

Mr Scott Lennon
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By email: scott.lennon@lennonpm.com.au>

Dear Scott,

Thank you for the opportunity to answer Council's latest critique of our ecological documentation accompanying the proposed development in DA/228/2020.

I have addressed each of the key issues in turn as listed by Council, and provided a response to each. Council's commentary is shown in italics.

1. *The application in its current form is not supported as the proposed loss of Cumberland Plain Woodland would be "Serious and Irreversible."*

In determining whether or not the development would be considered Serious and Irreversible, the fundamentally recognised ecological principle of assessing the impact at the local level i.e. the local occurrence of the entity being impacted has been considered. This is an important consideration as long-term loss of biodiversity at all levels arises mainly from the accumulation of losses and depletions of populations at a local level (Sourced from NSW Department of Primary Industries 2008 Threatened Species Assessment Guidelines, February 2008).

Not only are the Guidelines relied upon not relevant to the current legislation (being the *Biodiversity Conservation Act 2016* and not the *Threatened Species Conservation Act 1995* and the relevant parts of the *Environmental Planning and Assessment Act 1979*), but Council is also using the quoted assessment principle out of context. The degree of impact on a threatened entity is considered in the context of the local level at the **beginning** of the assessment process, and is a fundamental threshold trigger when determining whether a BDAR is required.

Once a BDAR is in train, then the consideration of SAII is to be undertaken against a different set of criteria. These criteria are detailed in the most recent Guidance document (DPIE 2019) and their application is also referred to in the Department's September 2019 document *Biodiversity Assessment Method Operational Manual Stage 2*. Specifically, on page 27 of this document when discussing the assessment criteria for SAII of threatened communities, the following is stated (emphases added):

*"While assessment criteria do not explicitly require reporting on **the extent of the TEC in New South Wales this should be reported on, as this is the scale at which the principles of SAII operate.**"*

Therefore, Council is incorrect in their reliance on local extent when assessing SAIL. Further, I maintain that my assessment of SAIL per the Guidance document (DPIE 2019) is correct and does not lead to the conclusion that a SAIL is likely to occur for Cumberland Plain Woodland.

2. *The proposed development will result in the removal of 90% of the identified local occurrence of Cumberland Plain Woodland once approved development on adjacent lands is enacted with 0.13 ha that will be retained on the property to the north managed under a Vegetation Management Plan. Insufficient information has been provided to demonstrate the 'avoid and minimise' principle has been applied by the developer. No detailed alternative building layouts have been provided to assess whether a viable stand of Cumberland Plain Woodland can be retained. The application proposes the complete removal of Cumberland Plain Woodland from the site which represents 90% of the local occurrence. In this regard it has in no way demonstrated avoidance of impacts to the critically endangered ecological community.*

Again Council is incorrectly reverting to the local occurrence of Cumberland Plain Woodland, which is the inappropriate assessment context – see above.

While plans of alternative footprints were not explicitly provided in the BDAR, Council is aware of at least two alternative layouts – one with no vegetation retained, and another with vegetation retained at the front and connected to the riparian corridor along Second Ponds Creek.

As discussed in the BDAR, I have relied upon advice from the client and consultant team that the retention of the patch of Cumberland Plain Woodland at the front of the site would impose untenable compromises to other critical components of the project including car park configuration, accessways, street presentation, and bushfire buffers. Such constraints would seriously threaten the project's financial viability.

The proposed footprint is a compromise solution to the difficult configuration of existing vegetation, and is recognised as such in the BDAR. It is openly acknowledged that the footprint has not been able to avoid impact on Cumberland Plain Woodland, but also that such decisions are not only driven by the ecological component of the triple bottom line. As detailed in the BDAR, it is considered that the far superior connectivity and inherent viability of the proposed vegetation retention pattern is adequate to allow for the loss of a small and isolated patch of vegetation at the front of the property. Along with retirement of the necessary offsets, this would result in no nett loss.

3. *There is currently a difference in opinion regarding the vegetation communities that occur on site.*
- a. *Council acknowledges the difficulty in classifying vegetation in areas that have been subject to disturbances that has resulted in a reduction in diagnostic plant species.*
 - b. *The justification in the Biodiversity Development Assessment Report for the way Plant Community Types have been assigned has not been adequate. This is due to the applicant's accredited assessor drawing a boundary with Cumberland Plain Woodland (at the top of the site) and Shale Sandstone Transition Forest across the lower parts of the site.*

It is difficult to identify vegetation types and PCTs in highly modified environments such as on site, because the floristic composition has been profoundly degraded by more than 200 years of destructive land uses, and complicated in more recent times by drought and extreme temperatures. This is also

further confused by the candidate vegetation communities sharing many species, and the fact that one of them is an ecotonal community.

Nevertheless, despite Council's claims to the contrary, all of the standard procedures listed by Council were used by me to classify and map the vegetation on site. Further, due to the potential ambiguity of this site's vegetation, I consulted with specialist Council officers on several occasions regarding their opinion of my procedure, decision rules, and mapping. I am surprised and disappointed that although at the last site meeting we adopted an agreed position on the distribution of Cumberland Plain Woodland, this criticism has not only been levelled at the vegetation analysis in the BDAR, but also amplified.

- c. *The property immediately to the north (Lot 33 DP 834050) has been subject to two development applications in which two different ecological consultants have identified the native vegetation community over the site as Cumberland Plain Woodland.*

Shale Sandstone Transition was not recorded by either assessment. (Anderson Environment & Planning and Eco Logical Australia). These findings are in contrast to the findings of the Biodiversity Development Assessment report for the current application. The figure below shows the vegetation map provided in these reports.

This is no surprise, as there are very few species we can use to aid in the definition of the communities, and there is a great deal of overlap between the candidate communities, as mentioned above. Also, I have no way to judge how the other consultants determined their boundaries as these reports or studies were not made known to me by Council, despite their apparent reliance upon them.

It reflects poorly on Council that they have not shared this misgiving earlier and the mapping / analyses that they find more acceptable, despite my providing a number of opportunities to do so.

Notwithstanding analyses by others of other sites, I stand by my vegetation analysis of the subject site.

- 4. *If the application provides additional information/ justification for the selection of the best fit Plant Community Type and if it is found that Cumberland Plain Woodland is distributed more extensively across the site then another assessment can be undertaken to determine if the development would then be considered 'Serious and Irreversible.'*

- a. *If it is found Cumberland Plain Woodland does occur more extensively across the subject site there would be greater opportunity for the retention of this community along the rear of the site. It would also increase the mapped extent of the local occurrence of Cumberland Plain Woodland and therefore provide greater opportunities for a significant impact to the local occurrence to be avoided. Retaining an area of Cumberland Plain Woodland would enable the application to better demonstrate that it has applied the avoid and minimise principles to the proposal.*

Council's position here seems to be that if I would agree to a radical change to the interpretation of the vegetation distribution I have observed and described, then the decision re SAII may be favourable. However, I discerned a clear change in the flora from the top to the bottom of the site, as well as a topographic shift and the appearance of sandstone outcropping at the rear. I cannot ignore the evidence that leads me to the conclusions in my BDAR re the vegetation classification and distribution and, in the absence of persuasive argument from Council, I stand by my analysis of the subject site.

However, again I note that due to the ambiguity inherent in such sites, I invited comment and guidance on a number of occasions in order to avoid this very argument, yet Council's drastically different interpretation has come to light only now.

- b. The application would need to conserve a larger continuous band of vegetation, than is currently proposed, that connects with the Second Ponds Creek corridor to be able to conclude no 'Serious and Irreversible' impacts to Cumberland Plain Woodland.*

I see no justification for this assertion, particularly given Council's misunderstanding of the spatial context for determining SAI.

- c. The retention of a larger area of vegetation adjoining the Second Ponds Creek corridor would also align with the development controls in The Hills Shire Council Development Control Plan Appendix C – Section 2.13 by enhancing identifiable corridors and linkages. The Office of Environment and Heritage supported the retention a larger contiguous area at the rear of the site rather than two disjointed areas as proposed by the development concept would provide for a better biodiversity outcome.*

The proposal assessed in the BDAR satisfies this very control and objective, with the retention of vegetation at the rear that is continuous with the riparian corridor. This criticism demonstrates the superiority of the proposed configuration

Thank you for referring my BDAR and analysis for peer review by two reputable and experienced consultancies (EcoLogical Australia and Cumberland Ecology). I understand that while we may differ in some detail, their conclusions do not differ significantly to mine. I hope that the additional assessment will give Council peace of mind regarding the validity of my work and conclusions.

Yours sincerely,



Elizabeth Ashby

**Principal Consultant
Keystone Ecological**