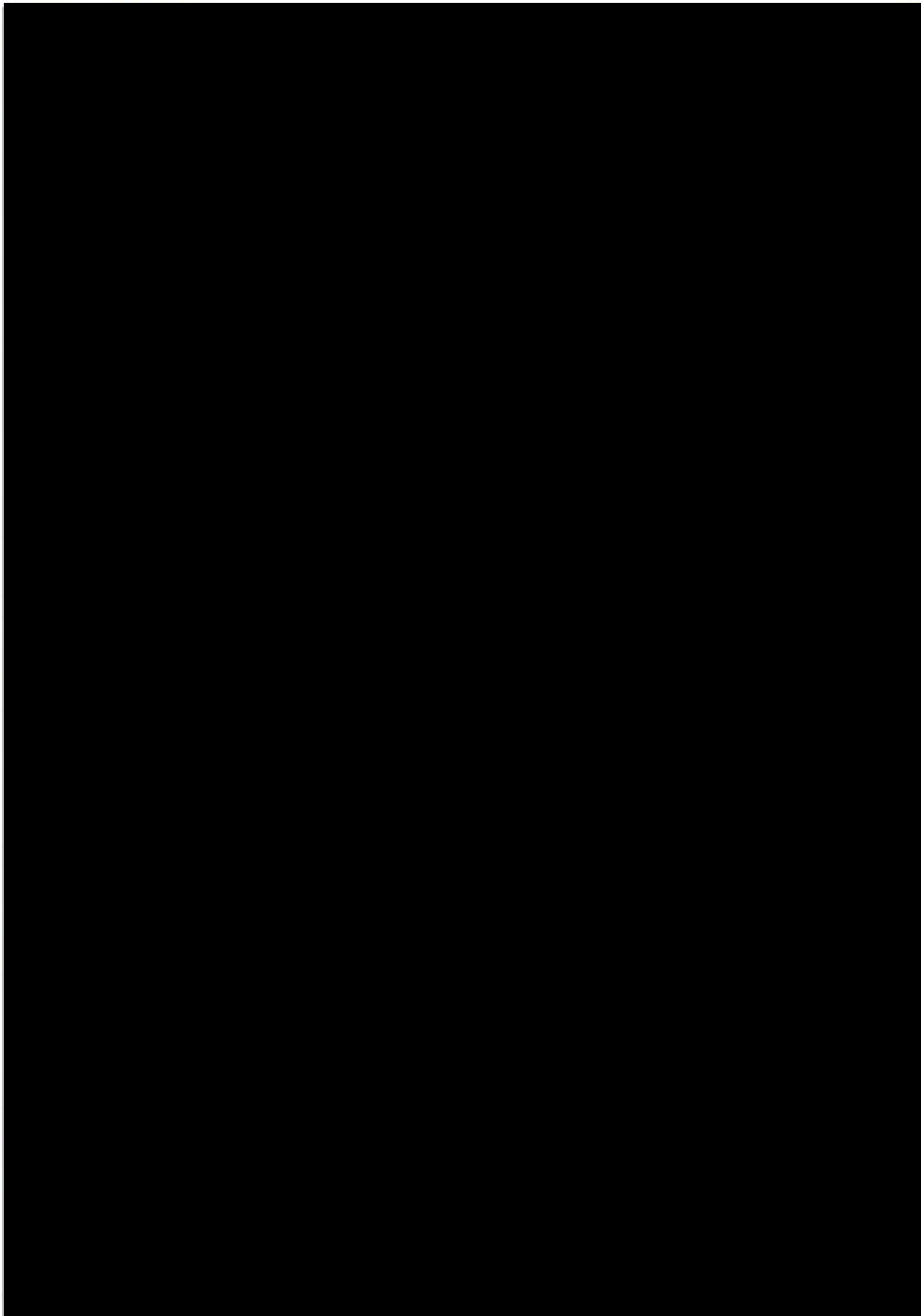


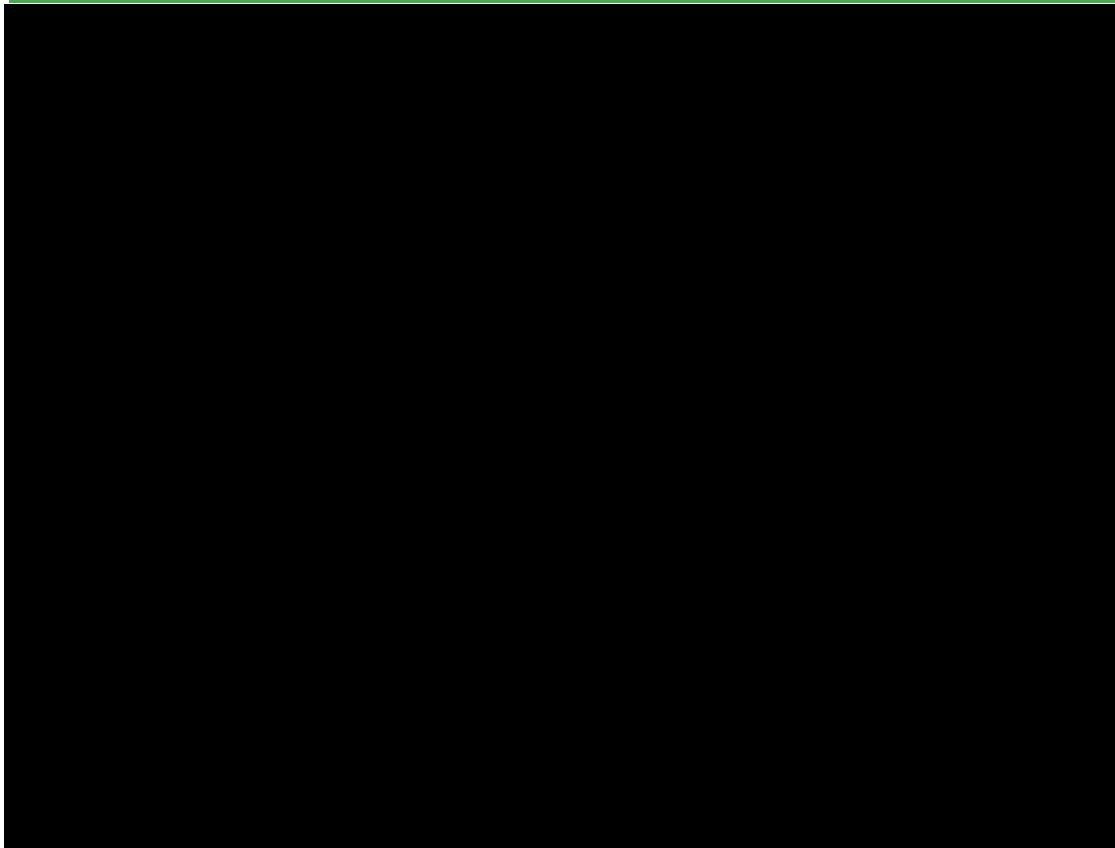
Figure 6: Developable land (Source: Eco Logical Australia 2020)



STATE ENVIRONMENTAL PLANNING POLICY WESTERN SYDNEY AEROTROPOLIS 2020

The Western Sydney Aerotropolis Plan published on 1 October 2020 has updated the zoning to ENZ Environment and Recreation and ENT Enterprise under the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. The zoning is shown in Figure 7 below. The site is also subject to the provisions of State Environmental Planning Policy (Major Infrastructure Corridors) 2020.

Figure 7: Land Zone Map (Source: NSW Legislation)



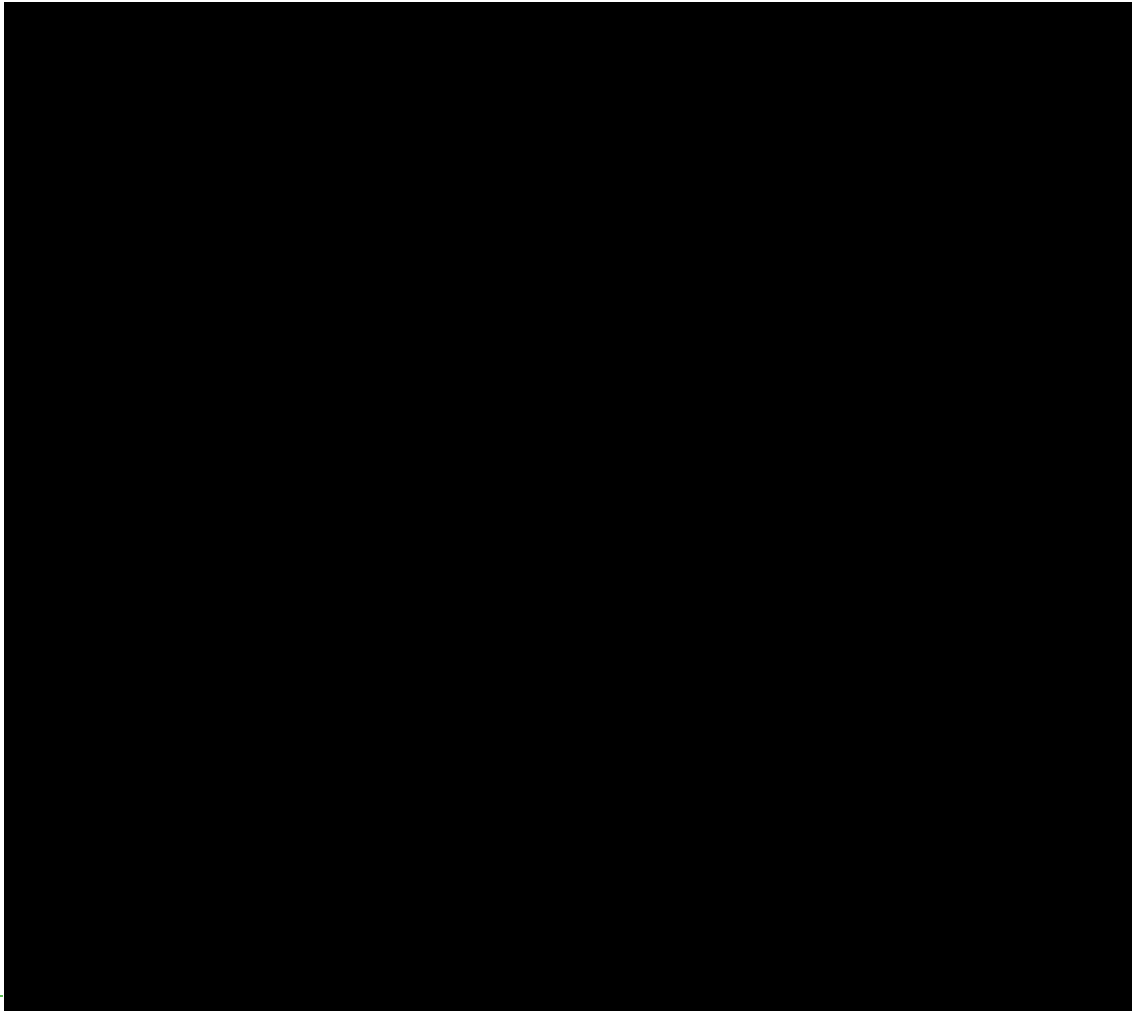
WESTERN SYDNEY AEROTROPOLIS STRUCTURE PLAN

The Northern Gateway Precinct (as identified in the Western Sydney Aerotropolis SEPP and Structure Plan 2020) is proposed to facilitate the delivery of emerging economic opportunities which are catalysed by the Airport. This Precinct is highlighted to build on the approved Sydney Science Park development to provide a variety of employment generating uses.

The extract from the Western Sydney Aerotropolis Structure Plan provided in Figure 8 overleaf demonstrates the land uses within the Northern Gateway Precinct and how

the subject land parcel has been assigned for transport corridors to pass through the property with the remaining land zoned for Environment and Recreation.

Figure 8: Western Sydney Aerotropolis Structure Plan Update (Source: NSW Planning Portal 2020)



SUBMISSION: DRAFT CUMERBLAND PLAIN CONSERVATION PLAN

The following key comments are made on behalf of the land owners, the Borg Families:

- **Site specific (ground-truthed) ecological assessment of the site.** The findings that are provided for in the appended ecological assessment provided by Eco Logical Australia confirm the vegetation on site differs from what is mapped in the draft CPCP. The western part of the site (as detailed in this submission) does not meet the definition of an Endangered Ecological Community or Critically Endangered Ecological Community and as a result this part of the site is capable of being developed.
- **Absence of significant environmental constraints.** It is recognised that the subject site is very marginally constrained by flooding and the assessment by Eco Logical Australia demonstrates that land that forms the eastern precinct of the subject site generally meets the criteria that the draft CPCP categorises as areas to be avoided and therefore would be considered to have high biodiversity value. However, the western part of subject site (as identified in this submission) has been historically cleared and degraded through agricultural land uses including cattle grazing. As a result, there remains capacity across the western part of this land to allow for future development potential.
- **Employment land supply.** The subject site offers the opportunity to allow additional land to be developed for business enterprise uses to realise the vision for the Northern Gateway and to provide much needed jobs for Western Sydney.
- **Building on the vision for the Northern Gateway.** Allowing the subject site to be developed for business and enterprises will bring additional and complementary employment floor space which will build a strong economic foundation for the Northern Gateway. This will assist with growing a stronger Northern Gateway by growing investment, business opportunities and jobs in this strategic location.
- **Economic viability.** Permitting the subject site to be developed will improve the economic viability and functional delivery of the Northern Gateway Precinct as more land can be developed to provide for much needed jobs in Western Sydney.
- **Opportunity for catalytic development.** The draft Cumberland Plain Conservation Plan should not deteriorate the ability for large landowners to deliver catalytic development. This is important as the subject site provides a large developable area that remains in single ownership and is prime for redevelopment.
- **Locational characteristics.** The site is located very close to where there is a junction between the north/south and east/west transport corridors. As the site is

located near this junction the land will be prime land located nearby a potential future station or interchange in this location. The land that is within proximity of a future junction should be efficiently used and nominated for flexible employment uses.

The opportunity exists for the draft Cumberland Plain Conservation Plan to be refined and the western/developable part of the subject site to be removed from the EEC and CEEC listed areas and as such development of this part of the site be permitted without further constraint. The land is well located being at the northern entry to the Aerotropolis Core and is prime land ready for redevelopment as such there is no impediment to allowing the land to be developed.

CONCLUSIONS

This submission on behalf of the Borg Families strongly advocates for the western part of the subject site to be removed from EEC and CEEC listed as this part of the site does not in any respects comprise significant areas of intact vegetation. The affectation is to be removed from the land to facilitate redevelopment to support the vision for the Northern Gateway Precinct.

This submission is intended to assist the NSW Government in finalising the draft Cumberland Plain Conservation Plan and positively contributing to the success of the Aerotropolis and WSA.

Principally, this submission makes the following key points:

1. Update the Vegetation Maps to reflect the ground-truthed vegetation map in this report at Figure 5. Eco Logical Australia can provide shapefiles to the DPIE on request.
2. Update the Land Category Map to show the western grassland areas as Certified-Urban Capable in accordance with the developable area in Figure 6.
3. Updated the Strategic Conservation Area map to remove proposed Environmental Conservation from the eastern portion of the lot in accordance with the developable area in Figure 6.

The Borg Families look forward to continuing to work with the NSW Department of Planning and Infrastructure on further refinements of the draft Cumberland Plain Conservation Plan 2020.