MEMPHIS STRATEGIC
PLANNING | PROPERTY ANALYTICS |ADVOCACY

PO Box 286
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[redacted]

9 October 2020

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

E: biodiversity@planning.nsw.gov.au and [redacted]

Dear Santina,

Re: Cumberland Plain Conservation Plan [redacted] Kemps Creek

This submission follows from and supports an earlier submission made to the Department (see ***Appendix A***) regarding the outcomes of the Mamre Road rezoning process and, specifically, its impact on my client's land at [redacted] Kemps Creek [redacted]

The earlier submission requested that it be considered in the context of the then pending draft Cumberland Plan Conservation Plan. Nonetheless, we were advised to make an additional submission to the now exhibited draft Conservation Plan.

In short, my client, Rocapa Pty Ltd et al, is aggrieved by the extent of E2 zoning that has been assigned to the subject land. My client originally felt that the Department had made a mistake in classifying its land as environmentally important. The land has historically been used for agricultural purposes – orchards and grazing – and is separated from the adjacent property to the east by a 40m wide cleared and grazed stretch of land. In addition to several exotic species, Lot [redacted] accommodates native trees, but these are insufficient in number and/or quality to warrant an environmental classification, i.e. the ecological quality of the site is heavily degraded by a dominant presence of weeds and exotic species.

A series of photographs depicting the site's vegetation is included at ***Appendix A*** to this submission.

In finalising the zoning outcomes for the Mamre Road precinct, the amount of land affected by the E2 zoning was reduced, but nonetheless still affects a large portion (70%) of Lot [redacted] Notably, as pointed out in our earlier submission, other properties that are more heavily impacted by existing vegetation had their E2 classification wholly removed. Other substantial reductions were also made elsewhere.

The subsequent draft Cumberland Plan Conservation Plan does not shed any site-specific 'new light' on how or why my client's land has been zoned E2 other than explaining the strategic 'landscape approach' taken to identify and protect habitat for species' population viability and connectivity. The Plan, for instance, does not reference the scientific basis of the 'Priority Conservation Lands Map' from the earlier Cumberland Plain Recovery Plan, 2011 which shows no land in the immediate vicinity of the Mamre Road precinct as representing the best remaining opportunity to secure long-term biodiversity benefits for the region.

An extract from the draft Conservation Plan's spatial viewer, depicting the classifications applied to my client's land follows.

Source: Draft Cumberland Plain Conservation Plan_Spatial Viewer

Under the draft Conservation Plan my client's land is identified as being within a Strategic Conservation Area and accommodating native vegetation that is solely classified as Cumberland Plain Woodland notwithstanding the aforementioned presence of exotic and orchard species.

It is noteworthy also that the Mamre Road zoning process was completed prior to the exhibition of the draft Conservation Plan, so there is little surprise in finding that the now exhibited Conservation Plan's classifications confirm the zone boundaries that have already been assigned.

It is unfortunate, however, that the now proposed classification under the Conservation Plan was not able to be provided prior to the completion of the zoning process. To this day, my client has not been contacted, spoken to or visited by the Department or its conservation representatives about the land's conservation value. My client also has no knowledge of any consultant ever visiting the site to consider its vegetation qualities first hand.

The draft Conservation Plan advises that:

- *Not all of the strategic conservation area is expected to become new conservation land under the Plan. However, it is expected that around 11,000 hectares, or approximately double the Plan's offset commitment of 5,475 hectares of impacted native vegetation will be protected within new conservation lands. This will deliver increased green space and publicly accessible reserves for the community to enjoy as well as building ecological connectivity across the landscape through greater protections for biodiversity (p.37).*

  Response: Does this mean that the full extent of environmental classification on my client's land (and elsewhere) is unnecessary and that, similar to other properties that have had a substantial reduction in the extent of E2 affectation, a similar reduction could still be contemplated?

- *An option for protecting land that has been assigned a high biodiversity value is to establish a Biodiversity Stewardship Agreement, providing owners with an ongoing income-stream to permanently manage their land.*

  Response: A common (and probably the loudest) concern expressed during the recent on-line community webinar was that private landowners impacted by an E2 zoning feel aggrieved that their land has been treated differently from other land zoned for development purposes. Ideally, given its scarcity, the value of E2 land would be similar to other 'development' land such that landowners impacted by such zonings are not financially penalised. Instead, both the zoning process and the Conservation Plan are silent on this matter, preferring to let the market play its role. As previously stated, the Department would be well aware that the market's practice of land acquisition is not always based on equal shared information, particularly where rural landowners are involved. Although suggested as a form of compensation, stewardship arrangements are only really suited to existing landowners that choose to remain on their land and to continue their going concern. It is not suited to landowners surrounded by development land such that their going concern is significantly compromised, i.e. where they have no choice but to sell. These landowners should be assisted in achieving an equivalent market development value. If this was the case, many landowners would not feel deprived by the zoning process. The lack of information provided in relation to land value will continue to rouse suspicion amongst affected landowners and is likely to thwart development progress.

- *The NSW Government proposes to purchase some areas of private land to create new public reserves or national parks. These areas will be identified as funding becomes available and based on priority areas for addressing the impacts of development that has been biodiversity certified.*

  Response: Given the lack of information regarding the impact of the E2 zoning on the value of private land, the Department should consider the acquisition of all E2 land within the Mamre Road Precinct at fair market value, based on the underlying value of adjoining land.

Since the exhibition of the draft Conservation Plan my client has spoken with the neighbouring owner to the east (Lot [redacted] Together they have considered a development scheme which reduces the amount of E2 zoned land on their properties to a more reasonable level and which considers the likely impact and alignment of the planned Southern Link Road.

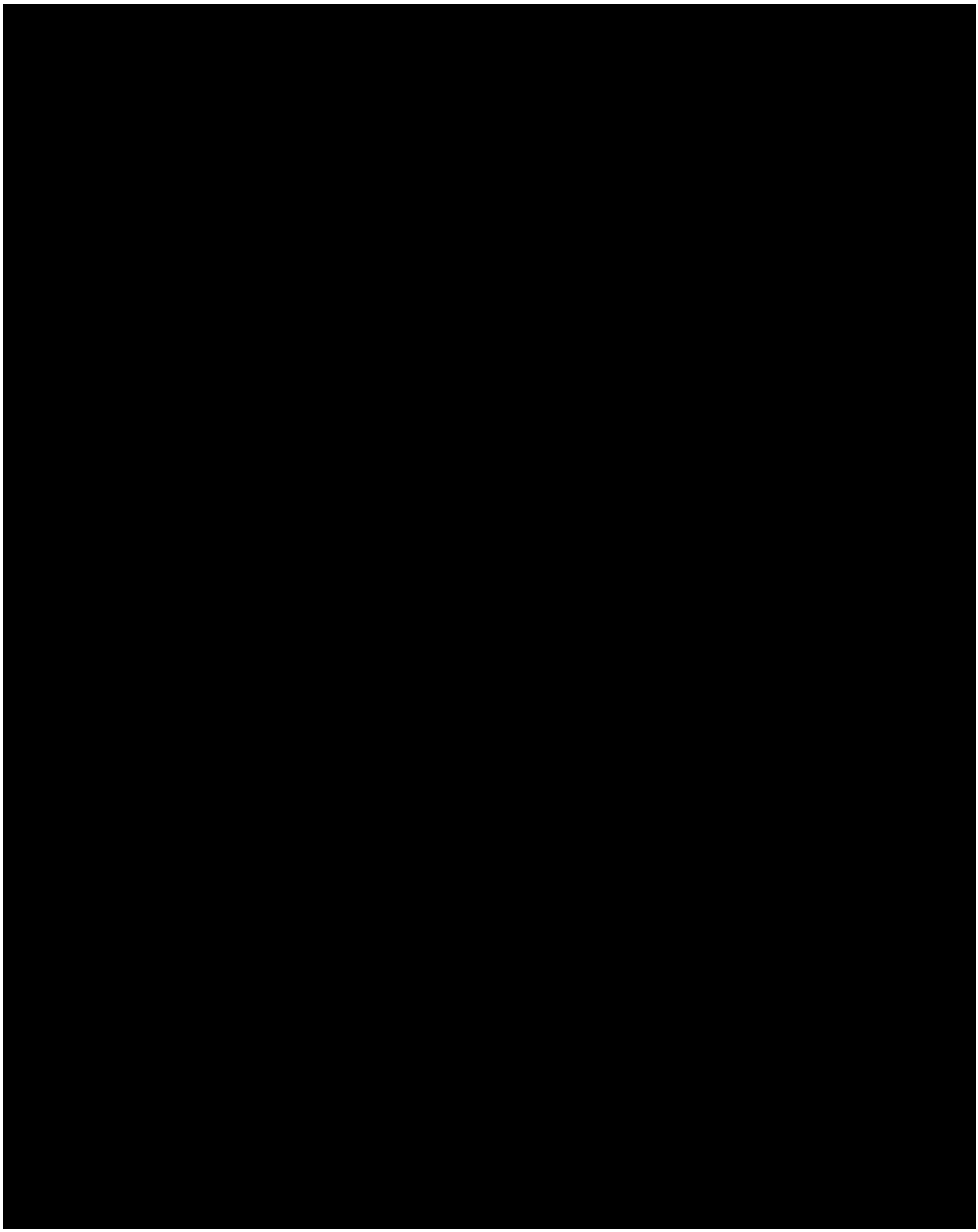
Our prior submission in August referred to a proposed road layout prepared by AT&L which showed how the land could be dissected by a new road parallel to the Southern Link Road.

The current plan proposed by the owners of Lot [redacted] and Lot [redacted] uses the AT&L base and shows how a new configuration could produce larger industrial lots and result in a lesser land take for E2 purposes. The suggested new scheme avoids the creation of small, awkward shaped industrial slivers that compromise the appeal of land to market.

The suggested road layout, showing right-sized industrial lots that reflect the land's proximity to the Sothern Link Road, is presented below.

This proposed layout would secure the retention of the more relevant existing vegetation across the lots and result in a more practical and reasonable outcome for the landowners. It also has

regard for the connectivity of conserved land across the estate, utilising public roads where necessary to connect and provide public access to other E2 land.



My client acknowledges that the zoning of the Mamre Road precinct has now been finalised but nonetheless feels that a better and more practical and reasonable outcome could still be achieved for its land and the adjacent Lot [redacted]

The suggested road layout and reduction of E2 land presents a more rational zone boundary for both Lots 39 and 38 and would not, in our opinion, compromise the integrity and purpose of the broader E2 allocation.

Any assistance that the Department can offer my client in terms of the final lot/zone/road configuration for Lots [redacted] and [redacted] in the remaining final stages of precinct planning would be appreciated.

We note, in particular, that a further zoning adjustment will be required to accommodate the final location and configuration of the Southern Link Road and its connection to [redacted] and request that this submission be considered in conjunction with this final step.

Please note that Penrith City Council and Transport for NSW have been copied in this correspondence.

Yours Sincerely

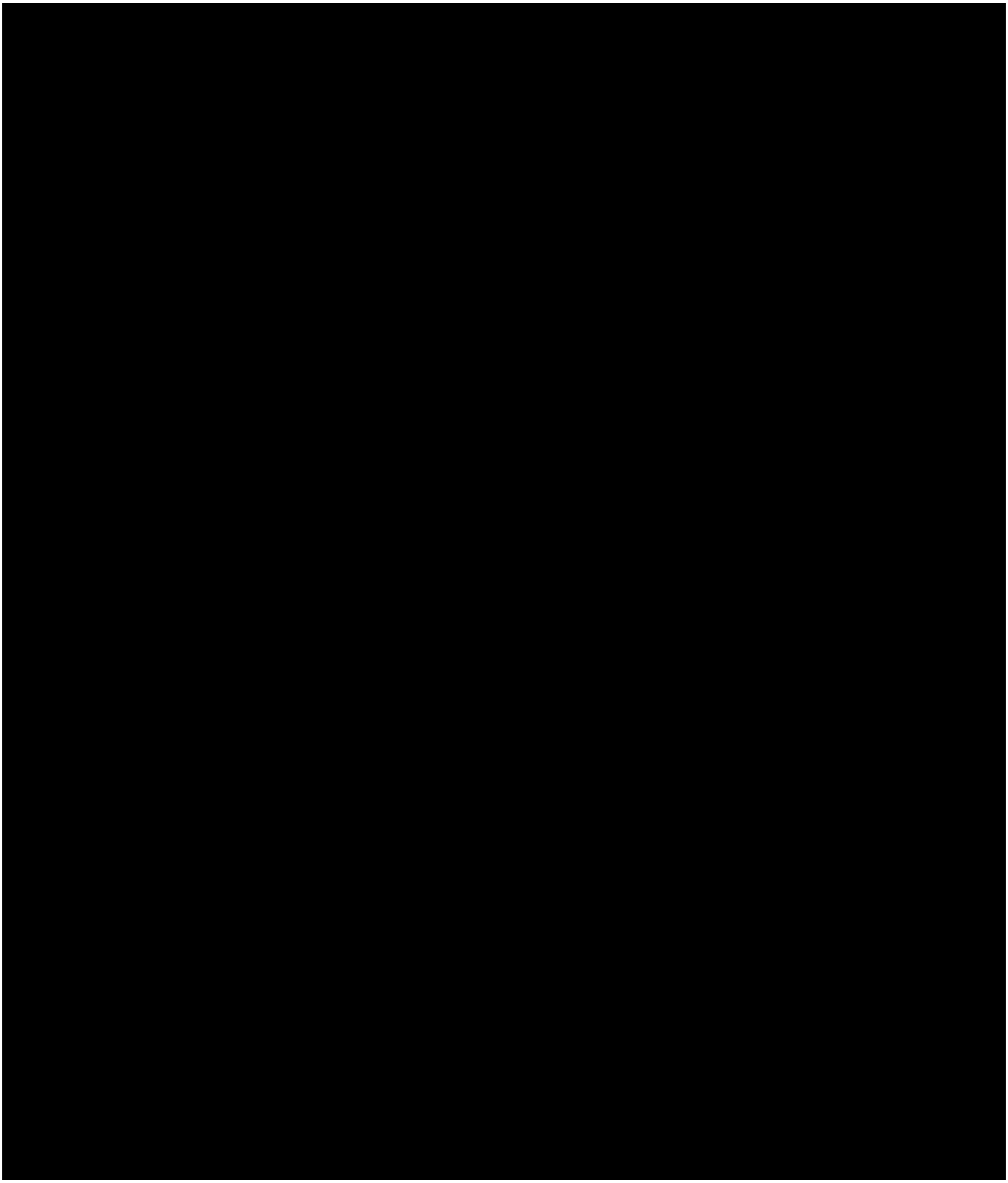
[redacted]

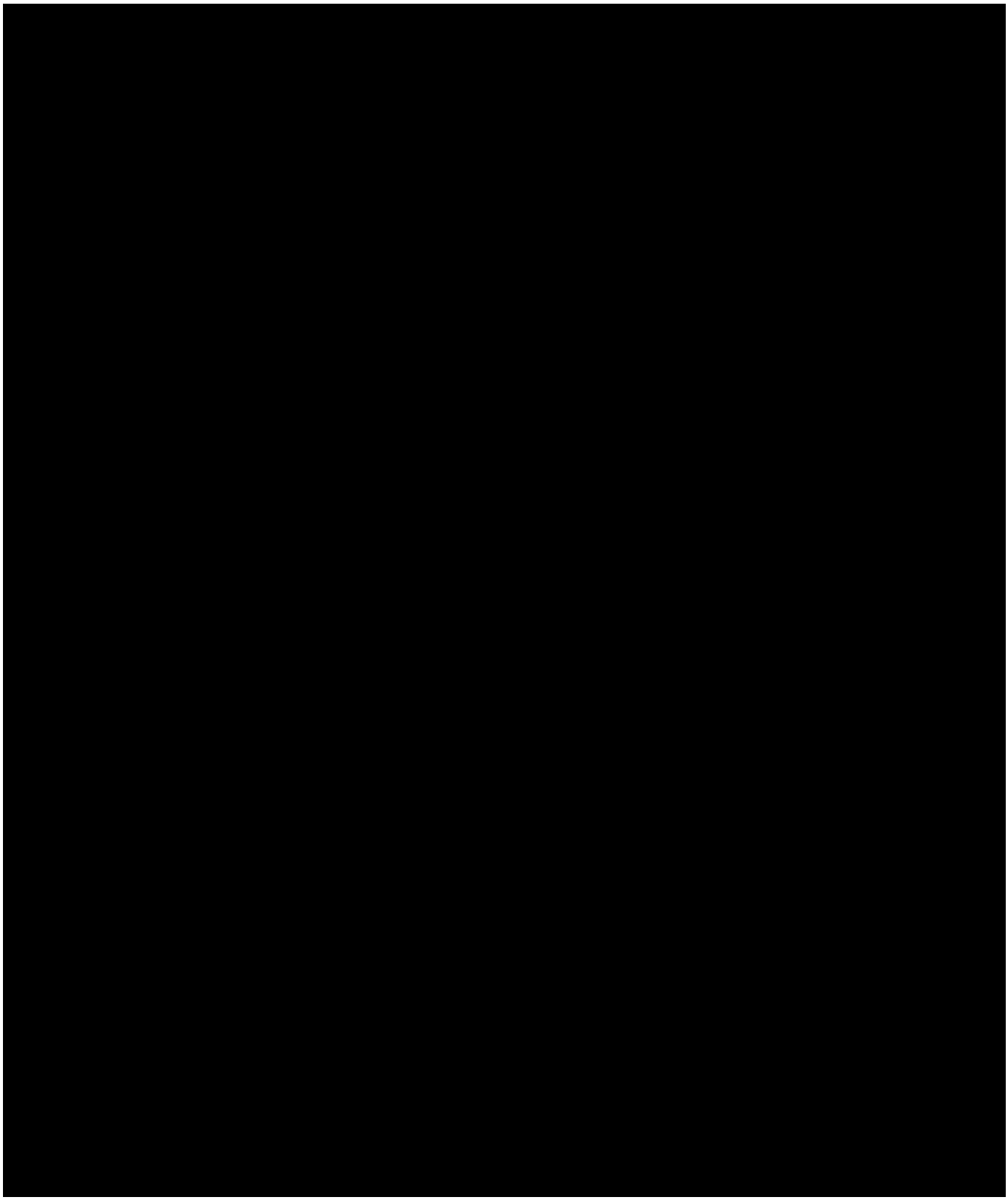
Wayne Gersbach I **Memphis Strategic**

CC:

- [redacted]
- [redacted]
- [redacted]

APPENDIX A – Site vegetation photos





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Gibb Group
Matthew Thiselton
National Development Director

CC: Gordon Kirkby

November 1, 2020

Dear Matthew,

Lot [redacted] – CPCP submission

As requested, an assessment of vegetation on Lot [redacted] (the subject site) has been undertaken with consideration to the draft Cumberland Plain Conservation Plan (CPCP), currently on exhibition until the 2nd November 2020.

The following scope of works has been completed:

- Floristic surveys including detailed vegetation integrity assessment (plot/transects) in accordance with Section 5.3 of the BAM (29th July 2020);
- Ground truthing of native and exotic vegetation (10th October 2020); and
- Review of draft CPCP and relevant vegetation and zoning layers as available on the draft CPCP spatial viewer.

1. Vegetation mapping

Existing mapping of native vegetation as relevant to the subject site is the 'Remnant Vegetation of the western Cumberland subregion, 2013 Update (VIS_ID 4207, OEH 2013). OEH (2013) identifies native vegetation in the subject site as both Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion (PCT 849) and Grey Box - Forest Red Gum grassy woodland on shale of the southern Cumberland Plain, Sydney Basin Bioregion (PCT 850), herein referred to as Cumberland Plain Woodland (CPW).

In preparation of the draft CPCP, detailed mapping of native vegetation was undertaken based on field surveys and data analysis, including interpretation of aerial photo imagery. Although no surveys were completed on Lot [redacted] (J Perica pers.comm 10/10/2020).

Exhibition of the draft CPCP has included a spatial viewer, which provides native vegetation and threatened ecological community (TEC) mapped layers. These layers have amended the Cumberland Plain vegetation mapping (OEH 2013) based on the outcomes of ecological investigations undertaken to inform the draft CPCP's proposed zoning. The amended mapping indicates PCT 849 and not PCT 850 within the subject area and the condition of PCT 840 within the subject area is identified as 'thinned'[1].

The exclusion of PCT 850 is also supported as the disturbed nature of the subject site precluded distinguishing between the two CPW communities (i.e. a lack of native shrub and groundlayer species and dominance of pasture and other weed species).

[1] The thinned condition state means native vegetation in various states of modification, including wooded vegetation with a partly-cleared canopy and a more open structure compared to the intact PCT, or wooded vegetation that has been under scrubbed.

Figure 1 illustrates the following vegetated areas within Lot [redacted]

- Areas dominated by exotic/planted trees and shrub/groundlayer weed species;
- Areas dominated by native CPW tree species; and
- The approximate[2] draft CPCP mapped CPW areas.

Generally, Lot [redacted] comprises large areas that are dominated by exotic planted and orchard trees and an understorey of pasture grasses and weeds (including priority weeds such as but not limited to: Blackberry, African boxthorn and African lovegrass). Areas that are dominated by CPW tree species comprise approximately 21% of the land proposed as a Strategic Conservation Area (SCA) on Lot [redacted]

As shown in Figure 1, mapping undertaken on the 10th October 2020 coincides with a proportion of the draft CPCP mapping, with the exceptions of the extent of CPW in the mid and southern areas of the proposed SCA land. The areas mapped on the 10th October 2020 that conflict with the draft CPCP mapping, were found to be dominated by exotic canopy and groundlayer species

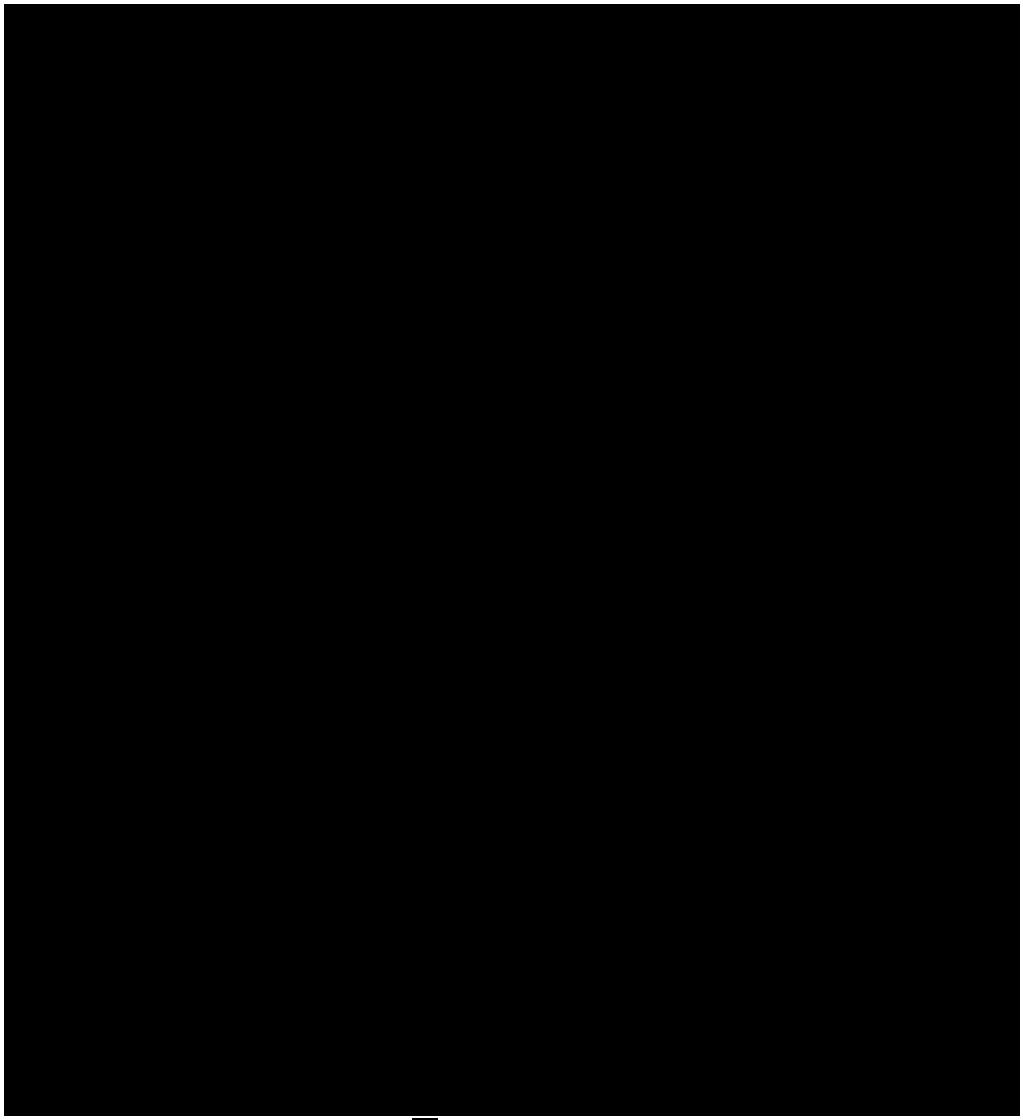

Figure 1. Vegetation mapping on Lot [redacted]

[2] The draft CPCP vegetation mapping layer for Lot [redacted] was manually digitised for a general comparison of what was found during site investigations and should be treated as indicative only

2. Ecological corridor constraints

Through consultation with the NSW Department of Planning Industry and Environment (DPIE) it is understood that the draft CPCP is seeking to provide an east - west ecological corridor between South Creek and Ropes Creek.

As shown on Figure 2 the proposed ecological link is a narrow riparian corridor proposed as E2, which extends from South Creek and terminates approximately 1km to the west of Ropes Creek Lot [redacted] DP 258949.

The distance between the proposed SCA zoning on Lot [redacted] is greater than 200m and greater than 300m from native vegetation on Lot [redacted]

Native vegetation patch size as defined in the BAM includes native vegetation that has a gap of less than 100m from the next area of moderate to good condition native vegetation.

A gap of less than 100m is also used a component of condition thresholds for Threatened Ecological Communities under the Commonwealth EPBC Act.

These gaps will be further isolated by proposed arterial road connections, high order and internal roads as shown in Figure 3.

Figure 2. DRAFT CPCP intended corridor from South Creek to Ropes Creek (spatial viewer extract) SCA zoned land on Lot [redacted] in red boundary)

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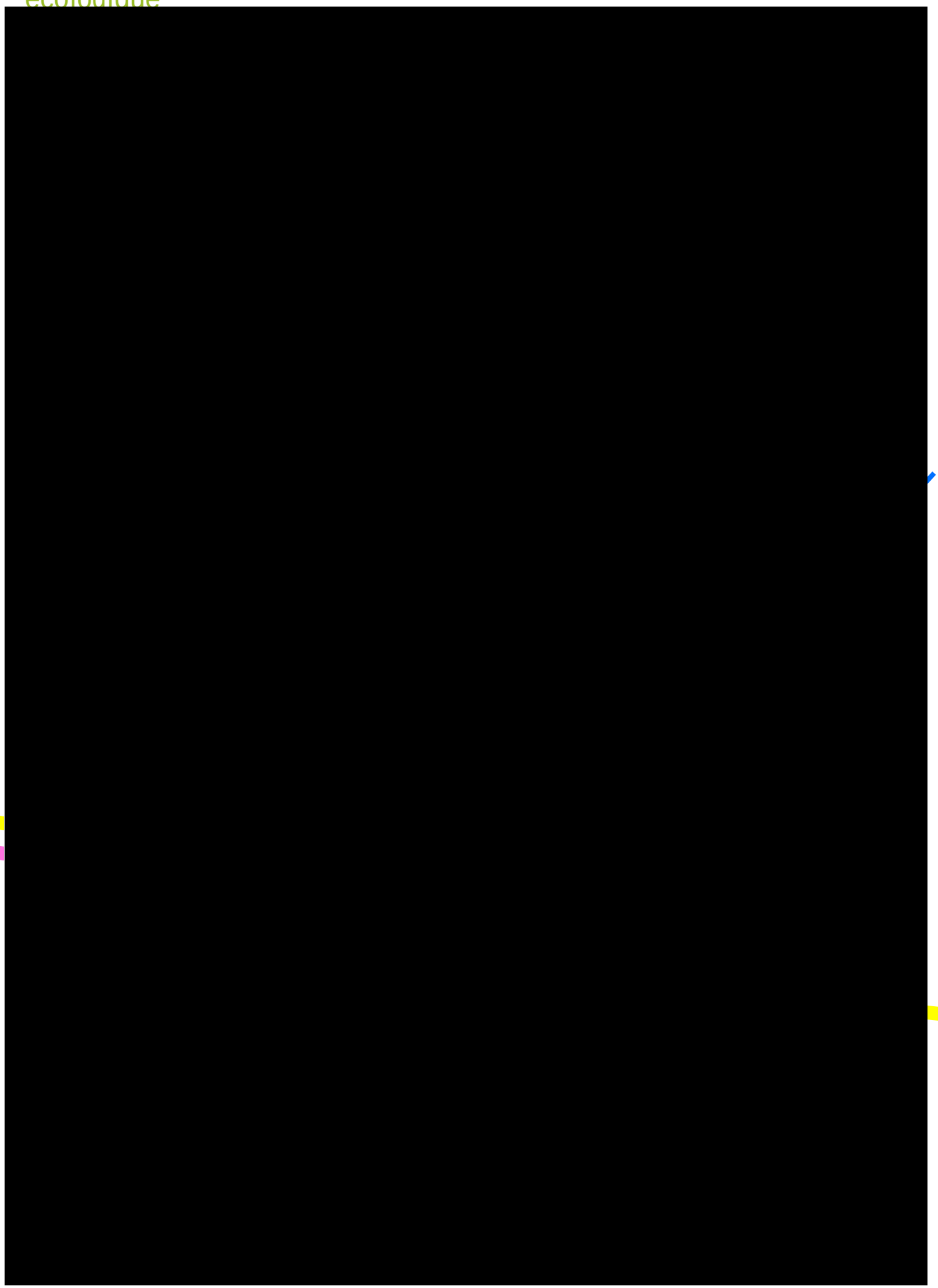

Master planning for the subject site by AT&L [redacted] Kemps Creek Masterplan Infrastructure Report, August 2020) anticipates that upgrading of [redacted] will adopt a cross-section with the following parameters once upgraded:

- 24.8m road reserve, 4 lanes across 2x 7.7m carriages, separated by a 0.8m central median;
- Two cycleways in 4-5m road verges; and
- 7.5m landscape set-back on either side of the verges.

The current width of the road and road easement immediately north of Lot [redacted] has a minimum width of 21.5m and maximum width of approximately 28m. This will not be wide enough for the proposed upgrade and will further impact on the areas proposed as SCA.

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.

  Not applicable

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

  See discussion in Section 1

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

  The vegetation present is not in an intact state

- There is no impact on an identified landscape corridor

  No identified landscape corridors currently occur on this land

- 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. 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 and low viability over the time frame identified. This due to industrial zoning of surrounding land, resultant changes in site topography to accommodate industrial lots and proposed road networks that will be required to accommodate large heavy vehicular traffic.

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

  The proposed corridor to the south of the subject site is a blind corridor (as shown on Figure 2). While Lot [redacted] is suitably located adjacent to bushland on Lot [redacted] it is not contiguous with the proposed ecological corridor to the southwest and south as discussed in Section 2.

5. Conclusion

SCA areas under the draft CPCP are areas with high-value biodiversity (which includes intact vegetation, primary koala corridors and threatened species habitat) as well as areas with important connectivity or potential for ecological restoration.

Lot [redacted] does not contain intact vegetation - it is substantially degraded and will not be easily restored.

The proposed corridor to the south of the subject site is a blind corridor (as shown on Figure 2). While Lot [redacted] is suitably located adjacent to more intact vegetation on Lot [redacted] it will only serve to increase the extent of native vegetation, not provide important connectivity (as discussed in Section 2).

A substantial area of Lot 39 is proposed as SCA land with only 21% containing degraded native vegetation. It seems unreasonable that the draft CPCP expects the landowner to sacrifice over 5 ha of orchard and grazing land to meet the draft CPCP's objectives. Especially when no ecological surveys were undertaken on Lot [redacted] (J.Perica pers.comm 10/10/2020).

Development of the subject site and land to the north, south and west for industrial purposes will significantly change the current landscape and introduce noise, light and traffic impacts. Further the topography of land zoned as industrial will require substantial levels of cut and fill. Whether feasible through retaining walls or steeply sloping embankments, the nature of the landscape will be significantly altered.

It is recommended that the proposed zoning of this land be rationalised and replace restrictive zoning with flexibility to provide a better outcome for both development and conservation. This can be achieved under the provisions to 'modify the proposed urban capable land boundaries' and consideration of 'boundary rationalisation' under the draft CPCP.

A better outcome would be achieved by reconstructing an equivalent area to that of existing native vegetation on Lot 39 and in closer proximity to more intact vegetation on the adjacent Lot 38. This would enable the eradication of priority weeds and provide a contiguous and diverse assemblage of native plant species with salvaged habitat features relocated to the new zone.

Yours faithfully

[redacted]

[redacted]
BAM Accreditation No. BAAS17054