

30 October 2020

Elizabeth Irwin
Director, Conservation and Sustainability
Green and Resilient Places Division
Department of Planning, Industry and
Environment
Locked Bah 5022
PARRAMATTA NSW 2124

By Email: biodiveristy@planning.nsw.gov.au

Mills Oakley
ABN: 51 493 069 734

Your ref: N/A

Our ref:
AJWS/CYCS/3474983

All correspondence to:
PO Box H316
AUSTRALIA SQUARE NSW 1215
DX 13025 Sydney Market Street

Contact
Clare Collett +61 2 9121 9027
Email: ccollett@millsOakley.com.au

Partner
Anthony Whealy +61 2 8035 7848
Email: awhealy@millsOakley.com.au

Dear Ms Irwin

Substantive Submission on Cumberland Plain Conservation Plan

We act for the Waterhouse Group (our '**Client**'), the owners of [REDACTED] (our '**Client's Site**').

On 9 October 2020, WillowTree Planning made an interim submission on the draft Cumberland Plain Conservation Plan (**the Cumberland Plan**). As agreed with the Department of Planning, Industry and Environment (**DPIE**), our Client now provides additional information in substantive submission, and we **enclose**:

- A letter from WillowTree Planning dated 29 October 2020; and
- A report from Cumberland Ecology dated 29 October 2020 (**Ecology Report**).

The purpose of this covering letter is to provide a high level outline of our client's primary concerns, including the additional issues that we perceive to be problematic from a legal perspective. Nevertheless, we must emphasise that the attached documents, which form part of our Client's submission, must be read and understood **in their own right**. Our client relies upon them in their totality.

We submit that the proposed zoning of our Client's Site under the Cumberland Plan, and in particular the proposed E2 conservation zoning, is both inappropriate and unjustified for a number of important reasons, which we outline in detail below. The site investigations carried out by Cumberland Ecology and outlined in the Ecology Report provide concrete evidence that the E2 conservation zoning is not justified, and indicates that future biodiversity values will only and inevitably be lessened by surrounding development, including significant Governmental infrastructure projects, and on any version of events our Client's Site **will not have** connectivity to biodiversity corridors.

Whilst the focus of this submission is on the onerous E2 conservation zoning, our Client also objects to the broadscale mapping of land a 'Strategic Conservation Zone'. We refer to the Willow Tree Planning for further discussion regarding the strategic conservation zoning.

We wish to highlight the following fundamental issues in particular.

Reason 1: Errors in mapping

1. As you know, a key part of the Cumberland Plan is the mapping and consequent zoning of land under the Plan. Therefore, it is in our view of great concern that:

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- a. No on-site surveys were undertaken of our Client's Site in preparation of the mapping and zoning; and
- b. There are clearly inaccuracies in the mapping.

Lack of specific site analysis

2. We are instructed that DPIE did not carry out any on-site survey of our Client's Site for the purposes of the Cumberland Plain Plan mapping. Not surprisingly therefore, the draft mapping is factually wrong.
3. This limited extent of site surveying which was carried out for the purposes of the Cumberland Plan is acknowledged as a limitation in the *Draft Cumberland Plain Assessment Report Summary Report* prepared for the DPIE by Open Lines Environmental Consulting and Biosis. Despite this acknowledgement, DPIE has proceeded to map areas of land as land of high biodiversity value under the Cumberland Plain.
4. In our opinion, it is not appropriate to impose an E2 conservation zoning (which essentially prevents any development of our Client's Site) without carrying out a site survey to determine whether such zoning is appropriate. Due to the significant constraints on development which accompany an E2 conservation zoning, it is our view that such a zoning should not be imposed based only on desktop studies.
5. You would appreciate that there are obvious legal consequences of mapping and downzoning land incorrectly, in the absence of any on-site surveys whatsoever.

Inaccuracies in mapping

6. The above issues are clearly demonstrated in the errors and inaccuracies in DPIE mapping of our Client's Site. As outlined in the Cumberland Ecology Report, approximately 2.5ha of grassland (cleared land) has erroneously been mapped for inclusion in the propose E2 conservation zone. This area which has been erroneously mapped as E2 amounts to approximately 35% of the 'Non-Certified – Avoided for Biodiversity' Area. To have such a significant proportion of land erroneously mapped is very concerning.
7. Full details of the erroneous mapping are outlined in the Cumberland Ecology Report. One example is the small triangle area in green below (circled in yellow for ease of reference) has been zoned E2 conservation and mapped as 'Non-certified – Avoided for biodiversity' when aerial photographs on which the maps are based clearly show that the area has been cleared. Actual site surveys carried out by Cumberland Ecology provide further evidence that this parcel is a cleared area of exotic grassland, which is clearly at odds with the DPIE's mapping and proposed zoning. In plain terms, the draft mapping is factually wrong, with severe adverse consequences for the potential 'orderly and economic use and development, of' our Client's land, contrary to the express objective of the *Environmental Planning and Assessment Act* (see objective 1(c), which seeks to ***promote the orderly and economic use and development of land***).

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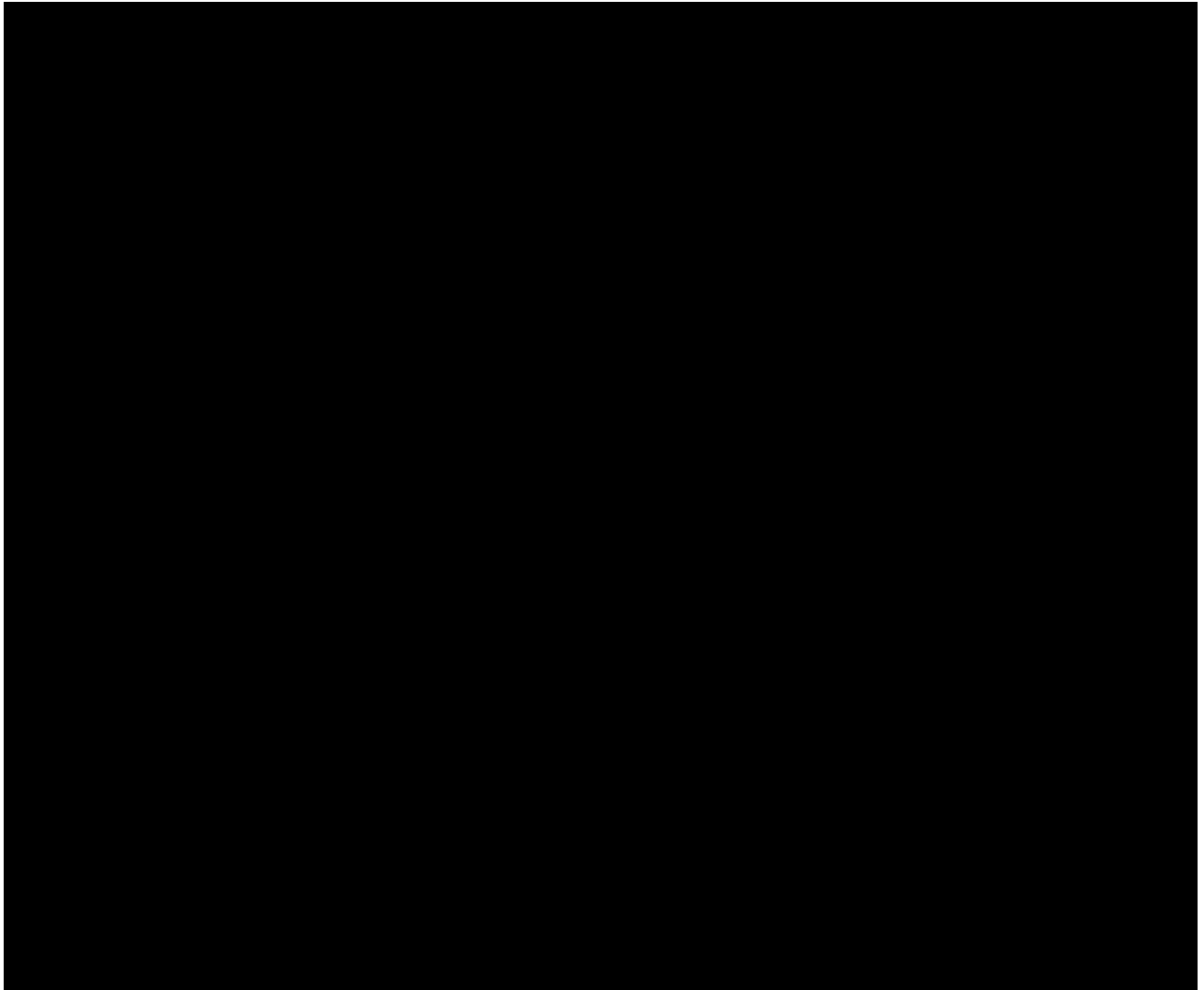


Figure 1: One of the errors in mapping of Waterhouse Land

8. The mapped 'green triangle' is clearly a specific and **intentional** mapping (as it is a defined shape and not adjacent to other '*avoided for biodiversity*' land) so it is particularly concerning that DPIE has mapped this area without justification.
9. We refer you to section A4.2.1 of the Ecology Report for further detail regarding multiple errors in mapping of our Client's Site.
10. Clear errors such as this suggest that mapping was not checked, even though aerial photographs are available. This undermines the integrity of the entire mapping process. Basic aerial mapping would have revealed that this area is cleared land, and yet the Cumberland Plan somehow designates it as having biodiversity values and seeks to prevent its development.
11. In circumstances where DPIE has not carried out any site specific mapping or surveys themselves, our client should be given the opportunity to submit accurate mapping prepared by a qualified consultant (which it now does through the Ecology Report) before zoning is decided. The fact that our client's land **is proposed to be rezoned prior to the DPIE considering any accurate mapping**, where DPIE has themselves acknowledged that specific surveying was not carried out, is in our view the incorrect approach and prejudices our client. Conservation areas should only be imposed where the DPIE can show that there are significant conservation values

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which justify this zoning. Again, there are obvious legal consequences to such an approach having been taken.

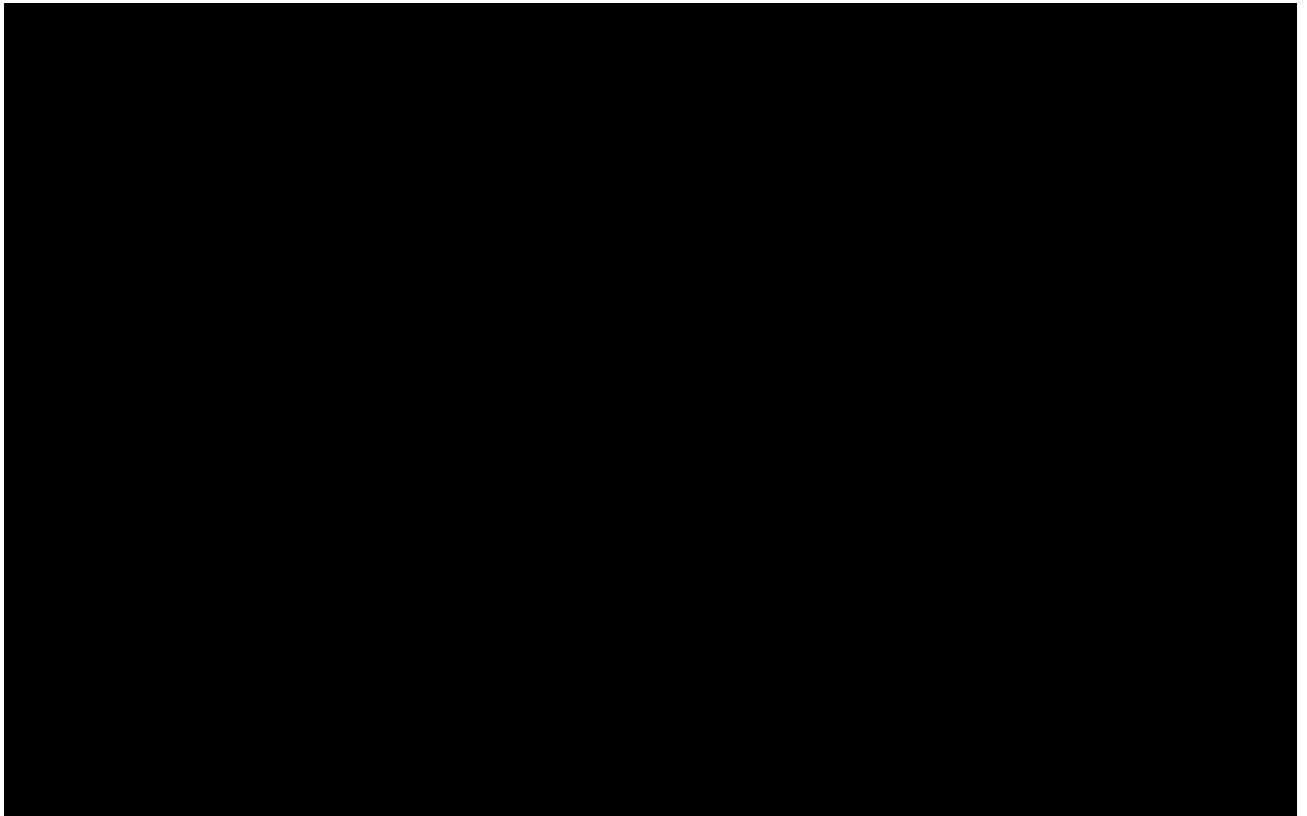
12. The E2 conservation zoning is a high level zoning used for land of high biodiversity values and therefore such zoning prohibits almost all forms of development. Such a high level conservation zoning is not appropriate for the biodiversity values of our Client's Site, as shown in the Ecology Report.
13. We urge DPIE to review the accurate mapping in the Ecology Report and use this as a basis for considering the biodiversity values (or otherwise) of our Client's land.

Reason 2: Conservation zoning is not justified and would be ineffectual in practice

14. As evidenced in the Ecology Report, the conservation zoning is not justified. The Cumberland Plain Woodland that exists on our Client's Site is regrowth only and predominantly saplings rather than mature trees, with large portions of our client's land having been cleared for the farming and agistment which has been carried out for well over 50 years. To impose conservation zoning on a working farm which has been subject to large-scale clearing is at odds with both the historic and current use of the site.
15. The proposed riparian zone appears to have been imposed based on an assumption that the stream running through our Client's Site is much wider and of much higher water quality than is the case in reality. As shown in Photograph 3 of the Ecology Report, the stream is either dry or mostly stagnant, filled with algae, and its water quality is (and will inevitably be) impacted by upstream development.
16. We urge the DPIE to review the Cumberland Ecology Report which outlines in detail the lack of justification for the conservation zoning.
17. Furthermore, even if the conservation zoning is maintained, it is unlikely to have the desired effect due to the location and **isolated nature of the site**. As you would be aware, **our Client's Site will be of minimal value in terms of biodiversity unless it is connected to other areas**. This is not the case. Our Client's Site will be an isolated site, cut in half by the proposed Outer Sydney Orbital (**OSO**) and not connected to other areas of conservation value so as to create any biodiversity corridor. The area of the Site that is proposed to be zoned E2 conservation is bordered by the OSO on one side and infrastructure/urban certified land on the other. The Site is in close proximity to The Northern Rd, very close to the new airport and under the flight path and high noise levels.
18. In our opinion, when the context of the Site is considered, this is not an area suitable to conservation zoning. Furthermore, the zoning of our Client's Site as E2 **would not achieve the stated objectives of the Cumberland Plan as the conservation zoning would not be sustainable due to loss of biodiversity values created by the isolation of the Site and the impacts of surrounding development**.
19. Our Client engaged an independent consultant, Arcadis Australia Pacific Pty Ltd, to prepare mapping of noise impacts. As shown in Figure 2 below, our Client's Site will clearly be impacted by noise from the new WSA airport. Our Client's Site has been marked in purple on Figure 2 below. Figure 2 clearly shows that our Client's Site will be subject to noise impacts in the ANEF 30-35 range. Importantly, the part of our Client's Site which is to be zoned E2 conservation is the area with the highest noise impacts. Such high noise impacts are clearly at odds with conservation zoning.

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Airport Noise

Figure 2: Arcadis plan showing noise impacts with Waterhouse land marked in purple and the proposed E2 zone is affected by the pink ANEC 30-35 Noise Level

20. Figure 3 below, which is taken from the Department of Infrastructure, Transport, Regional Development and Communications, shows indicative noise levels for the proposed new airport operating with two runways (the exact flight path has not been released but Figure 3 shows noise categories which can be used as a guide). Figure 3 shows that our Client's Site will be impacted by air traffic noise as it sits between ANEC 30 and 35 noise levels (which may have a noise impact on wildlife) and is likely to sit under or close to the flight path. The ANEC mapping tool only allows us to map one parcel of land so Figure 3 below shows [REDACTED]. However, the impacts are even larger when the other two properties which form part of our Client's Site are considered.

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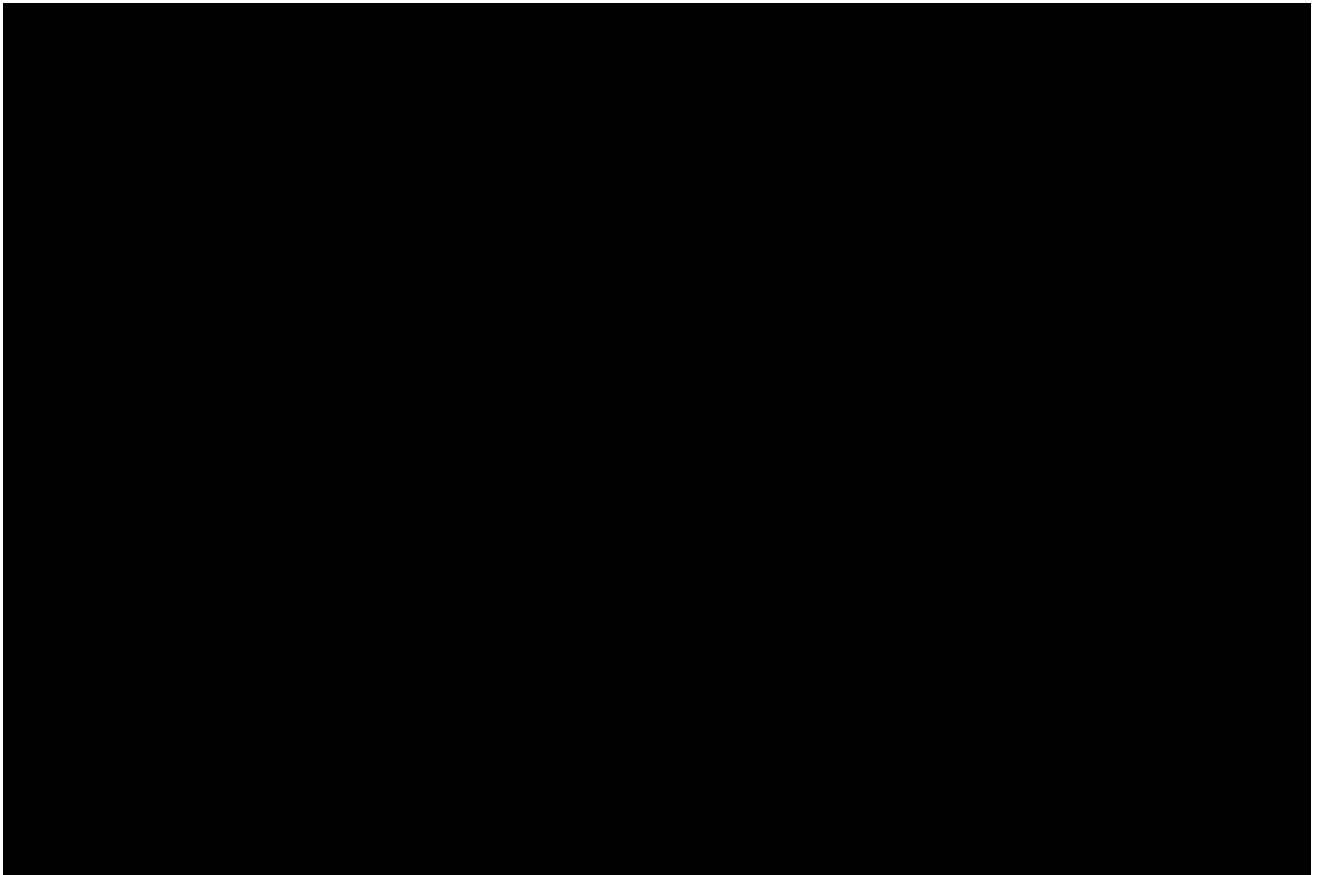


Figure 3: Noise impacts for [REDACTED] (noise impacts - two runways)

21. In our view, there is little merit in imposing a conservation zoning without considering the broader context of the Site, and any such zoning will be ineffective in practice. As such, it is unreasonable to impose the constraints on development which come with the conservation zoning when there will be little benefit in terms of biodiversity values. As the area surrounding our Client's Site is further developed as part of the aerotropolis precinct, the biodiversity values of our Client's land will decrease (regardless of any best efforts by our Client) as the Site is impacted by surrounding land uses.
22. We also note that there is **already a framework in place to consider biodiversity impacts and provide for the offsetting of impacts of development where appropriate, by way of the biodiversity offsets scheme**. The *Biodiversity Conservation Act 2016* provides a thorough mechanism for considering biodiversity impacts and ensuring any impacts are offset. In our view, this is the appropriate mechanism to be applied to this Site and this is supported in the Ecology Report.

Reason 3: Inconsistency with National Airports Safeguarding Framework

23. The proposed E2 conservation zoning of our client's land is at odds with the *National Airports Safeguarding Framework (Safety Framework)* released by the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications.
24. The Safety Framework has been established by the National Airports Safeguarding Advisory Group, which comprises of Commonwealth, State and Territory officials as well at the Department of Defence, the Civil Aviation Safety Authority, Airservices Australia and the Australia Local Government Association.

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25. The Safety Framework is a national land use planning framework which aims to 'improve safety outcomes by ensuring aviation safety requirements are recognised in land use planning decisions through guidelines being adopted by jurisdictions on various safety-related issues'.
26. The Safety Framework consists of a set of guiding principles and includes nine guidelines to be considered in regards to development around airports. The Framework applies to all airports and is intended to guide State governments in the development of land around airports.
27. Guideline C of the Safety Framework is titled 'Managing the Risk of Wildlife Strikes in the Vicinity of Airports' and the purpose of Guideline C is to provide guidelines for State and local government decision-makers to manage the risk of wildlife strike.
28. Attachment 1 to Guideline C provides specific guidance on the development of land within certain radii of an airport and recommends actions to be taken in terms of certain forms of development. Attachment 1 shows that the wildlife attraction risk for a dryland conservation area is 'moderate' and that development within 3km of the airport should include measures to 'mitigate' the risk. For wetland conservation areas that wildlife attraction risk is high and wetland conservation areas are shown as an incompatible land use within 3km of an airport. Although our Client's Property is not a wetland, it does contain a riparian zone.
29. The Safety Framework, which applies to NSW and that the State of NSW agreed to, therefore indicates that for areas of conservation within 3km of an airport, actions need to be taken to mitigate the risk of bird strike. If part of our client's land is to be zoned conservation there will obviously not be any measures taken to mitigate the risk of bird strike.
30. The conservation zoning of land in such close proximity to the airport is therefore inconsistent with a National framework which NSW endorsed. We urge DPIE to review the Safety Framework and, as required by the Safety Framework, consider its recommendations in terms of the planning framework for our Client's Site.
31. **By zoning part of our Client's Site which is closest to the airport as conservation land, this increases the risk of bird strike.** Bird strike is not only a threat to wildlife but is also a danger to any persons in aircraft. The zoning is therefore:
 - a. Inconsistent with the Safety Framework, including the purpose of implementing best practice in terms of decision-making in the vicinity of airports and providing certainty for landowners;
 - b. Undermined due to the bird strike risk (as frequent bird strikes will impact on conservation values);
 - c. Inappropriate for land in such close proximity to an airport; and
 - d. Creates a safety risk for aircraft;
 - e. Creates possible public liability issues in the event of loss of life from bird strikes with planes.
32. **The proposed E2 zoning under the Plan is directly at odds with the Safety Framework, which recommends that that the risk of bird strike be mitigated for conservation land within 3km of the airport.** The ANEC Maps released by the Government show that our Client's Site is within 3km of the airport and under possible flight paths. Mitigation measures are clearly not possible within the proposed E2 environmental zoning. As the land is currently zoned for rural uses, the imposition of conservation zoning in the context of the Safety Framework is entirely inappropriate.

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Reason 4: Inconsistency in treatment of land held by private landowners vs public lands and proposed public lands

33. Our Client's Site includes a large portion of land which has been identified to be part of the OSO and earmarked to be acquired for this purpose. This part of our Client's Site has not been mapped as having conservation zoning and has in fact been deliberately excluded from the Cumberland Plan mappings.
34. However, the land which will form part of the OSO holds similar conservation values to the portion of our Client's Site which is zoned environmental conservation. This is confirmed at section A4.2.3 of the Ecology Report, which finds that the conservation values of the OSO are similar to land mapped 'Non-certified – Avoid for Biodiversity' on our Client's Site. Land to the East of our Client's Site (owned by the Federal Govt and zoned 'Infrastructure') which has similar biodiversity values but has not been marked for conservation, despite being originally designated conservation within the Stage 1 Land Use Infrastructure and Implementation Plan (LUIIP). This demonstrates inconsistent treatment for public land and future proposed public uses.
35. The map which is included as Figure 5 of the Ecology Report clearly shows that the biodiversity values of the OSO are similar to surrounding parts of our Client's land. We refer you to the Ecology Report but provide an excerpt of Figure 5 below. The OSO is marked with diagonal pink hatching and the Shale Plains Woodland and Shale Hills Woodland within the OSO (and surrounding areas) can clearly be seen.

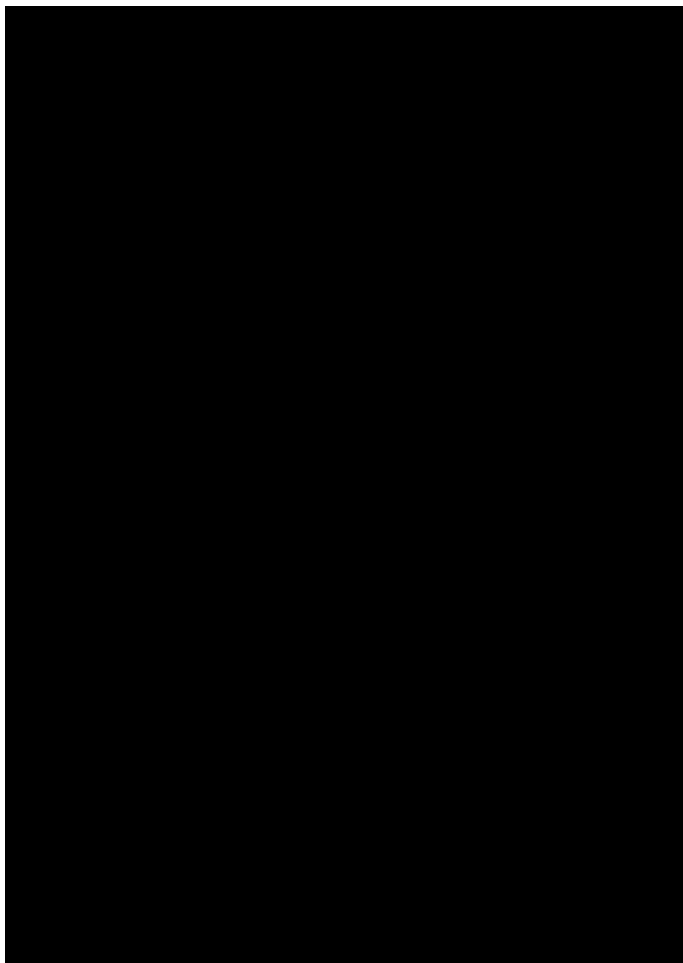


Figure 5: Excerpt from Ecology Report showing mapped biodiversity values of OSO

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36. Private landholders should be treated fairly and should not be subject to constraints on development which are not applied to Government-owned land or land ear-marked for acquisition by the Government.
37. The fact the DPIE has not zoned the OSO area of our Client's property as environmental conservation undermines any argument that our Client's Site should be subject to such zoning. It also raises questions as to the entire mapping exercise, and again, potentially has quite obvious legal consequences.
38. The existence of the large OSO will obviously also impact on the ongoing biodiversity values of our Client's Site, as stated above.

Reason 5: Inability to develop the site adjacent to the airport and close to the agribusiness zone

39. As DPIE is aware, the environmental conservation zoning heavily constrains the future development of our Client's Site.
40. We understand that the only forms of development which will be permissible in the E2 conservation zone will be environmental protection works and flood mitigation works. **This means that our client will not have the ability to construct any internal roads to connect their Site to the new surrounding infrastructure being developed.** This is an unduly onerous constraint on our Client's ongoing use of their Site, particularly as the Site is in such close proximity to the new airport and part of the Site is in fact zoned under the *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 (WSA SEPP)*. Any zoning which may ultimately be imposed under the Cumberland Plan must allow for internal roads to be constructed. Inability to construct an internal road to access the new infrastructure hub surrounding our Client's Site would be an onerous and illogical restriction on our Client's use of their land and would require them to use a lengthy and circuitous route to access link roads.
41. Our Client's Site sits in a strategic position to the West of the new airport and actually adjoins the proposed new airport, with part of the Site falling within the WSA SEPP. Our Client's vision is to develop the Site to be part of this Western Sydney growth area, contributing to jobs in the area and operating in synergy with the proposed new airport. The conservation zoning would prevent this logical use of the land and instead impose a narrow and isolated area of conservation zoned land in circumstances where the biodiversity values of the land are likely to be constantly eroded due to surrounding development and lack of connectivity to other conservation areas.
42. The lack of connectivity of our Client's Site will, in our view, thwart the long term conservation values of the Site. Therefore, the zoning of the Site of E2 is inconsistent with the Cumberland Plain objective of ensuring that the biodiversity outcome is feasible.
43. We also note that the zoning proposed under the Cumberland Plan is different to, and far more restrictive, than the zoning which has recently been put in place under the WSA SEPP for the same land. This inconsistency creates confusion for our Client who has relied upon advice received in the past 24 months from the various government bodies about the suitability of this Site for Agribusiness given the proximity to the cargo end of the Airport. Furthermore, the proposed zoning under the Cumberland Plan may also prevent the objectives of the WSA SEPP being achieved as our Client's Site, which sits in an important connectivity position adjacent to the new airport and agribusiness precinct, will be subject to strict E2 conservation zoning.
44. The mapping must be rectified immediately to remove the proposed EZ zoning and allow suitable access to the cargo airport lands.

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Conclusion

45. Our Client's Site is a piece of farmland which has been extensively cleared to be used for farming and agistment for over 50 years. The Site adjoins the new airport (and will most likely be directly under the flight path), is a short distance away from the four lane The Northern Road and will be intersected by the OSO.
46. Our Client has obtained a report from Cumberland Ecology which shows that their Site does not exhibit the high standard of biodiversity required to justify such a conservation zoning.
47. In circumstances where DPIE has not carried out any on-site surveys and where DPIE's mapping contains proven errors, the findings of Cumberland Ecology should be applied and the E2 conservation zoning of our Client's land should be removed. The Strategic Conservation Zoning is also unjustified due to the historic wide-scale clearing of our Client's Site.
48. The Biodiversity Conservation Act provides for offsetting for the clearing of vegetation and this is the appropriate mechanism to be used on our Client's Site in the event that our Client seeks to carry out any removal of vegetation in the future. The existing mechanisms for biodiversity offsetting is sufficient and appropriate for the land in question and the E2 zoning is in our view both unjustified and unnecessary.
49. Even if the fairly limited conservation values of the Site are taken into account, the context of the Site should be considered so that the Site can be developed in a manner consistent with the surrounding precinct, in a way which can generate employment and in a manner complementary to the surrounding area, including the new airport. Any limited existing biodiversity values will be diminished by the surrounding development and lack of connectivity to other conservations areas.
50. The Principals in the Safety Framework should be applied and a Site in such close proximity to the new airport should not be zoned E2 environmental conservation.
51. Furthermore, private landholdings should be treated in the same way as government landholdings and an E2 conservation zoning should not only be applied to private land where government-owned land has similar ecological values and is not burdened with such restrictive E2 zoning.
52. Consideration should also be given to the WSA SEPP, which is already in force, as the proposed zoning of our Client's Site limits the development of the broader area as envisaged by the WSA SEPP.
53. The fundamental flaws and factual errors in the mapping process lead to quite obvious issues going to the legal validity of the process and of the Cumberland Plan, were it to be made in this form, and based upon the available data.
54. We reiterate that the Department must carefully consider each of the attachments to this letter in full and in their entirety. They (together with this letter) form the substance of our client's submission to the Department on the Cumberland Plan, and they are relied upon in their totality.
55. Our Client would be happy to meet with you to discuss in detail the findings of the Ecology Report and their vision of the use of the Site in the broader agribusiness precinct and WSA area.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy at awhealy@millsoakley.com.au or direct line 8035 7848, or Clare Collett at ccollett@millsoakley.com.au or on direct line 9121 9027.

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Yours sincerely



Partner
Accredited Specialist Local Government & Planning

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ACN: 146 035 707 ABN: 54 146 035 707
Suite 4, Level 7, 100 Walker Street
North Sydney NSW 2060
P: 02 9929 6974
enquiries@willowtreeplanning.com.au
www.willowtreeplanning.com.au

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

Attention: Elizabeth Irwin - Director, Conservation and Sustainability

RE: PLANNING SUBMISSION TO DRAFT CUMBERLAND PLAIN CONSERVATION PLAN, AS IT RELATES TO THE PROPERTIES AT [REDACTED]

Dear Elizabeth,

This Planning Submission has been prepared by Willowtree Planning on behalf of the Waterhouse Group, in relation to the draft Cumberland Plain Conservation Plan ('the Plan'). This Submission has focused on the impacts of the Plan on a 233 hectare (ha) parcel of land at [REDACTED]

The Plan seeks to contribute to the Western Parkland City by supporting the delivery of housing, jobs and infrastructure while protecting important biodiversity. The Plan identifies strategically important biodiversity areas to offset the biodiversity impacts of future urban development, while ensuring a vibrant and liveable city.

The Plan maps certain land as 'Certified- Urban Capable', and for this land no further environmental assessment would be required pursuant to the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) or the NSW *Biodiversity Conservation Act 2016* (BC Act). Other land is 'Non-Certified Land', being avoided land for biodiversity or other environmental purposes (riparian corridors or steep slopes) or the Western Sydney Aerotropolis (flooding or not intended for urban development). The land specifically the subject of this Submission includes some areas of 'Non-Certified Land' avoided for both biodiversity and other environmental purposes.

Our client has consulted closely with Government for in excess of two years in relation to the intentions for the land to help realise the vision for an Agribusiness at the cargo end of the Airport. It is apparent that the Plan has not considered the future land uses that it is capable of accommodating in accordance with the strategic directions for the Aerotropolis and Agribusiness Precinct.

The key concerns with the Plan are outlined below:

1. Given that no on-site surveys have been completed, we consider this to be of concern given the nomination of the blue / green area mapped proposed to be zoned E2. It is therefore not appropriate to propose the land be restricted for future development to this extent without any verification of the actual site conditions. Prior to gazettal of any Conservation Zoning, we consider that site verification studies be documented and be made available for public comment.
2. The proposed conservation area is untenable given vegetation would be heavily disturbed as a result of nearby major infrastructure, including The Northern Road (less than 100m away), the proposed

draft flight path (ANEF 30-35), the six lane freeway which contains a rail freight line as part of the Outer Sydney Orbital (OSO) and the intense activities within the Agribusiness Precinct. The proposed E2 zoning would fail to meet the objectives of the Plan in terms of feasible and cost minimisation of conservation land.

3. In relation to mapping anomalies, it is evident that the exhibited Plan shows a triangular portion on Lot ■ and the adjoining eastern boundary of Lot ■ and also a significant other areas, that are marked green when in fact they are void of vegetation and contain mainly exotic grasslands only.
4. The Conservation Zoning is contradictory to the Airport Safety Guidelines which specifically prohibits conservation areas within 3km of the Airport. The entire site is within 3km of the Airport and therefore confirms that any conservation area is not acceptable given the risks associated with dense vegetation and birdlife in close proximity to the Airport. We consider this would create public liability issues related to aircraft operations posing a risk to life and property safety.
5. The proposed Conservation Zoning would severely compromise a logical development outcome for the Agribusiness Precinct within the Aerotropolis. The site affords a unique strategic location being adjoining the western edge of the Airport which provides opportunity for cargo, freight and logistics operations to support the overall Aerotropolis. Any conservation zoning would preclude the development potential of the site to fulfil its role in this respect.
6. The subject site is under single ownership control which presents a unique opportunity in terms of overall site planning and providing an Agribusiness operation which can be co-located with the Airport and surrounding employment precincts. The proposed conservation zoning fragments the site to preclude an orderly development outcome and is therefore considered to undermine the employment outcomes for the Precinct. It is anticipated that the greater site, when developed in accordance with the Masterplan, would generate up to 5,000 direct and indirect jobs.
7. For more than 60 years, the site has been used for agricultural purposes and disturbed across the entire 233ha. The vegetation on the site contains regrowth because these operations have heavily disturbed the original vegetation. The photo in **Figure 1** indicates the extent of the property as it existed in the 1960's showing that much of the property was void of vegetation cover.

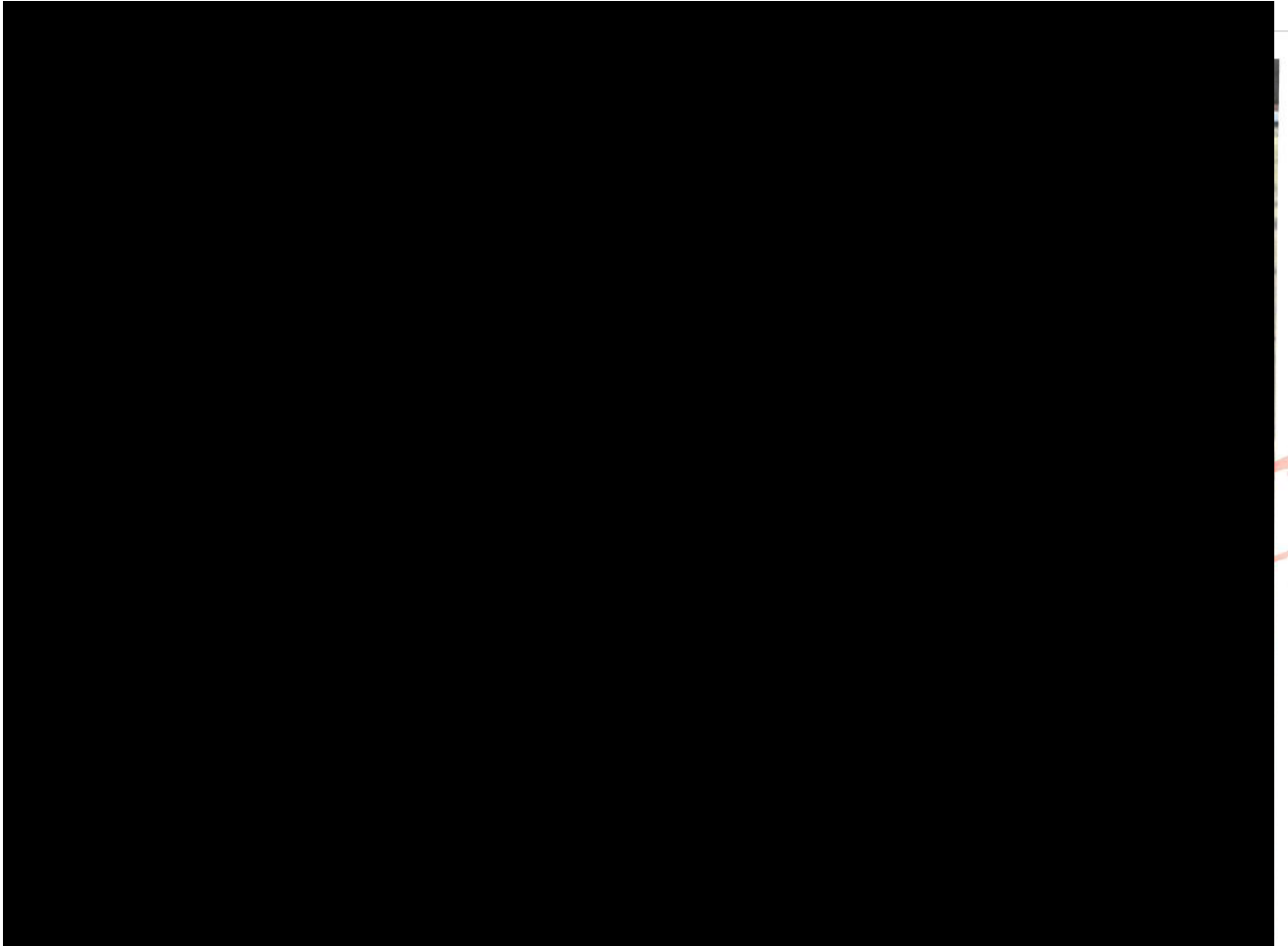


Figure 1: Subject Site as existing in the 1960s

8. The designation of the proposed blue area under the Plan for this property is disputed given the characteristics being not representative of a major waterway as it has a narrow channel with indications of stagnation, nutrient pollution and low flow. The vegetation quality in the designated green area is deemed to be patchy and, in some parts, cleared as it has historically been used for agricultural purposes.
9. It is evident that the proposed OSO corridor has similar vegetation characteristics to the subject site and has been left out of any conservation characterisation which is inconsistent with the approach applied to the subject site. Refer to **Figure 2** which shows the area of the proposed OSO being left out of the mapping. We consider that exclusion of the proposed OSO corridor from the Plan is inequitable and there should be no differential treatment between private and potential future public land.

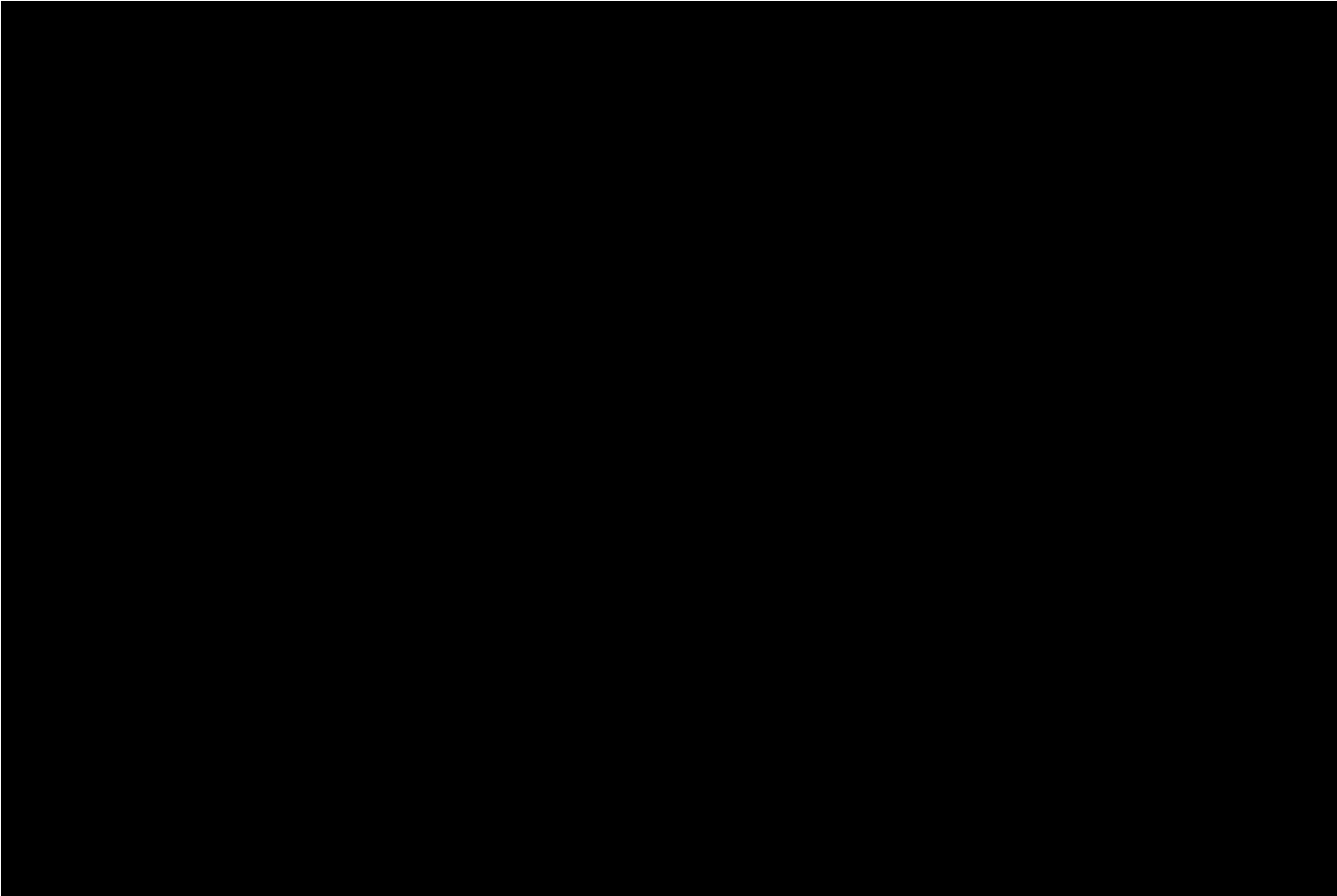


Figure 2: OSO Corridor which has been excluded from the Plan (highlighted pink)

10. By restricting the development of the Agribusiness Precinct in the Aerotropolis, the proposed Conservation Zoning would hinder the objectives of key Strategic Planning policies, namely that of the Agribusiness Precinct under the Aerotropolis SEPP which seeks to retain a connection with the rural lands and bio-strategic agricultural land to the west.

Specifically, Page 74 of the Aerotropolis Finalisation Report states the following with respect to the Agribusiness Precinct:

- *Encourage fresh food markets in appropriate locations with direct access to the Airport and associated tourism opportunities. (Planning Partnership and Western Parkland City Authority).*

Comment: The Waterhouse land is the only property in the agribusiness precinct with a direct border to the commercial end/airside of the airport. The proposed Conservation Zoning should consider this duly so as to not inhibit the Agribusiness operational potential of the site.

- *Address the interface between the proposed Outer Sydney Orbital and The Northern Road through precinct planning to ensure the Agribusiness Precinct retains connection with the rural land and Biostrategic Agricultural Land to the west (Planning Partnership and Transport for NSW).*

Comment: It is considered that the proposed Conservation Zoning would preclude the envisaged connectivity as stated in the above. Accordingly, provision should be made to ensure that suitable corridors can be achieved to fulfil the objectives of the Agribusiness Precinct.

- *Enable an interconnected relationship between the Agribusiness Precinct and MRA and their planning requirements (Planning Partnership, Western Parkland City Authority and Department of Planning, Industry and Environment)."*

Comment: Regardless of the future zoning, provision should be made for a suitable corridor width that allows access to the land to the west to facilitate Agribusiness operations.

11. The Metropolitan Rural Area (MRA) designation under the Western City District Plan contemplates primary production and rural production, all of which have the potential to heavily disturb the broader site. This should be given due consideration when finalising the Plan noting that such activities are essential to support the Agribusiness Precinct and Aerotropolis generally.
12. With respect to the subject site specifically, the mapped conservation area would obstruct a vital access link, thereby inhibiting the development of a 233ha parcel of land that that is primarily cleared and otherwise strategically positioned for development that would provide a major economic contribution to the Agribusiness Precinct and Aerotropolis. There are two strategic access points, being:

- [REDACTED]
- [REDACTED]

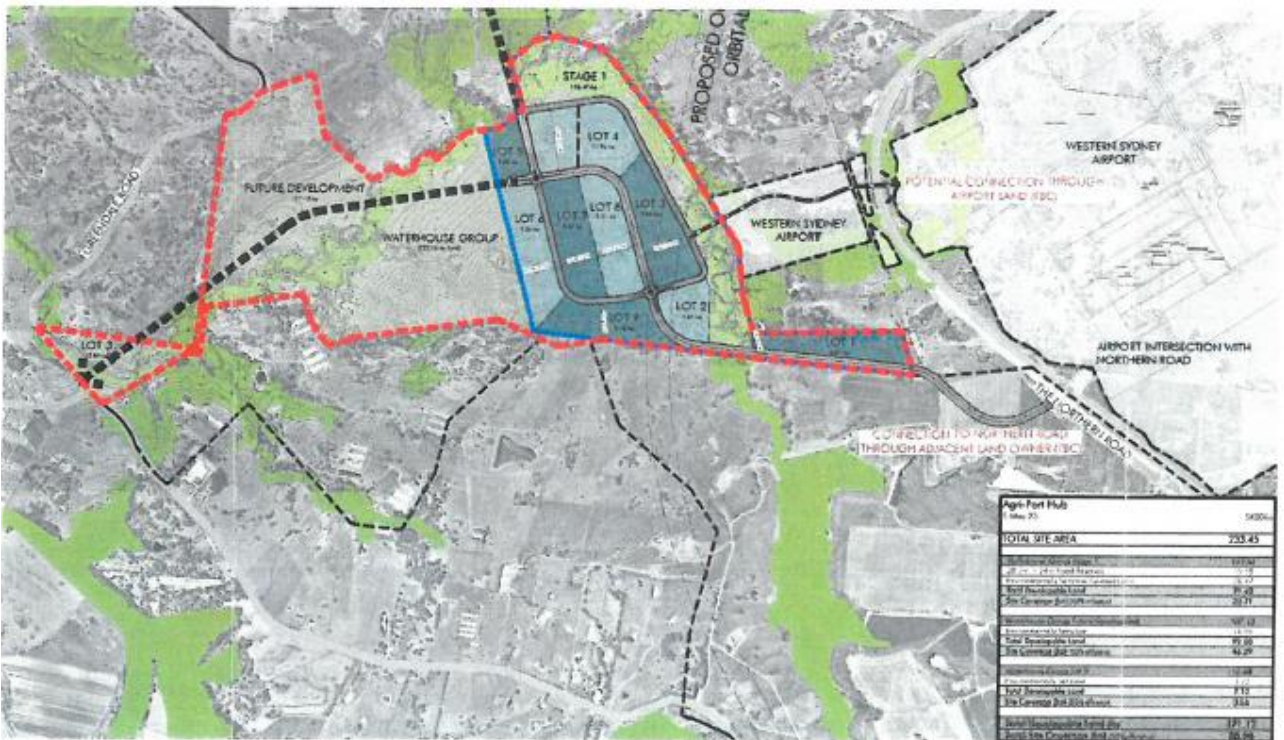


Figure 3: Proposed Masterplan

12. Any diversion of vehicle ingress / egress is considered to cause significant issues as vehicles associated with Agribusiness operations would unduly burden the local road infrastructure which is not capable of accommodating such heavy vehicle movements. The vehicle diversion would be in the order of 5km which is shown in **Figure 4** overleaf.



Figure 4: Vehicle Diversion Diagram

13. Given the strategic location of the site in relation to western edge of the Airport, it is considered essential to preserve provision for access for the purpose of future cargo associated with Agribusiness operations. Additionally, the site is co-located with the Airport which provides opportunity for streamlined pre-cleared export produce as per the Governments vision.
14. Regardless of the final zoning for the site, it is essential to include site specific provisions within the SEPP to allow access roads and bridges in the proposed blue/green area for the purpose of connectivity with the Airport.
15. The land zoned SP Infrastructure to the east of the subject site (Airport land) was previously identified for conservation under the Stage 1 Land Use Infrastructure and Implementation Plan (LUIIP). This is inequitable treatment between public and private land use. **Figure 5** shows land that has been certified as urban capable when it is apparent that it heavily vegetated.

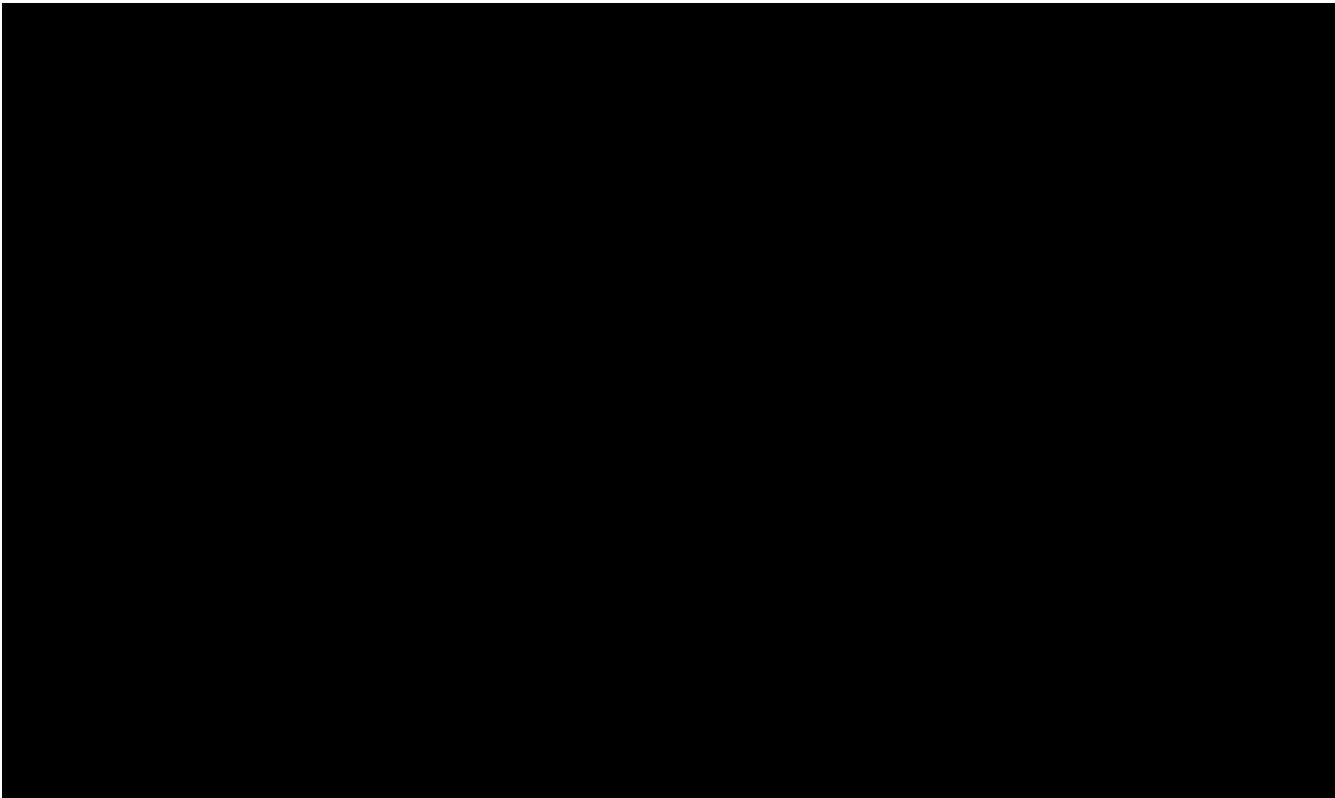


Figure 5: Government Land to the east certified Urban Capable that it is heavily vegetated and proposed OSO corridor

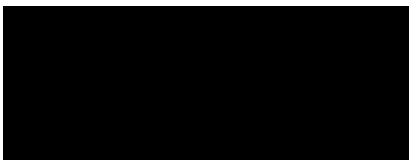
16. It is considered flawed that DPIE has created a new classification of "Strategic Conservation Zone" (SCA). Any impacts on areas mapped as such would need to be assessed in accordance with the requirements of the existing BC Act and/or the EPBC Act, which include requirements to avoid and minimise impacts. However, as assessments under the BC Act already require various assessments methods to be undertaken as well as measures to avoid and minimise impacts on areas with high biodiversity value, the introduction of additional planning controls is not considered to be warranted and a heavy handed duplication.

17. Finalising the Plan prior to the Precinct Plans and resolving the final precinct boundaries is considered to be premature as it would preclude an orderly development outcome. We request that the Plan take into account all of these factors.

We consider the above critical matters which DPIE must give due consideration before finalising the Plan. Our client would appreciate the opportunity to meet to discuss further.

Should you wish to discuss the matter further, please do not hesitate to contact the undersigned.

Yours Faithfully,



Director
Willowtree Planning Pty Ltd

29 October 2020

Waterhouse Group
c/- Willowtree Planning
PO Box 238
North Sydney NSW 2059

Draft Cumberland Plain Conservation Plan: Supporting Ecological Assessment for submission for Waterhouse Properties

Dear Sir/Madam,

This letter presents our broad-scale ecological assessment of the current and future biodiversity values of the Waterhouse Properties [REDACTED]

[REDACTED] The assessment is part of a submission to the NSW Department of Planning, Infrastructure and Environment (DPIE), regarding the Draft Cumberland Plain Conservation Plan ("the DCPCP"). The DCPCP has significant implications for the future development of the Waterhouse Properties due to the mapping of areas as 'non-certified – avoided for biodiversity' (coloured green on DCPCP maps), 'non-certified – avoided for other' (coloured blue on DCPCP maps) and 'strategic conservation areas' (purple hatched areas on DCPCP maps) and these map units are the focus of this review.

We found that the areas, coloured blue and green, proposed to be mapped for E2 conservation under the DCPCP as well as parts of the areas mapped strategic conservation, contain patches of young and regrowth vegetation with biodiversity value, notably the threatened ecological communities Cumberland Plain Woodland and River-flat Eucalypt Forest. Additionally, it was noted that some exotic grassland areas have been included in the proposed E2 zone, but were not appropriate for inclusion in this zone, as is the case for the proposed E2 zoning over Lot [REDACTED] and the south eastern corner of [REDACTED]. Other areas of grasslands and bare/eroded lands have been included in the E2 zone, but do not have the habitat values appropriate to this zoning. In total, approximately 2.5 ha of grassland/cleared land (approximately 19% of the total area) has been mapped for inclusion in the proposed E2 zone.

The proposed mapping and E2 conservation zoning of the Waterhouse land is based on desktop mapping. However, the site surveys undertaken by Cumberland Ecology demonstrate that this mapping and zoning needs to be amended to take into consideration the following:

Cumberland Ecology
PO Box 2474
Carlingford Court 2118
NSW Australia
Telephone (02) 9868 1933
ABN 14 106 144 647
Web: www.cumberlandecology.com.au

- Some of the mapping and zoning is erroneous. For example, a specific triangle of land is marked as non-certified- avoided for biodiversity when both aerial images and on-site surveys show this triangle of land has been cleared and consists of exotic grassland. Errors such as this undermine the integrity of the entire mapping process;
- The stream running through the east of the property is significantly impacted in terms of water quality by the farming operations upstream so that the stream is stagnant and green with algae. The watercourse within the proposed E2 zoning is narrow in channel width, and shows signs of stagnation, and is significantly impacted by upstream farming practices. The site conditions are not characteristic of a major watercourse (as is typical of 4th order streams), and it is more consistent with a 2nd or 3rd order stream, which would require at minimum a 20-30m riparian corridor (fully vegetated) to be maintained. It is therefore not appropriate to impose a large riparian buffer which would be required for a high order stream of significant ecological value;
- The Cumberland Woodland Plain present on the site exists only in patches and is fairly young regrowth.
- The historical use of the land and the permissible uses under the current rural zoning, which has resulted in the historical large scale clearing of the site;
- The location of the site, which sits within and adjacent to the Western Sydney aerotropolis. Zoning part of the site as environmental conservation is impractical and undesirable when the site sits in such close proximity to the proposed airport. Furthermore, the proposed environmental zoning fails to consider the fragmented nature of the zone and zoning. Any potential biodiversity values are likely to be lost due to the development of the area surrounding the site, rendering conservation zoning unviable. The proposed zoning constitutes an insufficient, isolated corridor with limited long-term conservation values;
- The location of the site being adjacent to a future airport, in close proximity to a major road (The Northern Rd) and under a flight path with high level ANEC (noise) levels, which makes the area unsuitable for conservation zoning;
- The site lacks the connectivity to other existing or proposed conservation areas which is essential for preserving conservation values; and
- The area of the site ear-marked for the Outer Sydney Orbital has similar biodiversity values to the Waterhouse land to the east of the proposed OSO which is proposed to be zoned E2, yet no measures have been seen as necessary to recognise or protect this OSO designated land.

If the proposed zoning for 'non-certified – avoided for biodiversity', 'non-certified – avoided for other' and 'strategic conservation areas' is gazetted, key development opportunities and linkages to the Aerotropolis from the Waterhouse lands will be denied in order to achieve very limited, flawed conservation outcomes and contrary with two of the goals of the DCPCP:

- Minimise the cost of delivering the biodiversity outcome; and
- Ensure the biodiversity outcome is feasible.

Furthermore, it is noted that any future development of this land will already require an appropriate assessment under the *Biodiversity Conservation Act 2016* and *Commonwealth Environment Protection and Biodiversity Conservation Act 1995*, including demonstration of avoidance, mitigation and offsetting (in accordance with the Biodiversity Assessment Method), making the proposed considerations of the SCA and proposed zoning under the DCPCP a duplication of this required assessment.

If gazetted to be E2 it will undermine the clear intention of the Aerotropolis SEPP 'to allow connectivity to the vital Agri-precinct'.

Our complete ecological assessment is provided in **Appendix A** to this letter. Supporting figures are attached at the end of this document.

If you have any queries or require any further information, please do not hesitate to contact me at our Sydney office on [REDACTED]

Yours sincerely

[REDACTED]


[REDACTED]

Director

[REDACTED]

APPENDIX A :

Draft Cumberland Plain Conservation Plan: Ecological assessment of Waterhouse Properties



A.1. Introduction

This submission relates to the private lands known as the “Waterhouse properties” within the suburb of Luddenham in the Liverpool Council Local Government Area.

The Waterhouse properties comprise [REDACTED] (collectively referred to as the ‘subject site’) and cover an area of approximately 232.50 ha, as shown in **Figure 1**. The subject site is currently zoned RU1 – Primary Production, and is within the Metropolitan Rural Area (MRA) under the Western Sydney District Plan, and is largely composed of cleared land, which has been used for agricultural grazing purposes. The current land use is consistent with the zoning and existing use-rights. However, patches of remnant and regrowth vegetation are also present within the properties.

A number of mapped watercourses occur in the east and west of the subject site. The watercourses are minor in the landscape, with numerous farm dams both upstream, within, and downstream on the subject site, as part of fragmented riparian corridors.

The eastern extent of the subject site also lies within the boundaries of *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* (The Aerotropolis SEPP), in particular the Agribusiness precinct, which extends to the east of the subject site. Lot [REDACTED] and Lot [REDACTED] occur within the Metropolitan Rural Area (MRA) and allow a wide range of Agribusiness activities. This section of the subject site lies between the proposed future Outer Sydney Orbital with Western Sydney International Airport, beside The Northern Road. A portion of the Western Sydney Aerotropolis land has been zoned ‘Environment and Recreation’ (ENV), which corresponds to the area of proposed E2 zoning under the draft Cumberland Plain Conservation Plan (mapped as blue and green in **Figure 2**), and discussed further in **Section A.2** below.

A.2. Draft Cumberland Plain Conservation Plan

A.2.1. Background

The NSW Government has identified four areas for urban growth and other development (referred to as ‘nominated areas’) and a series of transport corridors within and outside the nominated areas to support the future growth of Western Sydney. The nominated areas include:

- Greater Macarthur Growth Area;
- Greater Penrith to Eastern Creek Investigation Area;
- Western Sydney Aerotropolis; and
- Wilton Growth Area.

The key infrastructure/transport corridors include:

- Metro Rail future extension to Macarthur (excluding areas within the South West Growth Area);
- M7/Ropes Crossing Link Road;
- Outer Sydney Orbital between Box Hill and the Hume Motorway near Menangle; and

- Western Sydney Freight Line corridor.

The nominated areas program is administered by the NSW Department of Planning, Industry and Environment (DPIE) while the transport corridors program is administered by Transport for NSW (TfNSW), who are a major project partner.

As part of the biodiversity approvals required for the development of the nominated areas, DPIE has prepared the Draft Cumberland Plain Conservation Plan (DCPCP) to provide long-term certainty for biodiversity and development in Western Sydney. The DCPCP will support two separate statutory approvals processes under State and Commonwealth laws that are required to address the impacts of the proposed development on biodiversity values. These include:

- Strategic biodiversity certification under Part 8 of the *Biodiversity Conservation Act 2016* (BC Act); and
- Strategic assessment under Part 10 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The aim of the DCPCP is to support the delivery of infrastructure, housing and jobs for Western Sydney in a planned and strategic way that also protects and maintains key biodiversity values of Western Sydney. The DCPCP includes a conservation program of commitments and actions that seeks to improve ecological function and resilience in the Cumberland Plain and provide an enduring conservation legacy for Western Sydney. A structured decision-making process was based around four decision making criteria across environmental, social and economic themes. The criteria were:

- Maximise conservation of biodiversity;
- Minimise the costs of delivering the biodiversity outcome;
- Ensure the biodiversity outcome is feasible; and
- Maximise public amenity.

Overall, the DCPCP identifies the following categories of land within the nominated areas:

- Certified Urban Capable: development can occur without further biodiversity assessments, subject to development approval in accordance with precinct plans;
- Non-certified – Western Sydney Aerotropolis: 1 in 100 year flood affected land and other vegetated land within the Aerotropolis SEPP area;
- Non-certified – avoided for Biodiversity Purposes: land to be protected for its important environmental value and to be rezoned E2 Environmental Conservation;
- Non-certified – avoided for other purposes: land that has riparian corridors, steep slopes or other constraints such as flood risk and is to be rezoned E2 Environmental Conservation; and

- Excluded: land is excluded from the strategic certification as it is either already developed for urban use, is already subject to environmental protection or specific zoning, or is subject to a separate biodiversity approval process.

In addition, the DCPCP also identifies the major transport corridors and strategic conservation areas outside of the nominated areas. These strategic conservation areas include lands with potential high-value biodiversity, as well as areas with important connectivity or potential for ecological restoration.

The strategic conservation area is to be used to identify and prioritise suitable conservation lands as offsets for biodiversity impacts over the life of the Plan. Suitable areas may be protected as a future reserve or biodiversity stewardship site or enhanced through an ecological restoration project to deliver the Plan's offset targets for affected native vegetation communities.

Not all of the mapped areas in the Strategic conservation area will be established as conservation land under the Plan and identification of suitable conservation lands from within the strategic conservation area will continue over the life of the Plan to ensure that potential sites are appropriate, can be implemented and are based on the best available information and data.

A.2.2. Mapping of the Subject Site and Surrounds

A.2.2.1. Draft Cumberland Plain Conservation Plan

The eastern parts of the subject site, namely Lot [REDACTED] (with an area of approximately 10 ha) and the eastern extent of Lot [REDACTED] (approximately 12.5 ha) lie within the Western Sydney Aerotropolis (WSA) nominated area while the remainder of the subject site lies outside and to the west of the WSA nominated area, including approximately 26 ha located within the Outer Sydney Orbital corridor, as shown in **Figure 2** and **Figure 3**.

The majority of Lot [REDACTED] is zoned as 'Certified – urban capable' (approximately 8.9 ha, and mapped orange in **Figure 2**), and contains very little native vegetation, with small areas along the northern boundary being mapped 'Non-certified – avoided for other' (approximately 0.5 ha and corresponding to the area of riparian corridor, mapped blue in **Figure 2**) and parts of western extent mapped as 'Non-certified – avoided for biodiversity' (approximately 0.7 ha and mapped green in **Figure 2**). The areas of Lot [REDACTED] that have been mapped as Non-certified contain no native vegetation, and should not be avoided on biodiversity grounds.

The eastern parts of Lot [REDACTED] (a total of approximately 12.5 ha), which lie within the WSA nominated area boundary are either mapped as 'Non-certified – avoided for other' (approximately 7 ha and mapped blue in **Figure 2**) or 'Non-certified – avoided for biodiversity' (approximately 5.4 ha, and mapped green in **Figure 2**). The 26 ha of the OSO is not categorised for SCA – despite having similar vegetation patches to the Avoided for Biodiversity (green area). The remainder of the site, outside of the WSA nominated area is mapped as part of the Strategic Conservation Areas (SCAs) (with a total area of 195 ha), and the OSO corridor (26 ha). Parts of Lot [REDACTED] within the WSA nominated area are also mapped as part of the SCAs. The relevant DCPCP mapping for the subject site is shown in **Figure 3**. It is understood that this mapping is based on the perceived ecological values of the subject site from prior broad-scale vegetation mapping (OEH, 2013) for the

Cumberland Plain with large portions of the subject site being mapped as Cumberland Plain Woodland and River-flat Eucalypt Forest (**Figure 4**). Both these vegetation communities are listed as threatened ecological communities (TECs) under the *NSW Biodiversity Conservation Act 2016* (BC Act) and/or *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Furthermore, the subject site contain mapped watercourses (**Figure 1**).

The non-certified parts of Lot [REDACTED] are also mapped as Proposed Environmental Conservation i.e they are proposed to be rezoned as E2 Environmental Conservation. Under the DCPCP, development that will be permitted with consent under the proposed environmental conservation (E2) zone will be limited to environmental protection works and flood mitigation works.

On a wider locality level, the Western Sydney International (Nancy Bird Walton) airport, which is currently under construction, lies to the immediate east of the subject site. Lands to the north and south of the subset of the subject site within the WSA nominated area are largely mapped as Certified – urban capable except for areas along mapped watercourses which are mapped as ‘Non-certified – avoided for other’ with small isolated patches mapped as ‘Non-certified – avoided for biodiversity’. The WSA nominated area is bounded along its’ western extent by the proposed Outer Sydney Orbital. Lands to the north and west of the subject site, outside of the WSA nominated area are also included within the SCAs.

A.2.2.2. Western Sydney Aerotropolis SEPP

The parts of the subject site that lie within the WSA nominated area are also subject to the Aerotropolis SEPP. The parts of the subject site mapped as Certified under the DCPCP correspond to areas zoned ‘Agribusiness’ under the Aerotropolis SEPP while non-certified areas (proposed E2 conservation zones) correspond to areas zoned ‘Environment and Recreation’ (ENV) under the Aerotropolis SEPP. It is noted that while development consent within the proposed E2 zone under the DCPCP is to be limited to environment protection works and flood mitigation works, the ENV zoning under the Aerotropolis SEPP allows for a greater variety of works with development consent.

A.3. Methodology

The proposed mapping/zoning under the DCPCP has major implications for the future development of the subject site, in particular areas within the WSA nominated area, due to the mapping of areas as ‘non-certified – avoided for biodiversity’ (green mapping) and ‘non-certified – avoided for other’ (blue mapping) .

Suitability/accuracy of mapping was assessed to determine the suitability of the proposed mapping/zoning with due consideration to on-ground conditions, future land uses and objectives of the DCPCP.

The methodology for this assessment has been conducted as follows:

A.3.1. Desktop assessments

Desktop assessments involved a detailed review of the Draft Cumberland Plain Conservation Plan and its supporting documents and spatial viewer, as well as available vegetation mapping, and threatened species information for the subject site. The desktop assessment included review of the following resources:

- Detailed Review of DCPCP exhibition documents, as publicly available;

- Western Sydney Aerotropolis Planning Package, as made and finalised;
- Vegetation Mapping of the Cumberland Plain (OEH 2013);
- Vegetation Information System (VIS) (EES 2020b);
- BioNet (EES 2020a); and
- Concept development plans for the subject site as provided by the client.

It should be noted that the Land Categories, Explanation of Intended Effect and Vegetation Conservation Significance mapping, which underpin the DCDP, were available online through the DPIE portal, but not as downloadable mapping layers. For this reason, the figures in this report, which represent the DCPC implications over the subject site, have been prepared using a reproduction of the layers (ie by tracing), and are not 100% accurate. In regard to the vegetation mapping, it was observed that the available information in the online portal was dated 2020, and the same as the published OEH 2013 layer, and therefore the older version has been used.

A.3.2. Field Surveys

An initial site inspection was conducted by Cumberland Ecology Director David Robertson on 16 September 2020. This included a site overview, and detailed discussion of past and present land uses and management with the owner. Photographs and notes were taken during the site overview inspection, to allow for a thorough understanding of the conditions and constraints in relation to biodiversity.

Following the site inspection, further field surveys were conducted by an ecologist and botanist on 1 October 2020 to obtain more detailed field data. The focus of the field surveys was to verify accuracy of existing vegetation mapping, with particular reference to Threatened Ecological Communities (TECs) listed under the BC Act and/or EPBC Act. Each patch of vegetation within the subject site was ground-truthed and the plant species recorded. The vegetation survey consisted of random meander transects to compile detailed lists of plant species present within each plant community type and vegetation patch.

Fauna habitat assessments were conducted concurrently with the vegetation mapping and included recording key habitat resources for threatened species, such as the presence of hollows, logs, dense understorey vegetation, flowering and fruiting plants, bush rock and watercourses.

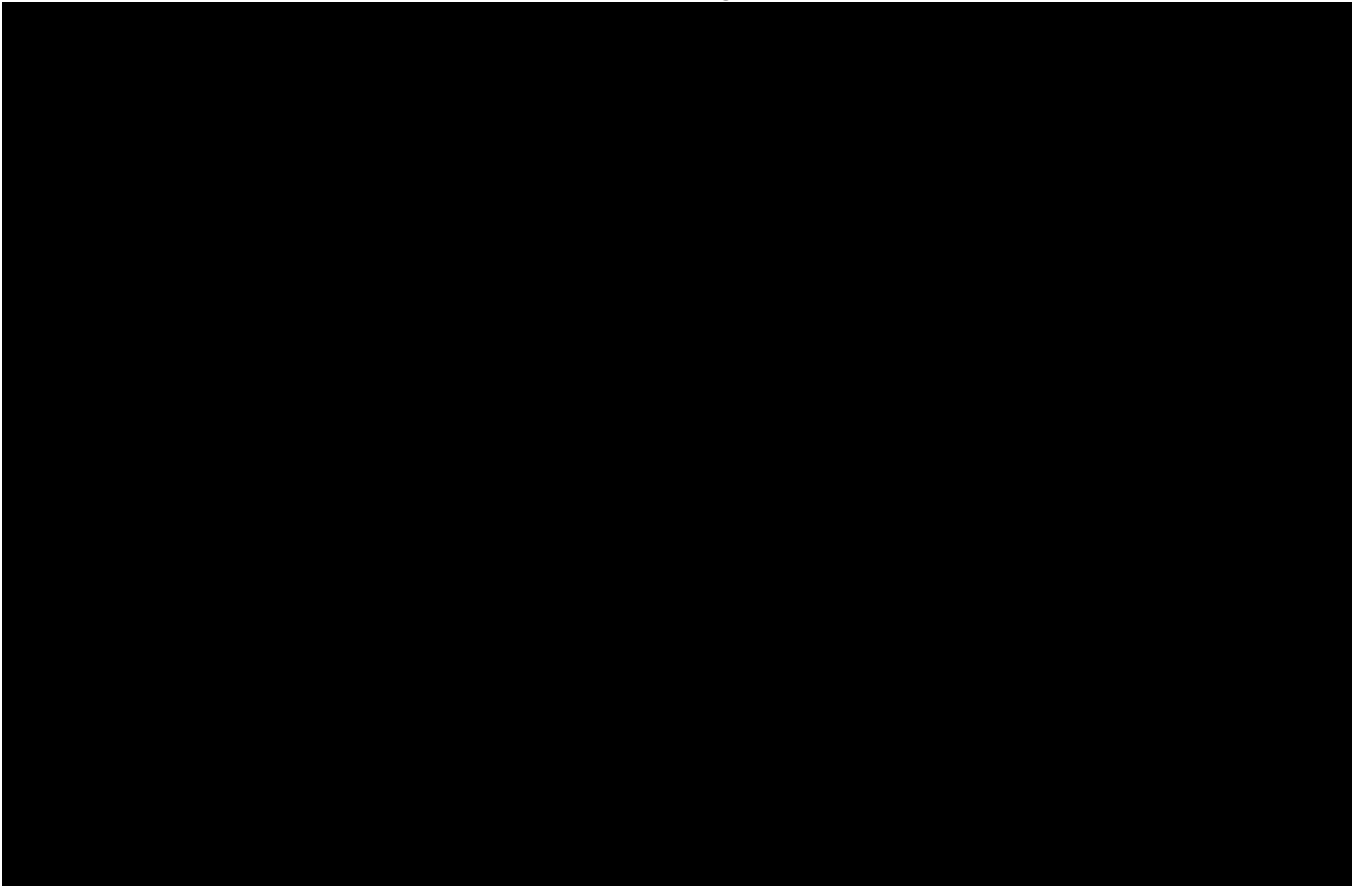
Survey locations are shown in **Figure 5**.

A.4. Key Findings

A.4.1. History of the Subject Site and Current Context

The Site has been used for farming and agricultural purposes for sixty years and has therefore been subject to extensive clearing, as shown in the historical image provided in the covering submission. Lots [REDACTED] and [REDACTED] have been used for farming by the Waterhouse family since these properties were acquired in the mid-60s. At the time this portion of the site was acquired it had already been cleared for farming and the farming use has continued on-site, as shown in **Photograph 1**.

Photograph 1 Historical Photo (Circa 1968) of Pemberton Park – Lot [REDACTED] (located in the centre of the image, with the main east – west watercourse visible, to the north of the small houses in the foreground)



Farming practices utilised by the Waterhouse family included clearing and the sowing of pasture grasses, particularly in the period immediately after the Waterhouse family acquired the property, and the property was divided into paddocks for farming purposes. Some isolated tree clumps were retained to provide shade for livestock.

Other improvements were undertaken such as constructing cattle yards, upgrading fences, creating dams (as the streams within the site were usually dry) and building bridges and roadways through the property.

In 2005 the Waterhouse family ceased carrying out farming activities themselves but the site continued to be used for farming as well as agistment through lease arrangements. At present, Lots [REDACTED] and [REDACTED] are used for cropping and agistment.

Lot [REDACTED] also has been used for farming purposes for a significant period of time. Lot [REDACTED] was acquired by the Waterhouse group in 2015, at which time the previous owners were operating a farm on the Lot. The Waterhouse family has continued to carry out farming operations on this Lot, which also include a two storey brick house.

The entire Site therefore has undergone large-scale clearing as part of historical farming and agistment uses. Any biodiversity values should be viewed in the context of this historical and on-going farming use. This is not

a Site which has remained in its natural site and contains 'pristine' vegetation but is a site which has been used for commercial farming and agistment and has been cleared and cropped accordingly.

In recent years, The Northern Road has been constructed. The Northern Road is a large, 4 lane arterial road which runs just towards the east of the subject site (approximately 80m away).

A.4.2. Habitat Values of the Subject Site

A.4.2.1. Vegetation

Due to the historical clearing and land uses, different forms of vegetation exist in a patchwork fashion across the site. Areas of native vegetation are broken up by large, cleared areas, predominantly exotic dominated grassland. Aerial photography of the site shows that the majority of the site consists of grassland and a site survey identified the grassland within the WSA (including the grassland within the proposed E2 zone) as exotic dominated grassland.

The field surveys confirmed that the patches of native forest and woodland vegetation on the subject site is predominantly regrowth of varied ages, as the subject site has apparently been historically cleared. Consequently, the forest and woodland vegetation varies in condition, based on the time of historic clearing and various impacts from pasture improvement, cropping, irrigation and livestock grazing for more than 60 years. The surrounding vegetation reflects the same disturbances, being a rural/agricultural district, and is in close proximity to transport linkages (both existing and proposed), with the Northern Road being located 80m to the east, and Western Sydney International Airport and connecting road infrastructure (under construction), to the east and northeast. There is a mosaic of native vegetation and exotic grassland, in various condition states.

The broad-scale vegetation mapping for the Cumberland Plain (OEH 2013), as shown in **Figure 4**, was found to be fairly accurate in terms of mapping forest and woodland patches across most of the site, with field surveys confirming the presence of the TECs Cumberland Plain Woodland (CPW) and River-flat Eucalypt Forest (RFEF) in parts of the subject site. RFEF is largely concentrated along the banks of the mapped watercourses that meander through parts of the subject site. Cumberland Plain Woodland occurs as scattered patches amid cleared and predominantly exotic dominated grassland areas on the higher undulating plains and is fairly concentrated in the eastern parts of the subject site, particularly along the eastern boundary of Lot [REDACTED] and most notably in the area proposed as E2 on Lot [REDACTED] (shown in blue and green on **Figure 2**).

The condition of both CPW and RFEF varies across the subject site from scattered paddock trees over predominantly exotic grass and herb understorey to good condition, vegetation with a predominantly native understorey. Despite the presence of a predominantly native understorey in some areas, the vegetation in these areas still shows indications of historic clearing as the canopy is generally comprised of relatively young trees that largely lack hollows (**Photograph 2**).

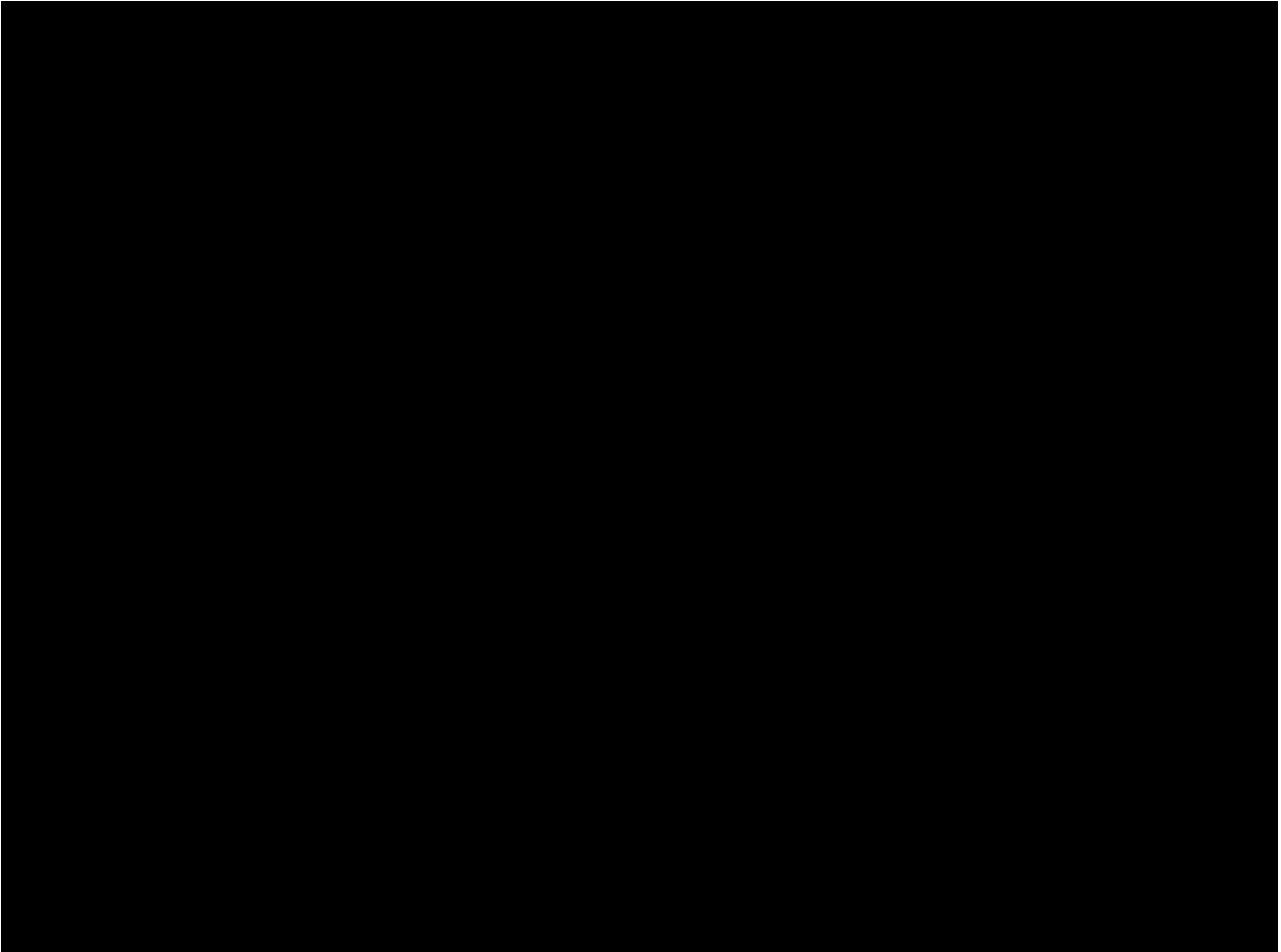
Each vegetation community mapped as occurring on the subject site is described in the sections below.

i. Cumberland Plain Woodland

The canopy of the CPW is open and dominated by *Eucalyptus moluccana* and *Eucalyptus tereticornis*, mostly as young regenerating trees. The majority of patches of CPW lack a shrub layer, although the more intact area, such as those in the transitional area to the River-flat Eucalypt Forest, have a moderately dense shrub layer dominated by *Bursaria spinosa* (Blackthorn). The groundcover is dominated by native grasses typical of CPW and herbs and twiners were also common. Species include the grasses *Aristida ramosa* (Purple Wiregrass), *Aristida vagans* (Three-awned Spear Grass), *Bothriochloa decipiens* (Pitted Bluegrass), and *Chloris ventricosa* (Windmill Grass). Forbs include *Brunoniella australis* (Blue Trumpet), *Oxalis perennans*, *Dichondra repens* (Kidney Weed), and *Glycine tabacina* (Love Creeper). A few exotic herbs such as *Bidens pilosa* (Cobblers Pegs), *Solanum linnaeanum* (Apple of Sodom), *Hypochaeris radicata* (Flatweed), and *Sida rhombifolia* (Paddy's Lucerne) are also present. An example of young regenerating CPW, present within the within the WSA nominated area surveyed (Flora Assessment 3, as shown in **Figure 5**), is shown in **Photograph 2**.

The majority of patches of CPW, and in particular within the western parts of subject site (i.e outside the WSA nominated area) show higher levels of disturbance from prevailing land uses, in particular a relative lack of shrub cover and proportionately higher exotic composition in the understorey. The understorey in these areas was comprised a mix of native and exotic species and was largely dominated by the native grass *Microlaena stipoides* var. *stipoides* (Weeping Grass). Despite the disturbances from prevailing rural land-uses, some areas still contain regenerating patches of *Eucalyptus moluccana*.

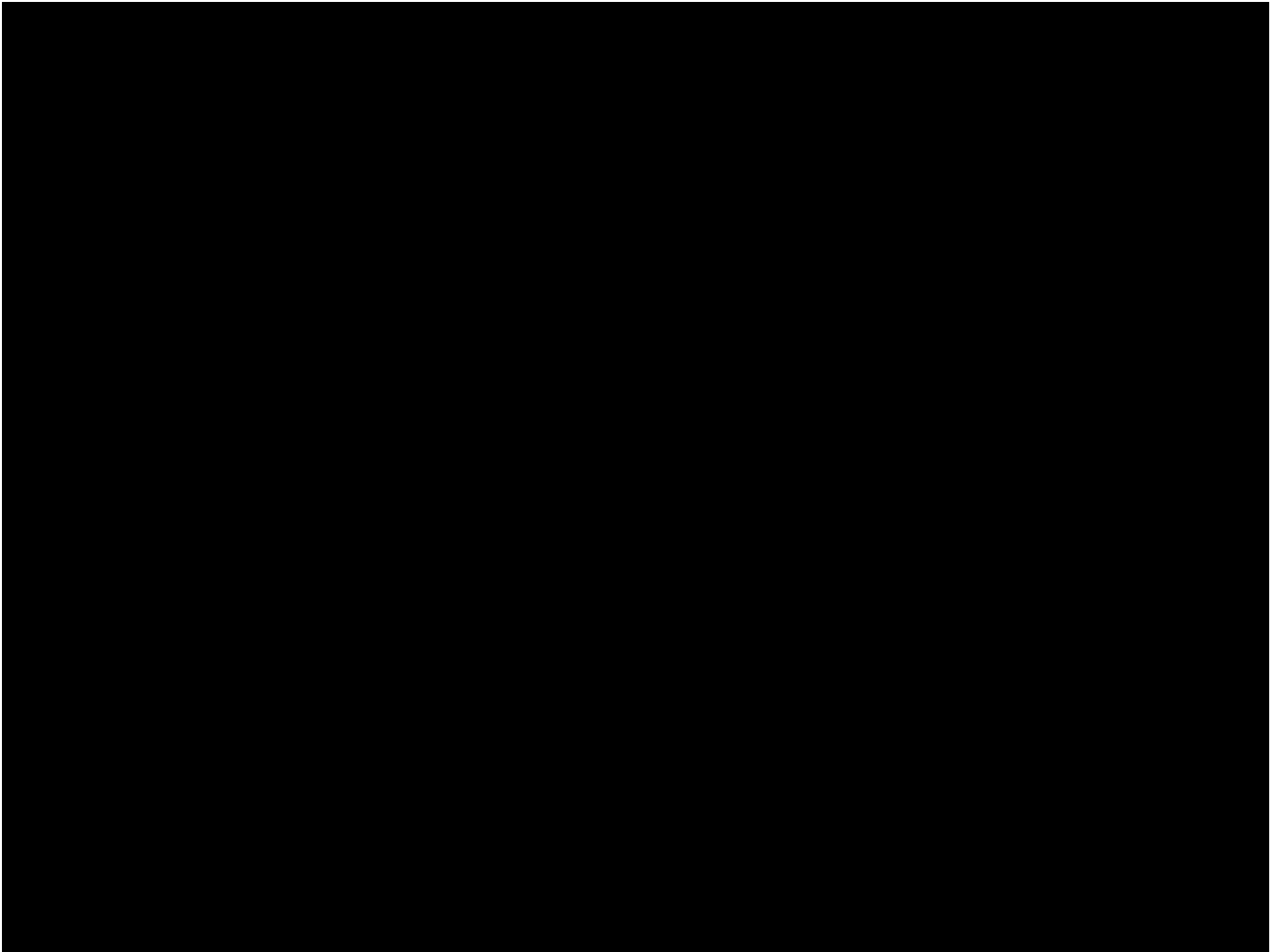
Photograph 2 Young regrowth CPW dominated by saplings of *Eucalyptus moluccana* located in the WSA nominated Area (in the location of Flora Assessment 3) subject site (in the 'Green' proposed E2 area)



ii. River-flat Eucalypt Forest

RFEF generally occurs along the banks of the mapped watercourses within the subject site, which are coloured blue in **Figure 2**. The canopy is largely comprised of *Eucalyptus tereticornis*, *Eucalyptus amplifolia* subsp. *amplifolia* (Cabbage Gum), *Angophora subvelutina* (Broad-leaved Apple) and *Melaleuca styphelioides* (Prickly-leaved Tea-tree). The occurrences in the eastern parts of the subject site (i.e within the WSA nominated area) have a sparse to dense shrub layer that is dominated by *Bursaria spinosa* (**Photograph 3**). The groundcover was dominated by the native grass *Microlaena stipoides* var. *stipoides* and other common species include the grass *Entolasia marginata* (Bordered Panic) and the fern *Adiantum aethiopicum* (Maidenhair Fern). Some of the exotic species recorded within areas of RFEF include high threat weeds such as *Lantana camara* (Lantana), *Cestrum parqui* (Green Cestrum), *Olea europaea* subsp. *cuspidata* (African Olive) and *Senecio madagascariensis* (Fireweed).

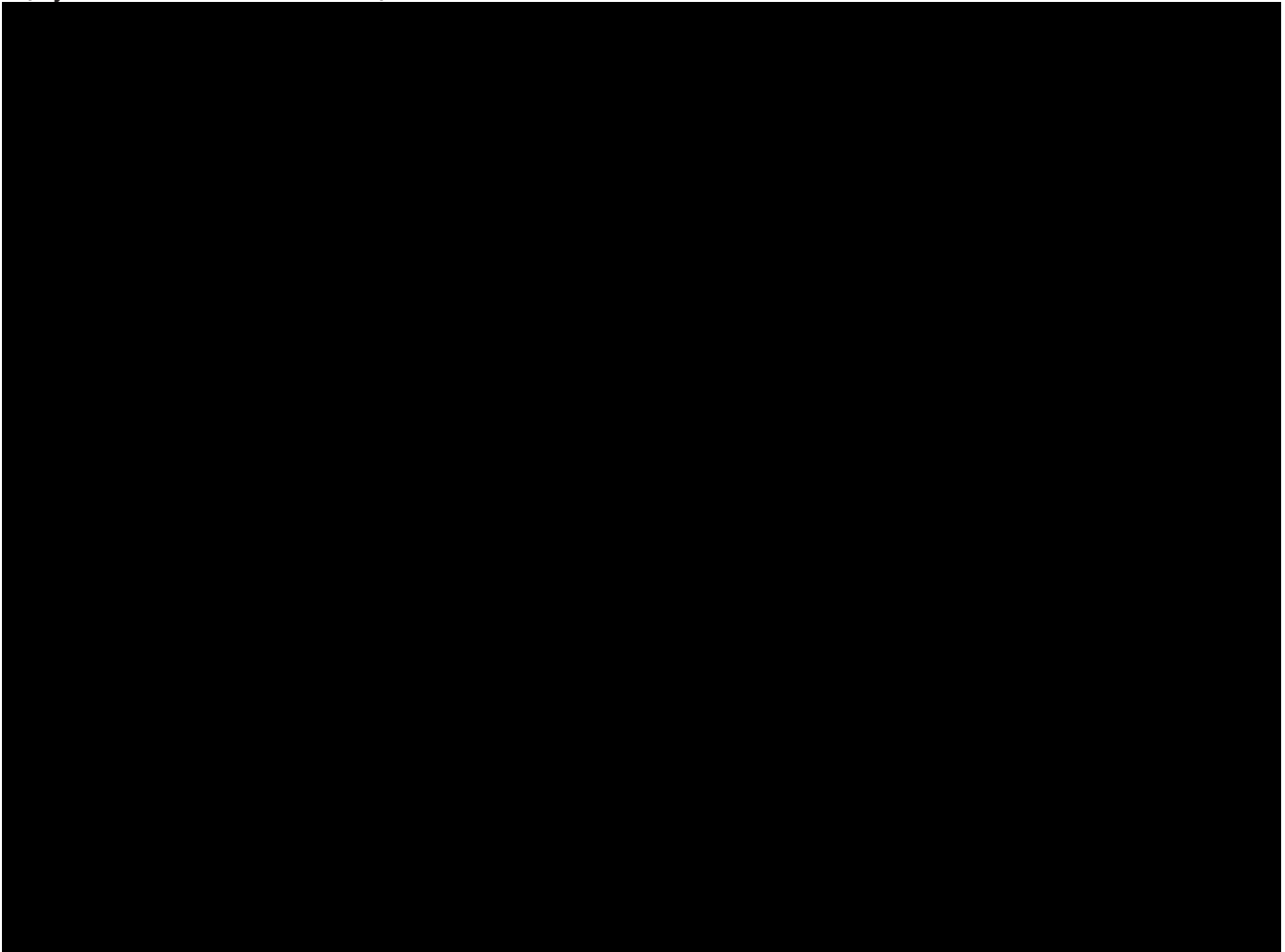
Photograph 3 Mature regrowth of RFEF, dominated by *Angophora subvelutina* and *Melaleuca styphelioides* in the eastern parts of the subject site (in the area of Flora Assessment 2, within proposed E2 zoned land) - note the narrow waterway, showing signs of stagnation (within the 'Blue' proposed E2 area)



The RFEF, which makes up the riparian corridors, varies in width surrounding the watercourses present on the subject site. The eastern most riparian corridor, located in the WSA nominated area and proposed as E2 zoned land, has an average width of 20-30m width either side of the banks. The characteristics of the riparian corridor, and watercourse itself are that of a minor-moderate waterway in the landscape, and has been allowed to regenerate to the maximum extent, whereas other parts of the corridor (to the north and south, within adjoining lots) have generally been more heavily cleared, and the corridor is significantly narrower. At a catchment scale, the characteristics of the watercourse in this area resemble a 2nd to 3rd order stream (as discussed further in **Section A.4.2**).

Adjoining the RFEF in the eastern extent of Lot [REDACTED], an area that is devoid of vegetation and is highly eroded has been mapped for inclusion in the E2 zone, which is not appropriate for inclusion in the zone, particularly in the context of the highly disturbed landscape with limited capacity for restoration, as shown in **Photograph 4**.

Photograph 4 Highly eroded area at the edge of the riparian corridor, but included in the proposed E2 zone (mapped green) (adjacent to Flora Assessment Area 2)



iii. Grasslands

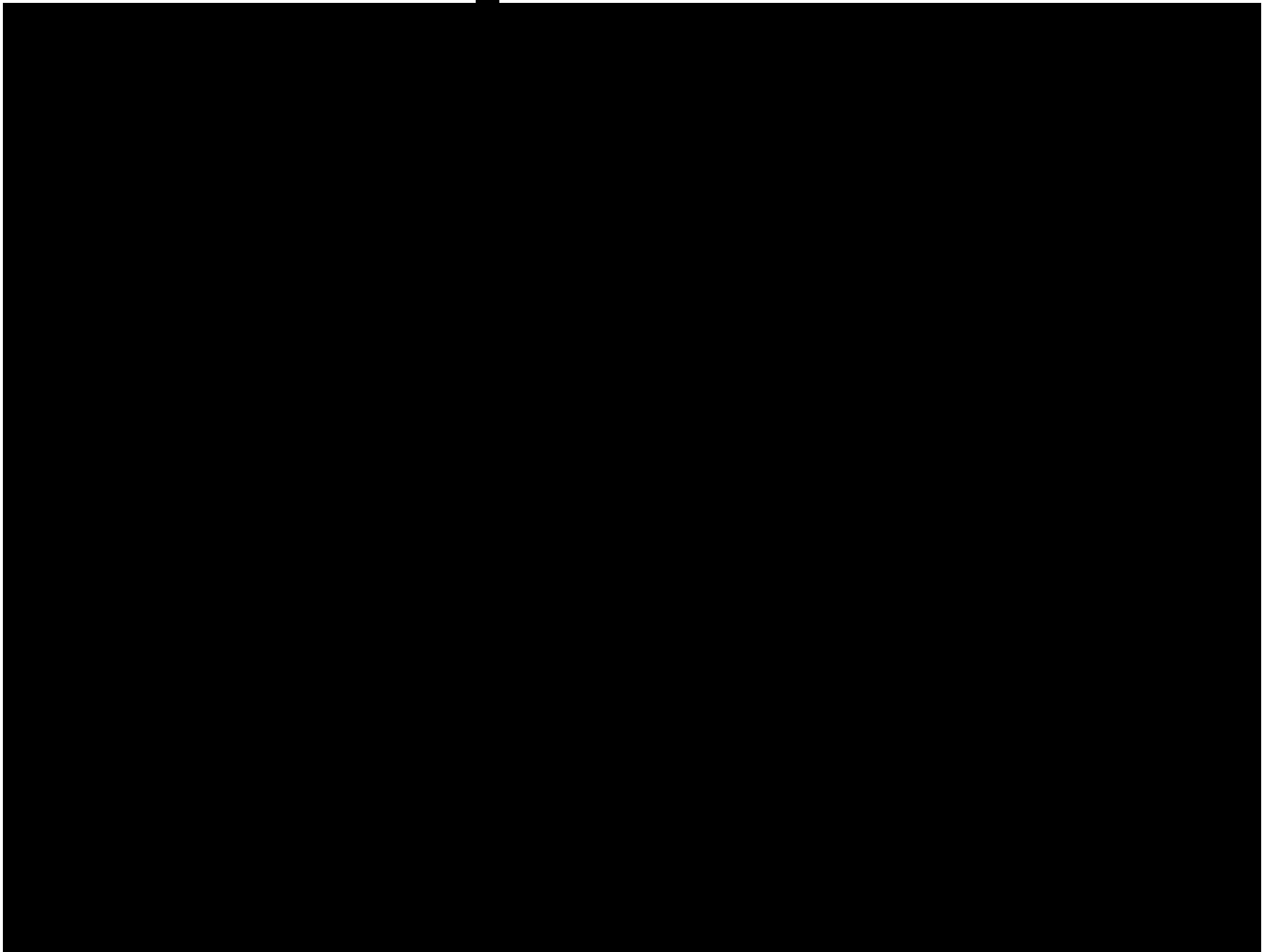
There are large areas of mostly exotic grassland across the site, with grassland being the predominant form of vegetation when the site is viewed as a whole. Grassland conditions vary across the subject site, depending on the agricultural practices, including pasture improvement, cropping and grazing. Although grassland areas adjacent to existing patches of woodland generally show a higher proportion of native herbs and forbs, the majority of the grassland areas are dominated by exotic species such as *Paspalum dilatatum* (Paspalum) and the non-endemic native *Cynodon dactylon* (Couch) which is extensively used as a pasture grass. Native grasses, which are generally recorded closer to the woodland patches, include *Chloris ventricosa* (Tall Chloris), *Aristida ramosa* and *Microlaena stipoides* (Weeping Grass).

An example of Exotic Dominated Grassland present throughout much of the subject site is shown in **Photograph 5**. Additionally, it was noted that some grassland zones at the edge of the riparian corridor have been included in the proposed E2 zone (e.g. green mapped area of Lot [redacted] but were not appropriate for inclusion in this zone, particularly in the context of the highly disturbed landscape with limited capacity for restoration (**Photograph 5**). Other areas of exotic grasslands have been included in the E2 zone, for example the green 'triangle' mapped at the eastern boundary of Lot [redacted] but do not have the habitat values appropriate

to this zoning. In total, approximately 2.5ha of grassland has been mapped for inclusion in the proposed E2 zone, as shown in **Photograph 6**.

The predominance of exotic grassland is consistent with the historic use of the site and clearing, grazing and cropping practices which have been carried out.

Photograph 5 Exotic dominated grassland within the subject site, located in areas designated as avoided for biodiversity – ie. the green categorisation on the eastern end of Lot [redacted] is incorrect (in the location of Flora Assessment 1 in Figure 5)



Photograph 6. Exotic dominated grassland within the subject site, located in areas designated as avoided for biodiversity – ie. the green categorisation where exotic dominated grassland exists in the proposed E2 zone, on the eastern boundary of Lot [redacted] is incorrect



A.4.2.2. Fauna Habitats

Fauna habitats present on the subject site are limited, due to the generally open nature of the vegetation and prior and current land uses, which provide insufficient cover and diversity for foraging, for the majority of fauna. However, resources present include:

- Waterbodies, in the form of farm dams and creeks;
- Scattered occurrences of hollow-bearing trees (mainly small hollows);
- Dead wood and logs;
- Fruiting and flowering trees and shrubs; and
- Grasslands

The existing habitats provide for a range of highly mobile species such as birds and bats, and large mammals including macropods. Common frog species would also be likely to occur, within the creek and dams present

on the subject site. It is noted however, that as the subject site will be in close proximity to the new WSA, the risk of bird strike being a consideration (for high-flying species) so the subject site may not be appropriate habitat to be enhanced for birdlife. Of the species with potential to occur, several are listed as threatened under the BC Act and/or the EPBC Act including; the Grey-headed Flying-fox (*Pteropus poliocephalus*), Southern Myotis (also known as the Large-footed Myotis) (*Myotis macropus*), Eastern False Pipistrelle (*Falsistrellus tasmaniensis*), Greater Broad-nosed Bat (*Scoteanax rueppellii*), Eastern Coastal Free-tailed Bat (also known as the Eastern Freetail Bat) (*Micronomus norfolkensis*) and the Yellow-bellied Sheath-tail-bat (*Saccolaimus flaviventris*). Other species with potential to occur include the Eastern Bent-winged Bat (*Miniopterus orianae oceanensis*) and Little Bent-winged bat (*Miniopterus australis*), although only as occasional foraging habitat, due to the lack of cave-roosting habitat onsite or close-by.

It is recommended that potential impacts on listed species are to be assessed at a future development stage, as required under the BC Act and EPBC Act. This includes consideration of any increased risk to fauna from road (and air strike), due to the proximity to the proposed transport corridors and future airport.

A.4.2.3. Outer Sydney Orbital and other land Identified for Infrastructure

A.i. Orbital Road

The conservation values of the area of land which has been marked as the OSO area are consistent with those of the portions of Lot [REDACTED] that are mapped as Non-certified – Avoid for Biodiversity (and included in part of the proposed E2 zone). Patches of young regrowth CPW occur over approximately 50% of the total area of the OSO mapped across the subject land, while the remainder is predominantly grassland/cleared. This entire area is proposed to be cleared for future infrastructure and not subject to the E2 zoning proposed for the adjoining land.

A.ii. Land to the east of the Waterhouse land

Land to the east of the subject site is also ear-marked for infrastructure in a similar way to the OSO area. This land, shown as part of Western Sydney International Airport (brown) in **Figure 3**, has similar conservation values as parts of the subject site, with a large patch of CPW mapped, but is not proposed to be zoned as environmental conservation.

A.4.3. Watercourses within subject site

The watercourse in the eastern part of the site (i.e. within the WSA nominated area) has a relatively narrow channel and shows indications of stagnation, nutrient pollution and/or low flow as evidence by the presence of algal films on the surface. This is shown clearly in **Photograph 3**.

The desktop assessments of topographic maps and review of the ecological documentation prepared for the DCPCP indicate that the watercourses passing through the subject site range from a 4th order stream (as per the Strahler ranking) in the eastern parts of Lot [REDACTED] (i.e within the WSA nominated area) to a 5th order or higher in the western parts of the subject site (i.e within the SCAs).

However, the onsite condition of the watercourse within Lot [REDACTED] (proposed E2 zoning) are not representative of a major waterway. This is likely due to changes to landform and flow paths upstream of the

subject site, in particular presence of multiple farm dams that comprise local 'drainage catchments' for 1st order streams and alter downstream flows towards the subject site.

It is further noted that land immediately upstream of the watercourse (e.g. Lot [REDACTED] which is also proposed within E2 zoning has very little riparian vegetation, with approximately 15m of vegetation on each bank. The proposed riparian corridor in this location is equally wide as on the subject site (with approximately 50m on each bank), but it is highly unlikely that restoration in this landscape would achieve such a major corridor, given the highly disturbed nature of the existing vegetation and lack of ability to naturally regenerate. Downstream, the existing riparian corridor narrows and widens in a patchy distribution of native vegetation, impacted by rural landuses.

In consideration of the site conditions, and at a landscape scale, it is suggested that the streams are more characteristic of 2nd and 3rd order streams in terms of corridor planning. When applying the Riparian Corridor Guidelines for Controlled Activities (under the *Water Management Act 2000*), published by the National Resources Access Regulator (NRAR), a 2nd order or 3rd order stream requires a 20m – 30m riparian corridor from the top of each bank (respectively).

It is further noted, that in consideration of the Water Management Act requirements, the guidelines allow for some types of works with riparian corridors, and this includes stormwater works, stream realignment and roads, in the outer 50% of the riparian corridor. For 3rd order and greater category streams, road crossings must include bridges or culverts. Where these 'non-riparian' uses have taken from the overall width of the corridor, it is possible to compensate and widen another part of the corridor using the 'averaging rule'.

A.4.4. Strategic Conservation Considerations

The regrowth TECs CPW and RFEF occur in varied patches across the subject site and include areas of relatively intact native vegetation in the eastern parts of Lot [REDACTED] i.e within non-certified areas of the WSA nominated area that are proposed for E2 Zoning (shown as blue and green in **Figure 6**). However, there are areas of inaccuracy with this mapping, and large areas of grassland/cleared land have been included in the E2 zone. The Non-certified – Avoided for Biodiversity (mapped in Green in **Figure 2**) includes 2 ha of grassland/cleared land (in patches labelled on **Figure 6**), which makes up 35% of the total area of that land category on the subject site.

When considered purely on a local scale on the basis of vegetation integrity and extent, it is acknowledged that much of the riparian corridor (mapped in blue), and a smaller portion of the biodiversity mapped land (mapped in green), which make up the proposed E2 zoned lands, have biodiversity conservation values that fit DCPCP criteria for maximising conservation of high quality remnants. However, when vegetation of the subject site is considered at a strategic or landscape scale, the feasibility for long term conservation is significantly reduced when future proposed land uses under the DCPCP are considered and proposed uses under the Aerotropolis SEPP and the infrastructure planning including 6 lane freeways, freight train lines; 4 lane highway and busy airport take-offs to isolate the proposed E2 area being under the ANEC 35 high noise areas.

As indicated in **Figure 6**, the Outer Sydney Orbital is proposed to be constructed to the immediate west and north-west of the proposed E2 conservation area while lands to the north-east, east and south are to be developed for the Nancy Bird Walton international airport and Aerotropolis agribusiness precinct. These future

land uses for the nominated areas and key transport corridors will sever and fragment the proposed E2 conservation area of the subject site. The vegetation in those other areas is of similar conservation value to that of the vegetated portions of the subject site, but is not proposed for conservation zoning. Once constructed and this vegetation is removed for infrastructure, it will create an isolated 'island' of native vegetation on the adjoining lands, that is detached from other areas of native vegetation.

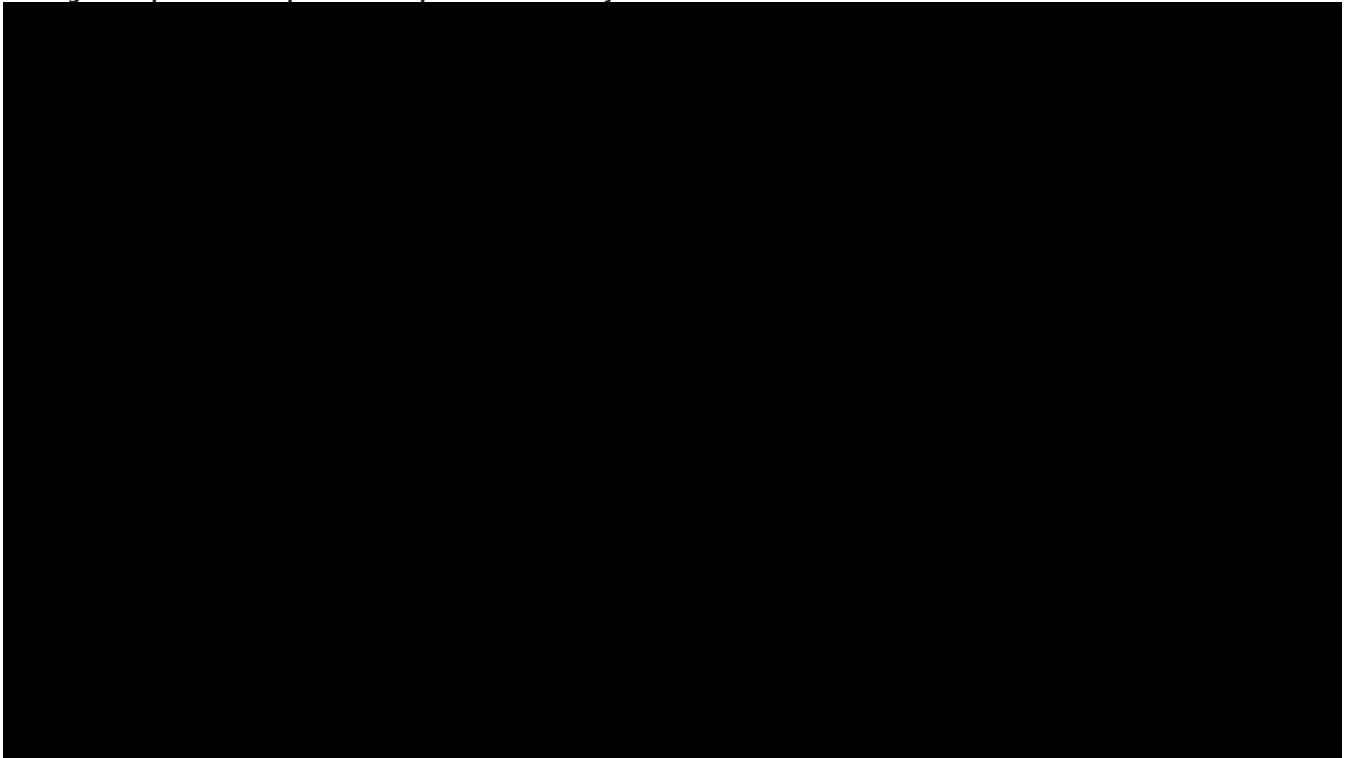
The Outer Sydney Orbital is proposed to be a minimum 6 lane motorway, and will be adjoined by a freight train line, with a total corridor width of 80m, and therefore presents a significant hostile barrier to the west once constructed. The presence of a motorway immediately adjacent to the site will significantly increase edge effects and weed incursion and also potentially increase other indirect impacts such as shading and increased dust, pollution and noise. The new airport to the east and limitations for vegetation planting within it will prevent connectivity to the east.

While the mapped watercourses currently indicate some level of future connectivity, upstream areas will largely be within the Agribusiness precinct. Future development of agriculture and agribusiness pose a risk of downstream flow of weeds and nutrients into the proposed E2 conservation land, and so may further impact long-term viability the site.

As the design of the Outer Sydney Orbital is yet to be confirmed, it is unknown whether the retention of the watercourses will enable any connectivity between the proposed E2 zone and SCAs further downstream or if flow patterns/drainage will be significantly modified for the construction of the Orbital. Although the parts of the subject site outside of the WSA nominated area are mapped as SCA and therefore imply the potential for some future connectivity, under the DCPCP not all of the mapped SCAs will be established as conservation land and developments consistent with land zonings can still be approved within the SCAs. Therefore, there is no guarantee that any connective vegetation will be present downstream of the proposed E2 zoned land.

A draft concept plan for future development of the subject site has been proposed (**Image 1**).

Image 1 Proposed Development Concept Plan for the subject site



Proposed Stage 1 design scheme

As this proposed development is consistent with current land zoning and complements proposed objectives in the adjacent agribusiness precinct, the potential for establishment of connective vegetation is reduced and the risk of isolation of the proposed E2 zone is increased.

The proposed E2 areas within the subject site currently do not occur within or adjacent to any regional corridors or protected lands, thus further increasing risk of isolation from future land uses. While CPW and RFEF can show some level of resilience to disturbance, the effective isolation of the vegetation within the proposed E2 conservation zone will require comparatively higher levels of management and maintenance to ensure long-term viability once future precincts and transport corridors are developed which contradicts the DCPCP decision making criteria of minimising costs of delivering the biodiversity outcomes. The increased indirect impacts on the proposed E2 lands from the future Orbital, airport and agribusiness precincts also do not ensure that the outcome of a long-term gain in biodiversity is feasible within the relevant parts of the subject site.

An integral component to the master planning is connectivity to the Agri-precinct and WSA through both the boundary to the WSA cargo end of the airport and the shared boundary between lot [redacted] and lot [redacted]. This section is currently categorised as green and is considered to be inaccurate as it comprises cleared exotic grassland. While vegetation outside of the proposed linkage road can be retained and maintained, development within proposed E2 zones under the DCPCP is to be limited to environment protection works so, the construction of the road would not be allowed under the proposed E2 zoning. This would result in the removal of key development opportunities and linkages to the Aerotropolis in order to achieve very limited, potentially unviable, long-term conservation outcomes. This is largely inconsistent with the aim of the DCPCP to support the delivery of infrastructure, housing and jobs for Western Sydney in a planned and strategic way that also

protects and maintains key biodiversity values of Western Sydney as the proposed E2 zoning prevents a key development linkage with the Aerotropolis in order to conserve what will become an isolated island of vegetation once other proposed developments are implemented.

Areas outside of the WSA nominated areas are largely mapped as SCAs, with a total area of approximately 196 ha. As a large proportion of the site comprises exotic dominated grassland (within the areas not mapped with vegetation covering the majority), reflecting current and past land uses, the mapping of the entire subject site as a SCA is not considered appropriate. Any future studies for potential conservation areas should be limited to riparian corridors and patches of woodland to enable potential future conservation while enabling continuation of current land uses under the existing RU1 land zoning. Any future development of this land will require an appropriate assessment under the BC Act and EPBC Act, including demonstration of avoidance, mitigation and offsetting (in accordance with the Biodiversity Assessment Method), making the proposed considerations of the SCA a duplication of this required assessment.

A.4.5. Inconsistencies between DCPCP and Aerotropolis SEPP zonings

Under the DCPCP, 'Environment and recreation' areas (ENV zoning) identified by the Western Sydney Aerotropolis Plan, and the Aerotropolis SEPP, will not be considered for biodiversity certification for development under the Plan. As the parts of the subject site within the WSA nominated area that are non-certified are mapped ENV under the Aerotropolis SEPP, the mapping of non-certified land under the DCPCP is consistent with the Aerotropolis SEPP.

The ENV zoning under the Aerotropolis SEPP allows for certain developments (such as roads) with consent. This is inconsistent with the objectives for E2 zoned land under the DCPCP, which state that development that will be permitted with consent under the E2 zone will be limited to environmental protection works and flood mitigation works.

The types of development with consent allowed within the non-certified lands that overlap with the Aerotropolis SEPP 'ENV' zoned land requires further clarification.

A.4.6. Proposed Amendments to Zoning

Based on surveys and studies carried out by Cumberland Ecology, there is little justification for an E2 zoning to be imposed as proposed for parts of the subject site. This is due to the historical clearing of the land and consequent fairly young regrowth, the poor quality water in the main stream, the fact that native vegetation will exist (post construction of infrastructure) only in small isolated pockets and the context of the subject site. As the site will sit partly within and partly adjacent to the WSA area, the site will become an isolated pocket of conserved vegetation. This means that the conservation value of this section of the subject site will be further undermined and diminished. When the site is viewed within the broader planning context, in our view there is inadequate justification for the environmental conservation zoning.

Even if the Department is minded to maintain some E2 zoning (which we say is not appropriate in this case), the mapping of land as 'non-certified-avoided for Other purposes' and 'non-certified - avoided for biodiversity' as proposed by the Department is not entirely accurate and does not reflect actual on site conditions. The map below at **Figure 6** overlays the proposed classification proposed by the Department with the vegetation

communities verified on site by Cumberland Ecology. In summary, the key errors with the proposed mapping are as follows:

- The small green triangle at the western end of Lot [REDACTED] combined with a small green triangle on the boundary in Lot [REDACTED] (identified in **Figure 6** below) and mapped as non-certified-avoided for biodiversity appears to have been erroneously mapped as this area only contains exotic grassland. The photograph at **Photograph 6** is taking from this area of land and clearly shows that it is exotic grassland. This can also clearly be seen from the aerial mapping. These green triangle areas should therefore be classified as certified in the same way as the rest of the lot [REDACTED] namely as 'certified - urban capable' land.
- The riparian zone marked in blue as 'non-certified-avoided for other purposes' is not reflective of the on-site conditions of the stream and therefore should be narrower in size (to 20-30m rather than the current 50m area). This would likely reduce the area mapped in this zone by at least 25%.
- The green area mapped as 'non-certified-avoided for biodiversity' does not properly take into account the exotic dominated grassland and also highly eroded lands within the area and so should be smaller in size.

A.5. Conclusions

The areas mapped for E2 zoning within the WSA nominated area contain patches of young CPW and RFEF and presents as a second order stream, which is of poor water quality, and also patches of exotic grassland, and denuded land with severe erosion. These areas are not appropriate for inclusion in this category, particularly in the context of the highly disturbed landscape with limited capacity for restoration (ie. entirety of Lot [REDACTED] DP 259698, and unmapped portion of Lot [REDACTED]).

The watercourse within the proposed E2 zoning is narrow in channel width, and shows sign of stagnation, and contains a riparian corridor of between 20-30m in width (from each bank). The site conditions are not characteristic of a major watercourse (as is typical of 4th order streams), and it is more consistent with a 2nd or 3rd order stream, and would require a 20-30m riparian corridor (fully vegetated) to be maintained. This would likely reduce the area mapped in this zone by at least 25%.

When native vegetation and riparian habitats that currently exist within the proposed E2 zone are considered at a local scale and purely on the basis of habitat integrity and scale, the mapped habitats of the site have conservation value, in terms of the presence of TEC vegetation, but with reduced connectivity in the landscape this significance is reduced. However, when a wider spatial and temporal context is considered and the future impacts of the Western Sydney Orbital and land zoned for agriculture and agribusiness are factored in, the long-term conservation values of the land are clearly compromised.

In future, the native vegetation and riparian habitats in the eastern portion of the subject site (i.e the proposed E2 zone) will be fragmented and connections to the west will be severely compromised or severed. Moreover, the new airport and adjacent agribusiness precinct prevents any meaningful long-term ecological connectivity to the east.

The aim of the DCPCP is to support the delivery of infrastructure, housing and jobs for Western Sydney in a planned and strategic way that also protects and maintains key biodiversity values of Western Sydney. The proposed E2 zoning for parts of the subject site is not considered to be consistent with these aims as the proposed E2 zoning prevents a key development linkage with the Aerotropolis in order to conserve what will become an isolated island of vegetation once other proposed developments are implemented. If the proposed E2 zoning is gazetted, key development opportunities and linkages to the Aerotropolis will be denied in order to achieve very limited, flawed conservation outcomes, contrary with two of the goals of the DCDP:

- Minimise the cost of delivering the biodiversity outcome; and
- Ensure the biodiversity outcome is feasible.

The land proposed to be zoned for environment conservation is not land which justifies such a zoning when the findings of the site view are considered in conjunction with the context of the site and the proposed development of the surrounding area. The Site sits adjacent to the new airport, under the flightpath and 80m from a four line major arterial road and will have the OSO running through the site. In our view, the site does not have the connectivity to other areas of biodiversity value to justify the environment conservation zoning. If gazetted to be E2 it will undermine the clear intention of the Aerotropolis SEPP 'to allow connectivity to the vital Agri-precinct'.

The mapping of the majority of the subject site as Strategic Conservation Areas, is also not considered appropriate given the high proportion of exotic grasslands and pasture from current and prior land uses. Any potential future conservation considerations for areas outside the WSA nominated area should be limited to riparian corridors and patches of woodland to enable retention of biodiversity values while enabling continuation of current land uses and future development under the existing MRA and other planning categorisations.

FIGURES



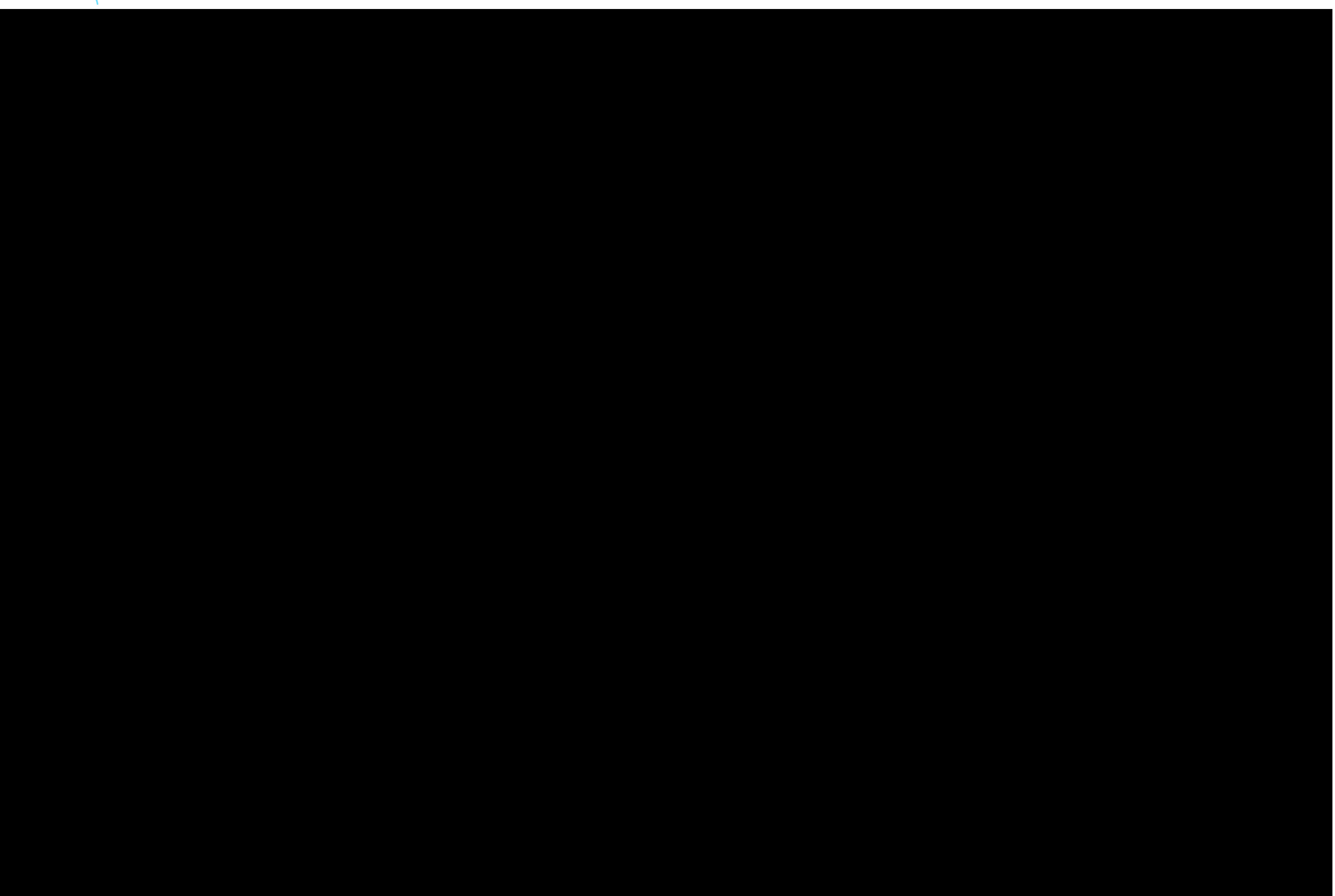


Figure 1. Location of the subject site

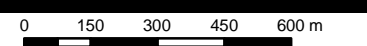


Figure 2. Identified Waterhouse Group Land and Land Categories

