

Submission re the Draft Cumberland Plain Conservation Plan

9 October 2020

My husband and I strongly object to the proposal to rezone our land at [REDACTED] Wilton to E2–*Environmental Conservation*. My husband will make a separate submission.

The proposal to rezone our land to E2 is not justified for the following reasons:

1. Our land does not have the conservation value that warrants the imposition of such a restrictive zoning.
2. Rezoning our land to E2 would be inconsistent with current NSW planning and other policies.
3. Even if our land had high biodiversity value (which we dispute), such value could be protected adequately by a less restrictive zoning such as E4.
4. Rezoning our land to E2 would impose an unjustified and grossly unfair burden on us as individual landowners.

1. Conservation value of our land

We have not been informed of the criteria relied upon in the proposal to rezone our land to E2. The *Draft Cumberland Plain Conservation Plan* simply indicates that our land is within a proposed “Strategic Conservation Area” and that the land is within the category of “non-certified - avoided for biodiversity purposes or for other purposes”. We do not know with any specificity what those purposes are.

1.1 Koala protection

If the criterion relied upon is that the land is key threatened species habitat (namely koala habitat), we dispute this. Under *SEPP (Koala Habitat Protection) 2019* (March 2020), our land is neither core koala habitat nor a prime koala corridor.

Clause 4 of the legislation defines ‘Core koala habitat’ as an area of land where *koalas are present*, or an area of land that has been both assessed as *highly suitable koala habitat* **and** where *koalas have been recorded as present in the previous 18 years*.

Neither criterion for core koala habitat applies to our land. There are no koalas present on our land. In spite of the fact that we are nature lovers, nature photographers and birdwatchers we have never seen a koala, or heard one, on our land, in our street or in the general vicinity during the time we have been here (nearly 20 years). Our neighbours, who have been here for 40 years, report that they have likewise never seen or heard a koala in the area.

This is consistent with your report *Conserving Koalas in the Wollondilly Campbelltown Local Area* (2019) (“Koala Report”) which shows no sightings in our street or in a vicinity – the closest being one sighting at Maldon Bridge).

A primary koala corridor requires land containing a significant amount of core koala habitat – see Koala Report. Having no core koala habitat on our land or in a street or near vicinity means we cannot qualify as a prime koala corridor.

We have read your Koala Report and acknowledge that our land comes within a mapped area indicating primary koala corridor or koala habitat. However, we argue that the maps are necessarily imprecise and are a blunt instrument for the purpose of identifying conservation areas for koala protection. It is inappropriate and unfair to make decisions affecting the rights of people on the basis of such a blunt instrument. Crucially, the maps are based on aerial mapping of vegetation and our land has never been ground-truthed. If anyone were to inspect our land on the ground, observing the nature of the vegetation and the soil quality, we believe they would categorise it as low quality in terms of koala habitat.

1.2 Other biodiversity value

If the criterion relied upon is the presence of some other threatened species (perhaps vegetation), we would like to know the evidence relied upon. We have never been directly consulted about the status of our land. Our land has not been ground-truthed for the presence of any threatened species.

We further submit that, if there are in fact any threatened flora species, these can be protected adequately by a less restrictive zoning, such as E4.

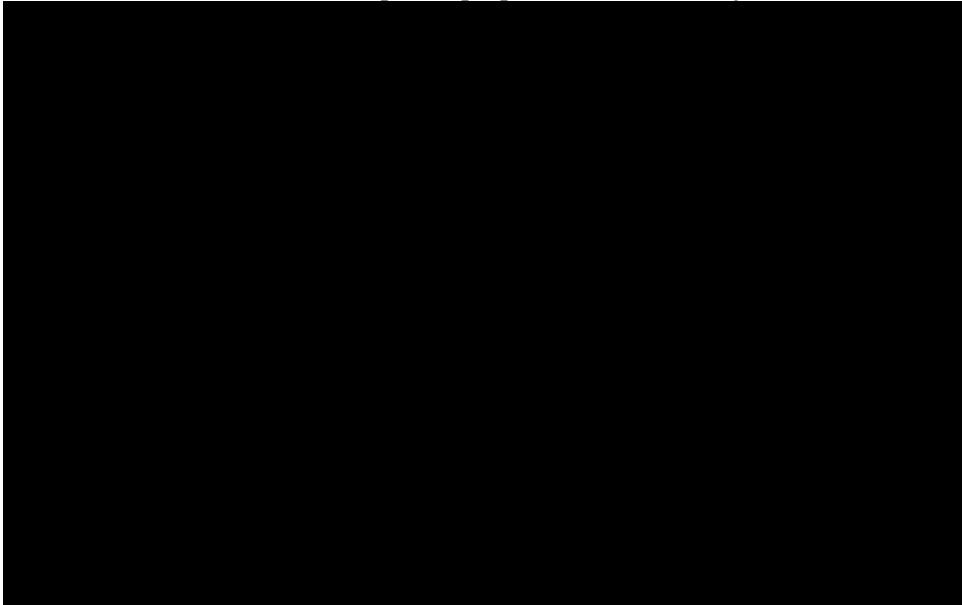
2. Unfairly selective and inconsistent with NSW planning and other policies

The proposal to rezone our land to E2 is selective and inconsistent with the Department's own principles for rezoning to E2 or E3. It is also utterly incompatible with land clearance required under bushfire protection principles.

2.1 Unfairly selective

The proposed rezoning of our land to E2 is selective and for the ulterior purpose of off-setting the effects of considerable urban development in the area – a fact unashamedly stated in the *DPIE Frequently Asked Questions for the Draft Cumberland Plain Conservation Plan* (August 2020).

The selective nature of this rezoning is borne out by the fact that properties directly opposite our house (across the river) in Kent Road, Picton, are not included in the "Strategic Conservation Area" despite having identical vegetation and biodiversity value and despite being included in your own "Important Koala Habitat" (see below screenshot from the *Draft Cumberland Plain Conservation Plan Map Viewer*). That land has a zoning of RU4. It is clear that the proposed Strategic Conservation Area (shaded in purple) is "strategic" in a political sense to offset the considerable urban development proposed in the land adjacent to that shading.



2.2 Inconsistent with planning and other policy

The final recommendations of the *NSW Planning and Environment Northern Councils E Zone Review 2015*, although specifically concerned with the North Coast of NSW, states the general principles to be applied when considering the rezoning of land to E2 or E3. It recognizes the imperative that planning principles be uniformly applied throughout the state.

The *Review* states that E2 and E3 zones may only be applied in the following circumstances:

1. Where the primary use of the land (currently) is considered to be E2 (environmental conservation) or E3 (environmental management).

AND

2. The land contains attributes which meet one or more of the criteria for E2 or E3.

Neither of these requirements are met in the case of our land.

"Primary use of the land" is the main use for which the land has been used for the last two years (Review Recommendation 2).

Our land is currently zoned RU2 and, for at least the last 20 years, has been used consistently with that zoning, and not for the purposes of environmental protection or management. Its primary use has been for rural living

or agriculture. Our property contains a mixture of structures – a dwelling, a shed, a chicken run, water tanks, dams and fences.

This fact alone precludes the rezoning of our land to E2 (or to E3 for that matter). However, we argue that the second requirement is also not met. As we have argued above, we do not believe our land to have the attributes necessary for conservation either of koalas or other threatened species. But even if it did, this alone, on your own principles, would not warrant a change to E2 or E3.

The proposed rezoning is also utterly inconsistent with the clearance of vegetation required by proper bushfire management.

3. Adequate protection by alternative zoning

The *Explanation of Intended Effect* describes the role of the NSW planning system in delivering the *Draft Cumberland Plain Plan* as, among other things, “to minimise impacts on areas that have high biodiversity value”. If the rationale for rezoning our land to E2 is the protection of koalas or other threatened species, then we argue that the same protection can be achieved by the less restrictive zoning of E4. If there are species that need protection, then development consent can be made contingent on meeting strict environmental conditions. This preserves the environment without robbing private landowners of their rights to reasonable and sensitive development and fair market value of their land.

4. Unjustified and unfair

During the Webinar on the Draft Plan, it was stated that no affected landowner will be required to pay for the objectives of the Plan. The rezoning of our land to E2 would have just that effect. The expense to us as landowners will be considerable and will include the following:

- The dramatic reduction in our land value;
- The reduction in potential use of our own land;
- The considerable cost of conserving the land to the standard of E2.

You will understand how unhappy we are about that. This is especially so given that we, unlike other landowners in our area, have generally looked after the conservation value of our land by maintaining trees and not overdeveloping. We are aggrieved that your decision flies in the face of our good faith over many years and rewards those who have cleared their land and now wish to make a considerable profit from its denouement, at our expense.

If the Government considers it appropriate to make decisions affecting the rights of small individual family landowners, then it should pay for those decisions by proper compensation or by buying the affected land from us at a fair market price.

Francine Feld

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