

14 October 2020

To Mrs Catherine Van Laeren  
Executive Director, Central River City & Western  
Parkland City  
Department of Planning Industry and Environment  
4 Parramatta Square  
12 Darcey Street  
Parramatta NSW 2150

BY EMAIL

Dear Ms Van Laeren

**Submission in relation to the Draft Cumberland Plain Conservation Plan on behalf of Australand C&I Landholdings Pty Ltd**

We act on behalf of Australand C&I Landholdings Pty Ltd, the owner of land at [REDACTED] Kemps Creek. We are instructed to make this submission in relation to the Draft Cumberland Plain Conservation Plan (the “Plan”) which seeks to achieve strategic biodiversity certification of certain land in western Sydney for 4 areas nominated for strategic conservation planning by, in part, improperly designating a large portion of our client’s land as E2 Environmental Conservation land.

As part of the process of seeking biodiversity certification of the Plan, our client’s land was recently rezoned under State Environmental Planning Policy (Western Sydney Employment Area) 2009 to part IN1 and part E2. The part E2 zoning came as a surprise to our client because in previous discussions with the Department and in the original draft Structure Plan, the whole of our client’s land was proposed to be zoned IN1.

The reason for the E2 zoning on part of the land has been explained to our client as being necessary in order to give effect to the Plan. The Department’s former Director, Central River City and Western Parkland City Ms Gina Metcalfe advised our client in a meeting held on 25 June 2020 that the reason for the late change in proposed zoning of our client’s land to include 18,665m<sup>2</sup> of land in the E2 zone was a decision to remove the previously proposed E2 zoning from land identified as being a preferred location for an intermodal terminal proposed by the NSW Government. Our client was advised that the decision to locate the intermodal terminal on land previously identified in the draft structure plan as environmental conservation land gave rise to a decision to instead zone the proposed intermodal land as IN1 and to make up a perceived deficiency in E2 zoned land by finding other land the subject of the SEPP which could be zoned E2, namely our client’s land.

The package of documents exhibited as part of the Draft Cumberland Plain Conservation Plan includes an Explanation of Intended Effect of a new State environmental planning policy known as State Environmental Planning Policy for Strategic Conservation Planning (the “EIE”). The EIE confirms the relationship between E2 zoning of land and strategic biodiversity conservation of land intended to be achieved by the Plan in that

land described as “avoided land” will be zoned E2 in order to provide for the ongoing protection of biodiversity values on that land. “Avoided land” is described in the EIE as land which will not be biodiversity certified for development because the land has:

- Areas of high-value biodiversity, which are avoided for biodiversity purposes in the Plan
- Riparian corridors and steep slopes, which are avoided for other purposes in the Plan.

Our client’s land satisfies neither of those requirements for E2 zoning to be applied to it. Our client has provided to the Department a report prepared by its expert consultants Ecologique which includes a detailed assessment of the land in question and makes it clear that, contrary to indications contained in a high level mapping exercise undertaken for the preparation of the Biodiversity Values Map under Part 7 of the Biodiversity Conservation Act, 2016, our client’s land does not contain an area of high diversity values. Instead, the land contains vegetation communities which are not the critically endangered Cumberland Plain Woodland communities and the land is not an area of high-value biodiversity. The area of remnant vegetation on our client’s land was found to be severely degraded with widespread infestations of Weeds of National Significance and State and Regional priority weeds listed under the NSW Biosecurity Act, 2015.

Our client objects to that part of the Plan which proposes to identify our client’s land as “Avoided land” on the basis that:

- 1 Our client’s land does not meet the criteria for “Avoided land” described in the EIE and Plan; and
- 2 Any decision to proceed with the Plan in its current form will be subject to legal challenge on the basis that the decision is infected with legal error, being a decision made for an ulterior purpose not authorised by the law.

The decision to zone our client’s land as E2 land similarly appears to have been made for the ulterior purpose of facilitating a government project without the need for that project to either protect land with high biodiversity values or to provide any offset for the destruction of high value vegetation on the intermodal site. Instead, our client’s land is to be sterilised from future development by the imposition of an E2 zoning over 18,665m<sup>2</sup> of that land.

Our client has instructed us to write separately to Ms Grose, Director, Central (Western) Greater Sydney, Place and Infrastructure to reiterate its request for the E2 zoning to be removed from its land by way of an appropriate amendment to the mapping under State Environmental Planning Policy (Western Sydney Employment Area) 2009 to remove the E2 zone and revert to the IN1 zoning across the whole of the parcel.

Yours sincerely

  
**Debra Townsend | Partner**  
**King & Wood Mallesons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000

 | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**