

14<sup>th</sup> October 2020

Ms Mellissa Rassack  
Manager, Western Sydney Employment Area (WSEA)  
and Greater Penrith to Eastern Creek (GPEC)  
Level 18, 4 Parramatta Square  
Parramatta NSW 2150  
(sent via email: biodiversity@planning.nsw.gov.au)

Dear Mellissa

**[REDACTED] Kemps Creek Cumberland Plain Conservation Plan Review**

Please find enclosed our final submission prepared by Kat Duchatel of écologique dated 14<sup>th</sup> October 2020, reviewing the Cumberland Plain Conservation Plan (CPCP) and ecological data in relation to Frasers Lot [REDACTED]

As per your email on the 6<sup>th</sup> October 20, our draft report was submitted through the NSW Planning Portal on 9<sup>th</sup> October 20, agreeing to an extension to the 14<sup>th</sup> October for the enclosed final submission being emailed to the above email address.

We also make you aware that our legal representative Debra Townsend of King & Wood Mallesons has issued a letter dated 14<sup>th</sup> October 20 on Frasers behalf, directly to the Executive Director Mrs Catherine Van Laeren in response to Jane Grose letter issued on the 6<sup>th</sup> October 20.

Trusting we can come to a reasonable solution to resolve and remove the E2 zoning from Lot [REDACTED]

Yours Sincerely,

**Frasers Property Australia€**

[REDACTED]

Michael Robinson  
**Acquisitions Manager**  
Commercial and Industrial Division


Frasers Property Industrial  
Level 2, 1C Homebush Bay Drive,  
Rhodes NSW 2138

Attn: **Michael Robinson**

October 14, 2020

Dear Michael,

## Kemp's Creek Cumberland Plain Conservation Plan Review

As requested, I have reviewed the draft Cumberland Plain Conservation Plan (CPCP) and ecological data provided by the Department of Planning Industry and Environment (the Department) in relation to the proposed E2 and Strategic Conservation zone planning on . The following matters of concern are provided to support Fraser's submission in response to the draft CPCP.

By way of introduction to those that will be assessing the draft CPCP's submissions, I have over 25 years' experience (including the past ten years in planning, approvals and supervision of consent conditional restoration / offsetting in the SEPP WSEA). I am accredited biodiversity assessor, having past accreditation under the repealed *Threatened Species Conservation Act 1995* and current *Biodiversity Conservation Act 2016*.

### **1. Incorrect identification of Cumberland Plain Woodland (PCT 849).**

The draft CPCP has based the proposed zoning on Lot 37 on the assumption that vegetation present is that commensurate with the plant community type (PCT) Cumberland Plain Woodland in the Sydney Basin (PCT 849).

The Department has advised that mapping of this vegetation was undertaken in 2019 by accredited ecological consultants engaged by the DPIE in accordance with legislative requirements of the *Biodiversity Conservation Act 2016* (NSW) and the Commonwealth *Environment Protection and the Biodiversity Conservation Act 1999* (EPBC Act).

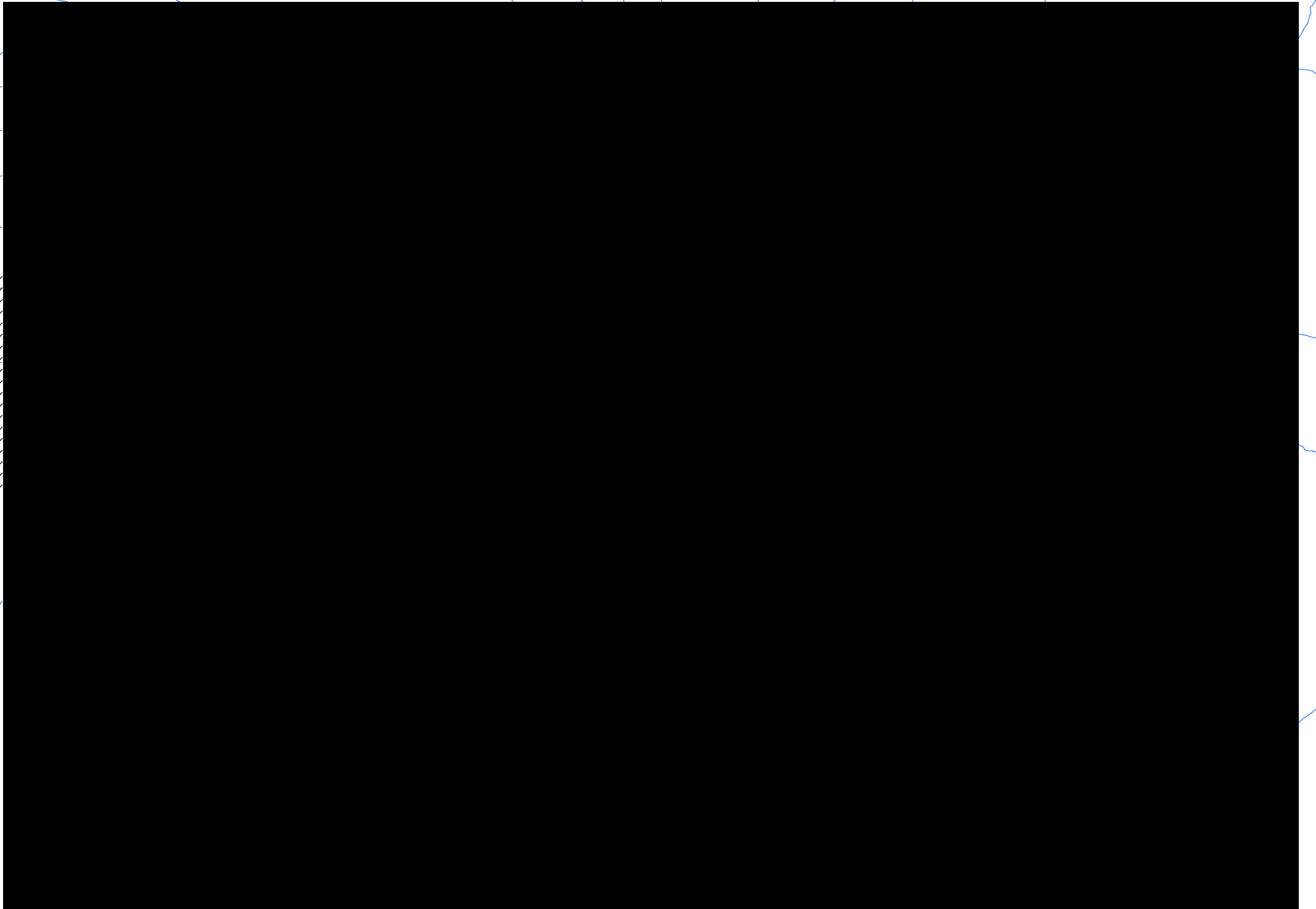
On review of the data used to support the proposed zoning, it has been determined that it has not been collected from the proposed zoning area (on Lot 37) but from a vegetated location approximately 200m east and at a noticeable change in elevation (i.e. on average 20m higher in elevation, see Figure 1).

On behalf of Frasers, data collected by an accredited biodiversity assessor (from within the proposed zoning area on Lot 37) has identified that the vegetation present is not commensurate with PCT 849.

The Department has confirmed that all relevant ecological data for Lot 37 has been provided to Frasers. This is of concern as the draft CPCP has also mapped a large portion of Lot 37 as derived native grassland of PCT 849 (see Figure 1).

An accredited biodiversity assessor and assisting ecologist with over 20 years' experience in weed management assessed the mapped derived native grassland on October 7, 2020.

It has been concluded that the area mapped as derived native grassland is dominated by pasture grasses and weeds including widespread *Nassella neesiana* (Chilean needle grass), which is a priority weed identified under the *Biosecurity Act 2015* and Weed of National Significance.



## 2. Incorrect mapping of watercourses adjacent to Lot [REDACTED]

[REDACTED] Kemps Creek have E2 zones proposed under the draft CPCP due to the presence of an assumed second order watercourse.

As can be seen on Figure 2, the proposed E2 zoning under both the WSEA SEPP and the CPCP extends marginally into Lot [REDACTED] where it joins Lot [REDACTED]

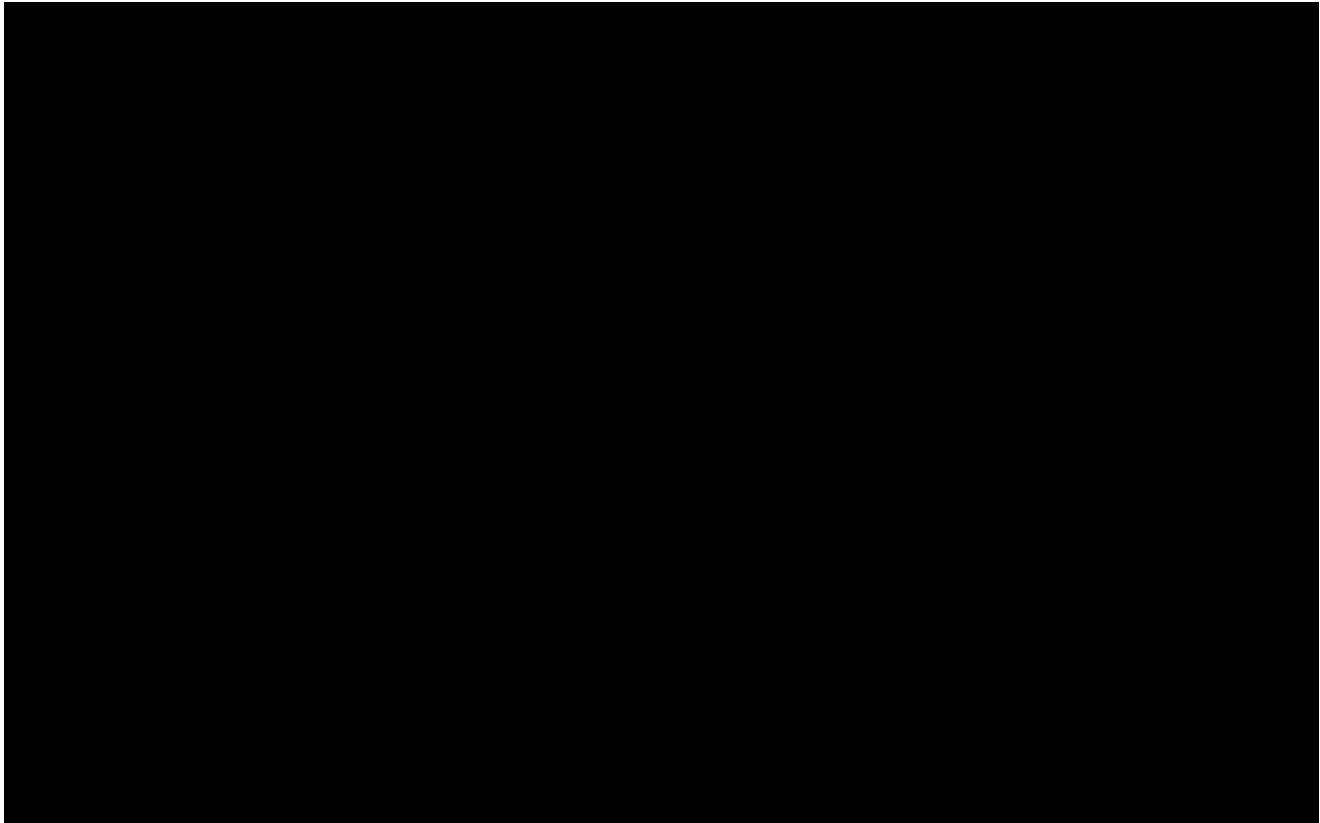


Figure 2. Screen shot from CPCP spatial view showing proposed E2 zoning

A separate submission was made to the Department in relation to the proposed E2 zoning under the WSEA SEPP (as relevant to the Mamre Road Precinct).

This submission was supported by a Biodiversity and Watercourse Assessment Report (écologique 24/08/2020). This report included a specialist geomorphological assessment and reference to a number of other watercourse assessments, all which disagreed that a second order watercourse was present on these allotments.

The Department has since indicated that it is willing to consider the removal of the E2 Environmental Conservation zone on the Lots 35 and 36, subject to review and agreement by the NSW Natural Resources Assessment Regulator (NRAR).

If Frasers is able to provide endorsement from NRAR the Department will undertake an amendment to the WSEA SEPP) in accordance with the *Environmental Planning and Assessment Act 1979*.

### 3. Urban capable land boundaries

The draft exhibited CPCP documentation indicates that the proposed urban capable land boundaries can be updated as a result of consultation if:

- 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.

**See discussion in Section 2**

- On-site data collected by accredited assessors supports updating the boundaries

**See discussion in Section 2**

- There is no net change to impact of threatened ecological communities, SAIL entities or vegetation in an intact condition state.

**The vegetation present in the proposed zoned land on Lot 37 is not in an intact condition state.**

- There is no impact on an identified landscape corridor

**No identified landscape corridors currently occur**

- 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)

**Not applicable**

### 4. Avoidance criteria and categories

Further, the CPCP uses an avoidance criteria and related actions to avoid and minimise direct impacts on land with high biodiversity values. High biodiversity values is land that includes one or more of the avoidance criteria.

#### (a) TECs and PCTs

1. Critically endangered ecological communities (CEECs) or PCTs  $\geq 90\%$  cleared in large patches and in good condition; or serious and irreversible impact (SAIL) entities (TECs)
2. EECs or PCTs  $\geq 70\%$  to  $< 90\%$  cleared in large patches and in good condition
3. PCTs  $\geq 50\%$  to  $< 70\%$  cleared in large patches and in good condition
4. PCTs  $< 50\%$  cleared in large patches and in good condition

**NOT APPLICABLE: PCT 835 is  $> 90\%$  cleared but is not present as a large patch ( $< 0.5\text{ha}$ ) and is not considered to be in good condition. PCT 1800 is only  $60\%$  cleared and is not considered to be in good condition. PCT 835 and PCT 1800 are the closest matching PCTs to that vegetation within the proposed E2 zone on Lot 37.**

#### (b) Threatened species

1. Known habitat<sup>^</sup> 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
2. Known habitat<sup>^</sup> for endangered species or known secondary koala habitat
3. Known habitat<sup>^</sup> for vulnerable species

**NOT APPLICABLE:** There is no known habitat for any of the above matters present. Advice provided by the Department's Green and Resilient Places team is that there were no threatened species (individual plants and animals) found on Lot 37.

(c) Ecological processes

1. Land identified as priority conservation lands, BIO Map core areas, or important local habitat corridors for key species including koalas

**NOT APPLICABLE:** Lot 37 is not identified as priority conservation lands, a core area on the BIO map, or functions as an important local habitat corridor for key species.

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

**NOT APPLICABLE:** Lot 37 is not identified as a regional corridor.

3. Areas identified on the Biodiversity Values Map

**AREA IDENTIFIED ON THE BIODIVERSITY VALUES MAP BUT THIS IS DUE TO THE VEGETATION ASSUMED TO BE PCT 849, WHICH IT IS NOT.**

PCT 849 is a critically endangered ecological ecosystem (CEEC) listed under both the NSW *Biodiversity Conservation Act 2016* (BC Act) and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

While the PCTs identified on behalf of Frasers are endangered ecological communities (EECs), they are not critically endangered.

This is an important distinction to be made, as mapping of high biodiversity values under the *Biodiversity Conservation Regulation 2017* (BC Reg.) coincides with the CEEC Cumberland Plain Woodland. The EECs identified within the proposed zoned land on Lot 37 is not included in areas mapped as containing high biodiversity values under the *Biodiversity Conservation Regulation 2017* (BC Reg.) elsewhere within the locality (see Figure 3).

## 5. Boundary rationalisation

The draft CPCP also considers boundary rationalisation, which is stated as consideration of removing the following:

- 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

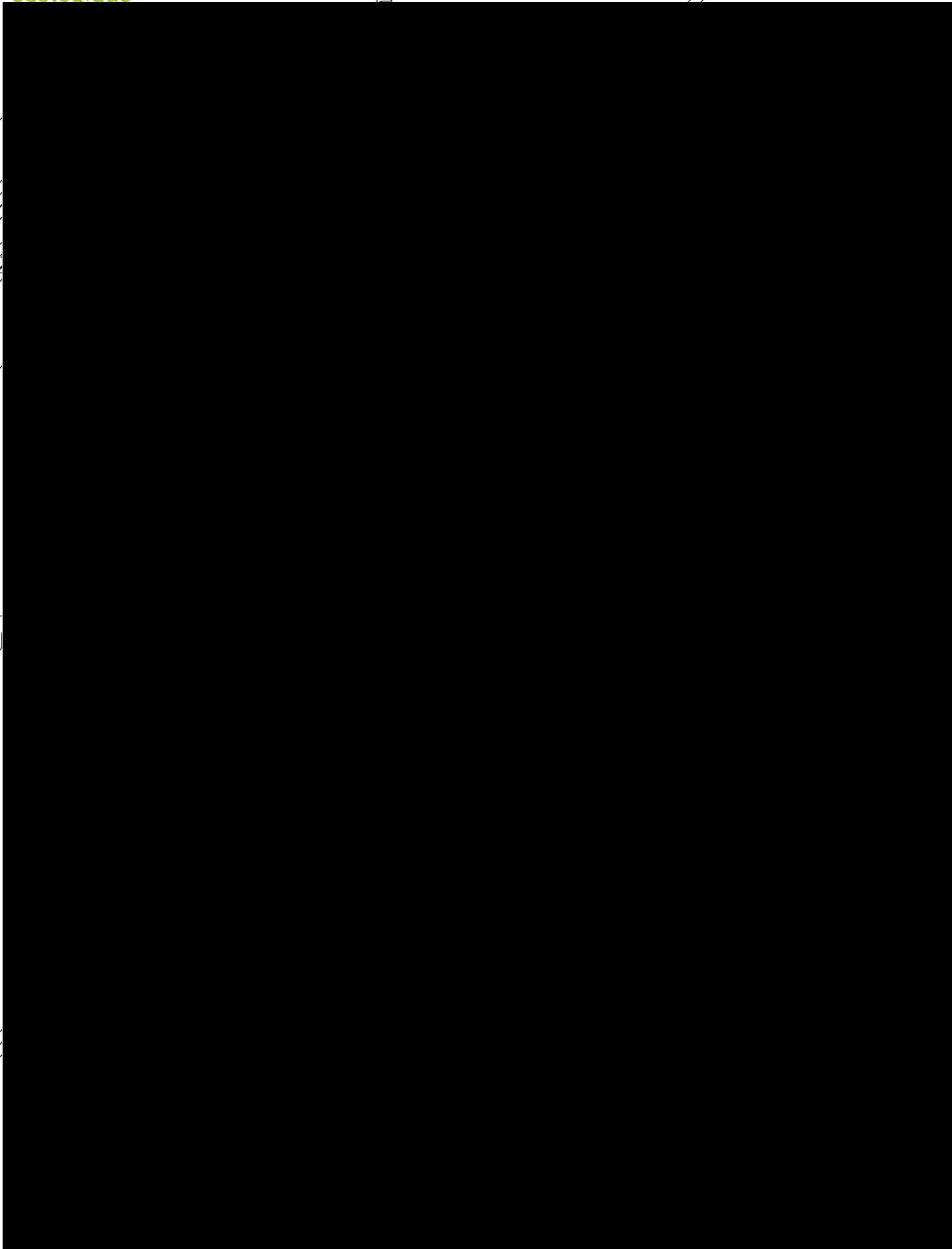
**Future land use will inevitably lead to significant edge effects due to the location of the proposed strategic conservation and E2 area within land zoned for industry and the various road networks that will be required to accommodate large/truck vehicle traffic.**

**The future road networks will require substantial earthworks to provide safe heavy vehicle access.**

**Development of this area for industrial purposes will also substantially change the current landscape and introduce noise, light and traffic impacts.**

- Corridors that do not link important areas of habitat, including 'blind corridors'.

**The proposed strategic conservation area and E2 zoning within Lot 37 is considered a blind corridor as it does not provide direct linkage to important areas of habitat.**



In the draft CPCP Summary Assessment Report (Biosis 2010) it is explained that Strategic Conservation Areas (SCAs) are to represent the areas in the Cumberland subregion that are considered most likely to be viable in the long-term. In determining the location of the SCAs, priority was given to including the largest, best condition and best-connected areas of native vegetation remaining in the subregion.

It is also stated that the avoidance effort generally focused on native vegetation and TECs in higher condition that are more likely to be viable in the long-term, with residual impacts from the development generally occurring to:

- Smaller patches
- Native vegetation or TECs in lower condition

The loss of vegetation within Lot 37 is considered to meet acceptable residual impacts from development as identified by Biosis. However, it is understood that E2 zone on Lot 37 has been identified to form part of an important ecological corridor connecting the Wianamatta-South Creek to the west of the precinct and Ropes Creek in the east of the precinct.

While the provision of ecological corridors is supported, the proposed west to east alignment from Mamre Road to Ropes Creek is not considered to be suitable for this purpose. Particularly when there are larger and more intact areas of Cumberland Plain ecological communities proposed to be certified urban capable development (see Figure 4).

It is further understood that the SCA/E2 proposed zoning on Lot 37 resulted from the need to find alternative locations due to the loss of Cumberland Plain Woodland for the proposed Western Sydney Freight (WSF) Intermodal Terminal (IMT).

This is an unfortunate outcome in terms of meeting the draft CPCP objectives. In addition to the loss of Cumberland Plain Woodland at this location, it is proximal to the Erskine Park Biodiversity Corridor, which does provide an ecological corridor from South Creek to Ropes Creek (see Figure 4).

While the WSF alignment will widen the separation from south to north already caused by the Warragamba Pipelines, there are multiple drainage lines that cross this area. A large population of eastern grey kangaroos currently move from south to north along these drainage lines and the construction of the Western North South Link Road (from Lenore Drive across to Oakdale West Industrial Estate) includes the installation of a fauna tunnel.

While not directly related to Frasers land, a recommendation to the Department is that the proposed WSF and IMT should be designed to provide fauna movement for both mammals and aquatic fauna. As should all future transport / infrastructure development be required to make provisions for fauna movement and not be limited to how biodiversity offsetting will mitigate flora and habitat loss.

**To conclude**, the Mamre Road Precinct planning has many matters that are yet to be resolved and which are very important considerations as to the viability of the draft CPCP's proposed zoning. For example:

- How [REDACTED] will connect to the future Southern Link Road.
- What the nature of the classification for [REDACTED] will be and the likely construction footprint required to ensure safe heavy vehicle access within an Industrial area.

It is already evident that [REDACTED] will need to be widened above what currently exists. This will result in a larger residual impact to areas proposed as both SCA and E2 zoning, and consequently impact on the draft CPCP's objectives of meeting specified conservation zone areas.

In turn, this impacts on how the individual landowners can masterplan internal roads and the ultimate land levels required to facilitate heavy vehicle access onto future industrial lots.



The lots that will be affected most by such (e.g. from where Bakers Lane becomes [REDACTED] for greater than one kilometre travelling south) are already significantly challenged by site topography. The existing westward ascent from [REDACTED] followed by the descent to the west of the ridgeline will require major earthworks to facilitate appropriately levelled industrial site pads.

It is noted that the Department has communicated a desire to have the finished masterplan levels respond to the retention of the vegetation zoned as SCA/E2. However, given the finished and lower surface levels proposed for land to the west of Lot 37, this is not practical and attempts to accommodate this requirement will inevitably impact on the viability of the subject vegetation.

Investigations undertaken on behalf of Frasers (écologique July and October 2020) determined that this vegetation is not commensurate with the draft CPCP avoidance criteria. A better outcome in terms of biodiversity objectives will only be possible through reconstruction of this vegetation and not through its retention and resource intensive rehabilitation.

The current extent and abundance of priority weeds throughout this vegetation would require intensive resourcing to suppress and an intensive maintenance program to continually suppress in perpetuity. For this reason, the proposed SCA/E2 zoning is not supported, nor does it appear to meet the avoidance criteria that underpins the identification of SCA under the draft CPCP.

Notwithstanding my summation of matters of concern, I support the objectives of the draft CPCP. I appreciate the vastness and complexities of its undertaking. However, as already inferred, I have many concerns as to the viability of the proposed zoning.

Yours faithfully

[REDACTED]

**Kat Duchatel**  
BAM Accreditation No. BAAS17054



