

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-26
DA Number	228/2020/JP
LGA	The Hills Shire Council
Proposed Development	Concept Development for a Mixed Use Development and Early Works including Tree Removal and Bulk Earthworks
Street Address	Lot 12 DP 833069 and Lot 34 DP 834050, Nos. 328-330 Annangrove Road, Rouse Hill
Applicant/Owner	Lennon Project Management / Abax Contracting Pty Ltd
Consultant/s Town Planner: Architect: Ecologist: Arborist: Landscape Architect: Engineering: Surveyor: Acoustic: Traffic: Bushfire: Contamination:	City Plan Leffler Simes Architects Keystone Ecology, Ecological Australia and Cumberland Ecology Advanced Treescape Consulting Patterson Design Studio Robert Moore and Associates Robert Moore and Associates Atkins Acoustics Stantec Bushfire Hazard Solutions GeoEnviro Consultancy
Date of DA lodgement	23 August 2019
Number of Submissions	Nil
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV exceeding \$30 million \$40,000,000 as lodged (amended proposal \$14,260,820)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • Biodiversity Conservation Act 2016 • State Environmental Planning Policy No 55 – Remediation of Land • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • State Environmental Planning Policy (Infrastructure) 2007 • Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River • The Hills Local Environmental Plan 2019 • Draft Environment SEPP • The Hills Development Control Plan 2012 Part B Section 7 – Industrial • The Hills Development Control Plan 2012 Part C Section 1 – Parking • The Hills Development Control Plan 2012 Part C Section 3 - Landscaping
List all documents submitted with this report for the Panel's	<ul style="list-style-type: none"> • Biodiversity Development Assessment Report – Keystone Ecological Version 2.1 dated 15 July 2020 • Letter by Keystone Ecological undated (received 10 December 2020)

consideration	<ul style="list-style-type: none"> • Mills Oakley Advice dated 23 September 2020 • Applicant's Peer Review Cumberland Ecology dated 9 December 2020 • Applicant's Peer Review Ecological Australia dated 10 December 2020
Clause 4.6 requests	NA
Summary of key submissions	<ul style="list-style-type: none"> • Ecological impacts
Report prepared by	Robert Buckham Principal Coordinator Development Assessment
Report date	18 February 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Not Applicable**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

The key issues that need to be considered by the Panel in respect of this application are;

- The application is in part a concept application made under Section 4.22 of the EP&A Act and also seeks consent for site preparation works such as earthworks and removal of trees. The concept component of the application seeks approval of a building layout and envelopes across the site up to a maximum height of 16 metres and accommodation of a maximum of 10,020m² of floor space.
- The key issue relating to the proposed development is the impact the proposed development will have on the biodiversity significance of the site. Section 7.16 of the Biodiversity Conservation Act 2016 requires the consent authority to refuse to grant consent where a development will have a serious and irreversible impact. Based on the proposed development footprint, it is considered that the proposed development will result in a Serious and Irreversible Impact on Cumberland Plain Woodland.
- The proposed development has not been designed to avoid and minimise impacts to the critically endangered ecological communities and threatened species present within the site. The proposed development will result in the removing the entire occurrence of Cumberland Plain Woodland on site and population of *Meridolum corneovirens* (Cumberland Plain Land Snail).
- Cumberland Plain Woodland has been identified as an ecological community that is at risk of a serious and irreversible impact by the NSW Department of Planning, Industry and Environment (DPIE) as it meets Principle 1 and 2 set out in clause 6.7 of the *Biodiversity Conservation Regulation 2017*. The proposed development will contribute to the risk of Cumberland Plain Woodland becoming extinct because:
 - It will cause a further decline of the ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline by reducing the distribution and habitat quality and increasing fragmentation of Cumberland Plain Woodland.
 - it will further reduce the ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size
- The proposal is defined as 'Nominated Integrated Development' under the provisions of Section 4.46 of the Environmental Planning and Assessment Act 1979 as the proposal requires approval from the Department of Primary Industries – Natural Resource Access Regulator (NRAR) under the provisions of the Water Management Act 2000. The Department of Primary Industries - Water have provided their General Terms of Approval.
- The application was publicly exhibited and notified to surrounding properties for 31 days and no submissions have been received.

The Development Application is recommended for refusal.

BACKGROUND

The development site is zoned B6 Enterprise Corridor and SP2 Infrastructure (Road Widening) under the provisions of The Hills LEP.

The site contains Cumberland Plain Woodland (CPW) and Shale Sandstone Transition Forest (SSTF). These plant type communities are identified as being critically endangered ecological communities listed under the NSW *Biodiversity Conservation Act 2016* and *Environment Protection and Biodiversity Conservation Act 1999*. Due to the presence of the CPW and

SSTF plant type communities within the site's boundaries, approximately 2.82 hectares (or 46% of the site area) has been mapped as having biodiversity values.

An amendment was notified on the NSW legislation website on 24 January 2020 for the subject site that made an amendment to Schedule 1 of The Hills Local Environmental Plan 2019 to allow 'specialised retail premises' as an additional permitted use which will enable a commercial development of up to 60,000m² of bulky goods floor space.

The subject application was initially lodged over three sites including Lot 13 DP 833069 Annangrove Road, Rouse Hill. The applicant subsequently amended the application to only two sites being 328 and 330 Annangrove Road only. This is primarily related to the applicant's intention to further development of the corner site under a separate development application (1180/2020/HC) currently with Council for assessment. Upon formally amending the application the Capital Investment Value was reduced to \$14,260,820. The Panel Secretariat advised that the application is to remain with the Panel as it was originally lodged as an application that met the panel criteria.

DA 172/2018/HC was approved by Council under Delegated Authority on 23 May 2019 for the construction of a mixed-use development with at-grade and basement car parking at the corner of Annangrove Road and Withers Road. This DA related to the part of the site with a street address of 332-334 Annangrove Road (Lot 13 in DP833069). Earthworks associated with this application have commenced.

DETAILS AND SUBMISSIONS

Owner:	Abax Contracting Pty Ltd.
Zoning:	B6 Enterprise Corridor, SP2 Infrastructure
Area:	3.377 Ha
Existing Development:	Vacant Dwelling
Contribution	NA
Exhibition:	Yes, 31 days
Notice Adj Owners:	Yes, 31 days
Number Advised:	22
Submissions Received:	Nil

PROPOSAL

The applications seeks approval in part for a staged development under Section 4.22 of the EP&A Act. Specifically, the subject DA seeks approval for a "stage 1" concept proposal for the development of the site for the purpose of a mixed-use development with a bulky goods component.

The amended proposal seeks consent for the approval of a building layout and envelopes for various blocks across the site up to a maximum height of 16 metres as per THLEP 2012 and accommodating a maximum of 10,020m² of floor space over three levels and 389 parking spaces.

Approval is also sought as part of this application for site preparation works such as removal of 677 trees and earthworks.

ISSUES FOR CONSIDERATION

1. State Environmental Planning Policy (State and Regional Development) 2011

Clause 20 and Schedule 7 of SEPP (State and Regional Development) 2011 provides the following referral requirements to a Joint Regional Planning Panel:-

Development that has a capital investment value of more than \$30 million.

The subject application was initially lodged over three sites including Lot 13 DP 833069 Annangrove Road, Rouse Hill. The applicant subsequently amended the application to only two sites being 328 and 330 Annangrove Road only. This is primarily related to the applicant's intention to further development of the corner site under a separate development application (1180/2020/HC) currently with Council for assessment. Upon formally amending the application the Capital Investment Value was reduced to \$14,260,820. The Panel Secretariat advised that the application is to remain with the Panel as it was originally lodged as an application that met the panel criteria thereby requiring referral to, and determination by, a Regional Planning Panel.

In accordance with this requirement the application was referred to, and listed with, the Sydney Central City Planning Panel for determination.

2. Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 (BC Act) establishes the requirements for the protection of biodiversity, outlines the requirements for the regulating a range of development activities on land and provides mechanisms for the management of impacts resulting from development activities. Part 7 of the BCA sets out the requirements for biodiversity assessment and sets out significant impact threshold criteria that trigger entry into the Biodiversity Offset Scheme (BOS).

Development or an activity is likely to significantly affect threatened entities if:

1. The amount of native vegetation being cleared exceeds clearing thresholds; or
2. The development is "likely to significantly affect threatened species" using the test of significance in Section 7.3 of the BCA; or
3. The development has any impact within an area mapped on the Biodiversity Values Map; or
4. The development is to be carried out in a declared Area of Outstanding Biodiversity Value.

The BOS must be applied to applications under Part 4 Environmental Planning and Assessment Act 1979 wherever the project is likely to have a 'significant impact' on threatened biodiversity based on the criteria outlined above.

A Biodiversity Development Assessment Report (BDAR) by Keystone Ecological dated 14 November 2018 was submitted with the application. The BDAR identifies the site as containing Critically Endangered Ecological Community Cumberland Plain Woodland and Shale Sandstone Transition Forest as well as the threatened fauna *Meridolum corneovirens* (Cumberland Plain Land Snail).

The BDAR was reviewed by Council's Senior Biodiversity Officer who raised concerns with the level of information and adequacy of the detail provided in the report, particularly relating to the impact this will have on the critically endangered and threatened species present on the site. The comments provide at the time to the applicant are outlined below;

The report contains a number of errors that needs to be addressed before this BDAR can be accepted. In addition the development and scale of vegetation loss is not supported as:

- The proposed development was discussed at a pre-lodgement meeting on 5 July 2019 (DA 165/2019/PRE) and notes were supplied to the applicant. It appears that Ecology related comments were not considered during the development of the proposed development design.*
- The proposal is not consistent with the Development Controls in Section 2.13 of the DCP.*
- The development will impact on one known threatened fauna species*
- The proposal will impact on areas containing the highest biodiversity value.*
- The site contains two critically endangered ecological communities that are both SAI entities.*

The consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values. Insufficient information has been supplied to assist with council's decision if the proposed development will result in a Serious and Irreversible Impact on Cumberland Plain Woodland and Shale Sandstone Transition Forest.

Consideration by the applicant is required to demonstrate that vegetation with the highest biodiversity value will be avoided and retained on site or additional vegetation will be retained than what is currently proposed.

Additional comments were also provided regarding the technical deficiencies or further information required in the Biodiversity Development Assessment Report.

A site meeting was undertaken on 18 December 2019 with the Applicant and their Ecological Consultants. An amended BDAR dated 11 March 2020 was submitted in response to Council's initial comments and discussions at the site meeting. Council's Senior Biodiversity Officer reviewed the amended BDAR and provided further comments relating to the information contained within the report. Further BDAR's dated 27 May 2020 and 15 July 2020 were also submitted and reviewed. Council staff remained concerned with the impact of the proposed development on the flora and fauna identified on the subject site.

A further meeting between Council staff and the applicant was undertaken on 09 September 2020 and further correspondence from Keystone Ecological and legal advice from Mills Oakley was provided by the applicant in support of their application.

The correspondence was reviewed and the following assessment was made;

Summary of key issues

- 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).

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.*
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. The justification does not take into account:*
 - i. *Consideration of Soil and Geology factors (including available mapping) against the NSW Scientific Determinations for Cumberland Plain Woodland and Shale Sandstone Transition Forest.*
 - ii. *Comparison and analysis of the plot data against the characteristic species within the NSW Scientific Committee determinations for Cumberland Plain Woodland and Shale Sandstone Transition Forest.*
 - iii. *Results of the BioNet Vegetation Classification Tool analysis to support the selection of the best –fit Plant Community Type.*
 - iv. *Council maintains that the extent of Cumberland Plain Woodland over the site is greater than what has been reported in the applicant's Biodiversity Development Assessment Report.*
 - 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.*

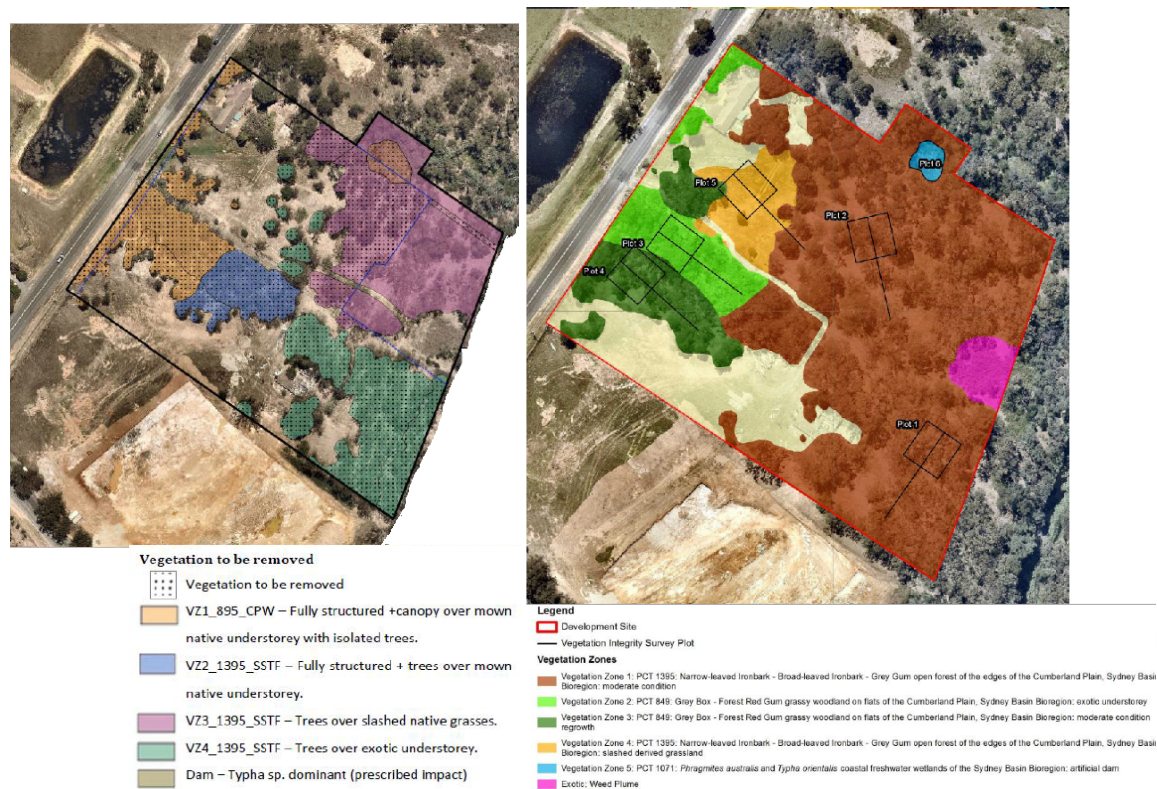


4. *If the application provides additional information/ justification for the selection of the best fit Plant Community Type and if it is found that Cumberland Plain Woodland is distributed more extensively across the site then another assessment can be undertaken to determine if the development would 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.*
 - 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.*
 - 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 applicant engaged two other ecological consultants', Eco Logical Australia and Cumberland Ecology to peer review the vegetation communities and extents and Serious and Irreversible Impact (SAIL) assessment. Both firms primarily agreed with Keystone's assessment of vegetation communities and information provided in the SAIL assessment. Council staff provided the following comments following a review of those reports;

The following are summarised points from the peer review.

1. **Validation of vegetation communities:** Cumberland Ecology only undertook a desktop review and did not validate the vegetation. Cumberland Ecology supported Keystones assessment. Eco Logical Australia undertook field surveys and plots and supports the boundary between the two vegetation communities used by Keystone. ELA has identified 'marginally' more Cumberland Plain Woodland and Shale Sandstone Transition Forest on site than is shown on Keystone maps mainly due to ELA mapping an area of SSTF Derived native grassland that was not identified by Keystone. I have provided Keystones and Eco Logical Vegetation map below side by side.



Council comment: I am satisfied with both Eco Logical and Cumberland Ecology's assessment and justification for mapping vegetation across the site.

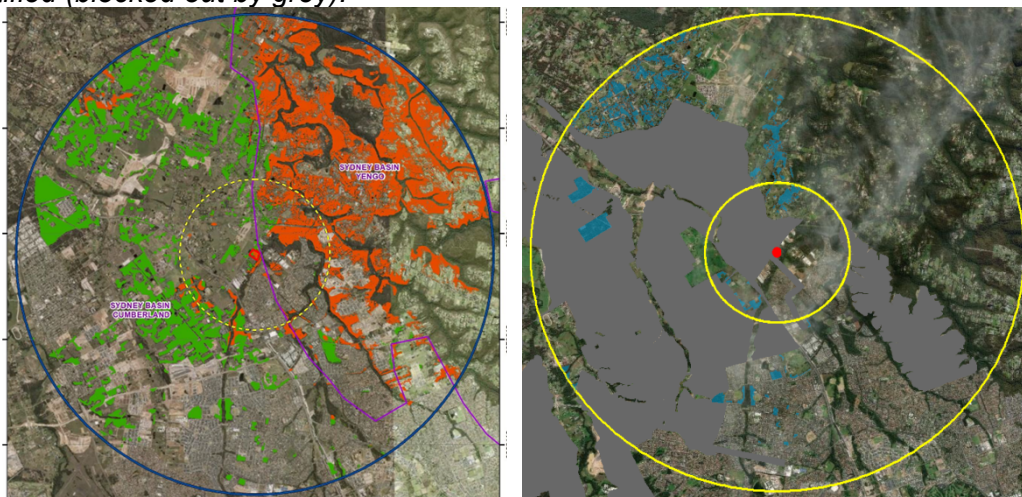
2. **Serious and Irreversible Impact Assessment:** Eco Logical provided an updated Serious and Irreversible Impact Assessment. They did not address all the questions as these may not be relevant for this assessment. ELA note there were some difference in the spatial analysis of the TECs within 1,000 ha, 10,000 ha, and the areas of TECs within the development site, which resulted in slightly different results. Despite the differences ELA supports Keystone's assessment of SAIL on Cumberland Plain Woodland and Shale Sandstone Transition Forest.

ELA included in the report that at the scale of 1,000 ha the removal of 0.6-0.86% removal of Cumberland Plain Woodland and 1.3%-1.41% removal of Shale Sandstone Transition Forest. The impact is not considered significant at this scale of assessment. Eco Logical's SAIL assessment also states that the development will result in an increase in the direct or indirect fragmentation or isolation of areas of CPW. All CPW in this development site will be removed therefore increasing fragmentation of remaining CPW in the locality.

Council comment: Similar to Keystone, Eco Logical has included in their calculation areas of Cumberland Plain Woodland and Shale Sandstone Transition Forest that is located on biodiversity certified lands. As shown below (image on left) ELA have shown the location of both Cumberland Plain Woodland (green) and Shale Sandstone Transition

Forest (orange) within the 1,000 ha and 10,000 ha assessment circles. However, this does not factor in lands that are identified as Biodiversity certified, some of which has already had CPW removed (since the date of the imagery used) or is approved to be removed. In reality there is likely to be little to no conservation of CPW within the biodiversity certified lands upon completion of development and therefore relying on this vegetation is not accurate.

The image on the right shows the refined extent based on my knowledge of Cumberland Plain Woodland (Blue) within the same assessment circles and also areas that are certified (blocked out by grey).



An accurate assessment is difficult to complete due to efforts required to ground truth the extent and condition of Cumberland Plain Woodland with the 1,000 ha and 10,000 ha assessment area while factoring in what developments have been approved or currently under review within the Hawkesbury or Blacktown Local Government Areas.

Cumberland Plain Woodland in The Hills Local Government Area is under increasing threat from development. Within the LGA CPW is generally restricted to small pockets within council reserves and low to moderate condition patches of CPW on private land.

The difference in spatial analysis and data interpretation between Keystone, Eco Logical and Councils assessment is shown in the Table below showing the proposed percentage removed.

Community	1,000 ha assessment circle			10,000 ha assessment circle		
	Keystone	ELA	Council	Keystone	ELA	Council
Cumberland Plain Woodland	0.6%	0.86%	1.35&%	0.04%	0.05%	0.15%
Shale Sandstone Transition Forest	1.3%	1.41%	2.68%	0.09%	0.18%	0.47%

- Cumberland Ecology has stated that the proposed development will only impact small areas of relatively degraded Cumberland Plain Woodland (CPW) and Shale Sandstone Transition Forest (SSTF) that are unlikely to be viable in the long-term.

Cumberland Ecology further state that the patches of CPW and SSTF that are proposed to be removed only comprise a very small portion of the local and regional extent of the corresponding threatened ecological communities as defined in the BAM. Therefore the impacts associated with the proposed development are not considered to reduce the

viability of the TECs at a local, regional or state level and are ultimately to contribute significantly to the extinction of either CPW or SSTF.

Council comment: I do not agree with the statement that the Cumberland Plain Woodland on site is considered 'degraded' Cumberland Ecology did not undertake a site inspection but regardless, CPW is often degraded by the nature of it's location and previous disturbances. The Final Determination for this community acknowledges that the community may be disturbed and may be legitimately represented by degraded remnants.. As iterated previously in my comments there is difficulty in providing an accurate percentage loss assessment due to vegetation that has already been removed and/or have existing approval to be removed. Council's assessment is still based on limited knowledge of what approvals are currently in place for removal of vegetation as part of the approved Development Applications. An accurate assessment would involve reviewing all Development Applications that will result in impacting Cumberland Plain Woodland within The Hills Shire Council, Blacktown Council and Hawkesbury Council to determine existing approvals and validating vegetation on the ground.

4. Keystone, Eco Logical and Cumberland Ecology have made comment in their assessment that local occurrence is not a requirement when assessing SAI which was something that was referred to in my previous summary. It is noted that in addition to assessing the information provided in the SAI Assessment, council has used this principle of considering local occurrence to assist in making its determination.
5. The applicant has not supplied an alternative footprint for council to consider. As previously identified the applicant had provided a concept plan showing the patch of Cumberland Plain Woodland to be retained. The applicant has only supplied a response in writing that the development would not be financially viable if the patch was to be retained. Alternative options have not been provided to Council with the exception of the concept plan provided with the Planning Proposal for the site showing the Cumberland Plain Woodland could be retained.
6. Statements have been made by Keystone and Cumberland Ecology regarding the viability of the patch following development. Determination of whether or not the patch would remain viable could only be made upon reviewing plans. There are similar examples of vegetation retained surrounded by development. The patch would be close enough to adjacent vegetation that dispersal of genetic material can occur with wind and highly mobile fauna guilds. It is noted that the composition over time could change, however the patch would have natural seed bank and require only minimal weeding based on its current condition.
7. The application in its current form is not supported as the proposed loss of Cumberland Plain Woodland would be "Serious and Irreversible" due to the following:
 - a. The development has not attempted to try and to avoid or minimise the impact on CPW with the entire occurrence on site removed.
 - b. The development would result in increasing fragmentation of remaining Cumberland Plain Woodland in the locality.
 - c. Although based on current spatial analysis the loss is represented as a small percentage. There are lots of factors that affect this calculation and cannot speak for other adjoining Local Government Areas.
 - d. Council has decided to consider the fundamentally recognised ecological principle of assessing the impact at the local level i.e. the local occurrence of the entity being impacted in addition to information provided in the SAI assessment. 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). 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. There is a new development application for this lot that could result in a different outcome for the amount of CPW retained on this site.

- e. Cumberland Plain Woodland is a listed entity of SAI due to Principle 1 – species or ecological community currently in a rapid rate of decline. Approval of the removal of the entire occurrence of Cumberland Plain Woodland on site will contribute to the further rapid decline of this community.*

The applicant has made numerous attempts at addressing the concerns raised by Council staff and has not demonstrated that the proposal complies with the requirements of the BC Act. In particular the proposal is considered to have a serious and irreversible impact on the critically endangered ecological community Cumberland Plain Woodland.

Clause 7.16(2) of the BC Act states “*The consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values*”. As noted above, Council staff are of the opinion that the proposed development is likely to have a serious and irreversible impact and the applicant has not demonstrated contrary to this.

Clause 7.16(4) of the BC Act states the following:

(4) If the determining authority is of the opinion that the proposed activity to which this Division applies is likely to have serious and irreversible impacts on biodiversity values, the determining authority—

- (a) is required to take those impacts into consideration, and*
- (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts if the activity is to be carried out or approved.*

In relation to Clause 7.16(4)(a), Council staff have identified the impacts of the development on the population of Cumberland Plain Woodland have not been adequately justified or mitigated. In relation to Clause 7.16(4)(b), the applicant has not provided appropriate measures to minimise or avoid the impacts of the development. As such the proposal has not demonstrated that the proposal will not have a serious or irreversible impact on biodiversity values and the consent authority must therefore refuse consent.

3. State Environmental Planning Policy No. 55 Remediation of Land

This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment.

Clause 7 of the SEPP states:-

- 1) A consent authority must not consent to the carrying out of any development on land unless:*

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

A Phase 1 Preliminary Site Investigation Report has been undertaken by GeoEnviro Consultancy to determine whether historical land uses have the potential to contaminate the site and affect the viability of the proposed development.

The investigation found that the site has been used for residential purposes since the 1960s and 1970s and does not appear to have been subjected to any potentially contaminating activities. However, the partially dilapidated dwelling house located on Lot 12 in DP833069 was found to have broken asbestos sheetings and fragments scattered in and around the house and it is considered there is the possibility of buried asbestos under the existing dwelling house and separate garage on Lot 34 in DP834050. The visual site inspection also confirmed on the presence of asbestos impacted fill in the north-east of the site.

Based on these findings the Preliminary Site Investigation Report recommends that sampling and analysis be undertaken in locations across the site where it has been identified that there is a risk of ground contamination or contamination of fill, which can be undertaken after the demolition and clearing of all buildings and structures across the site. Remediation will be required if contamination is found, to make these areas suitable for the proposed development. The PSI also recommends that any asbestos material encountered in the demolition and site clearing is removed by a licensed contractor and correctly disposed of at an approved landfill site.

In this regard, it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP 55.

4. The Hills Local Environmental Plan

The DA was lodged under The Hills LEP 2012. The Hills Local Environmental Plan 2019 came into force on 6 December 2019.

Clause 1.8A of The Hills LEP 2019 states that:

“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Nevertheless, the provisions of The Hills LEP 2019 are the same as those contained in the previous The Hills LEP 2012. The only change is the change of name.

a. Permissibility

The land is zoned B6 Enterprise Corridor and SP2 Infrastructure (Local Road Widening) under The Hills Local Environmental Plan 2012. The concept application does not seek consent for any uses, however is foreshadowed to include uses such as bulky goods premises, food and drink premises and neighbourhood shops. These uses are permitted in the B6 Enterprise Corridor Zone.

The land zoned SP2 Infrastructure (Local Road Widening) has been accounted for and does not form part of the development site subject to the concept proposal.

In view of the above, it is considered that the proposed development satisfies the provision for permissibility with respect to The Hills LEP 2012.

b. Zone Objectives

The land is zoned B6 Enterprise Corridor and SP2 Local Road Widening under The Hills Local Environmental Plan 2012. The objectives of the B6 zone are:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*

The objectives of the SP2 zone are:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

The proposed development is considered to be consistent with the above objectives of the B6 Enterprise Corridor and SP2 Local Road Widening zones.

c. Development Standards

The following addresses the principal development standards of The Hills LEP 2012:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.3 Height	16 metres	16 metres	Yes
4.4 Floor Space Ratio	1:1 (33,700sqm)	0.29:1 (10,020sqm)	Yes

d. Other Provisions

The proposal has been considered against the relevant provision of the LEP. Specific regard has been given to Clauses:

- 6.2 Public utility infrastructure; and
- 7.2 Earthworks

The proposal has been considered against these provisions and satisfies each of the standards and objectives relating to each of the clauses.

5. Compliance with The Hills Development Control Plan 2012

The proposal has been assessed against the provisions of The Hills Development Control Plan 2012 and the following addresses the relevant development controls of the DCP:

- Part B Section 7 – Industrial
- Part C Section 1 – Parking
- Part C Section 3 – Landscaping

The development complies with the relevant controls with the exception of the following:

a. Biodiversity

Clause 2.13 of The Hills DCP 2012 Part B Section 7 – Industrial states;

- a) Significant flora and fauna species, ecological communities and their habitats are to be preserved.*
- b) Development should be designed to retain existing bushland and fauna habitats, including identifiable corridors and linkages.*

The objectives of clause 2.13 of The Hills DCP 2012 Part B Section 7 – Industrial is as follows:

- i. To conserve and protect the biodiversity of the Shire including habitats of threatened flora and fauna species and communities.*

As outlined in Section 2 of this report relating the Biodiversity Conservation Act, the proposal is not considered to be consistent with the Development Controls in Section 2.13 of the DCP.

DEPARTMENT OF PRIMARY INDUSTRIES - NRAR

The proposal was lodged as Nominated Integrated Development under the provisions of the Environmental Planning & Assessment Act, 1979 as approval is required from the Department of Primary Industries – Natural Resources Access Regulator under the provisions of the Water Management Act, 2000. The Department of Primary Industries - Water have provided their General Terms of Approval (refer to Attachment 9).

CONCLUSION

The proposal has been assessed against Section 4.15 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy – State and Regional Development 2011, State Environmental Planning Policy No. 55 – Remediation of Land, Biodiversity Conservation Act 2016, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered unsatisfactory for the reasons outlined in this report. As currently proposed, the application demonstrates a serious and irreversible impact on the critically endangered ecological community Cumberland Plain Woodland.

The proposal is not supported and refusal is recommended.

IMPACTS:

Financial

This matter may have a direct financial impact upon Council's adopted budget as refusal of this matter may result in Council having to defend a Class 1 Appeal in the NSW Land and Environment Court.

The Hills Future Community Strategic Plan

The proposed development is inconsistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for satisfactory urban growth without adverse environmental or social amenity impacts and ensures a consistent built form is provided with respect to the streetscape and general locality.

RECOMMENDATION

The Development Application be refused for the matters and specific reasons listed below:

- The proposal is likely to have a serious and irreversible impact on the biodiversity values of the subject site.
 - The site is considered unsuitable for the development.
 - The proposal does not satisfy the relevant state and local planning provisions.
 - The proposal will have an unacceptable impact on the natural environment.
 - The proposal is not in the public interest.
1. The Development Application does not satisfactorily address Section 7.16(2) of the Biodiversity Conservation Act 2016 as the proposal is likely to have a serious and irreversible impact on the biodiversity values of the subject site.
 2. The Development Application is not satisfactory for the purposes of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the proposal has not adequately considered the likely impacts of the development on the environment relating to ecology.
 3. The Development Application is not satisfactory for the purposes of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development based on the development footprint proposed/ the impacts on ecology.
 4. The proposed development does not comply with Clause 2.13 – Biodiversity of The Hills Development Control Plan 2012 and results in an unsatisfactory impact on the natural environment.
 5. The Development Application is not satisfactory for the purposes of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 as the proposal is not in the public interest.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. LEP Zoning Map
4. LEP Height Map
5. Biodiversity Values Map
6. Vegetation Map by Keystone Ecological
7. Concept Plan
8. Earthworks Plan
9. NRAR General Terms of Approval

<< Insert ALL attachments below the section break >>