

29 October 2021

**Mills Oakley**  
ABN: 51 493 069 734

Our ref: AJWS/BMSS/3546751

**BY ELECTRONIC SUBMISSION TO  
DEPARTMENT WEBSITE**

All correspondence to:  
PO Box H316  
AUSTRALIA SQUARE NSW 1215

Attention: Steve Hartley  
Executive Director  
Department of Planning, Industry and Environment  
Green and Resilient Places Division  
Locked Bag 5022  
Parramatta NSW 2124

**Contact**  
Ben Salon +61 2 8035 7867  
Email: bsalon@millsoakley.com.au

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

Dear Mr Hartley

**Submission on Draft Cumberland Plain Conservation Plan  
70 Glendowner Street, Gilead (Rosemeadow)**

We act for the WKH Services Pty Ltd ('**Client**'), the registered proprietor of 70 Glendowner Street, Gilead (Rosemeadow), legally described as Lot 21 in DP 100643 (the '**Site**').

We write on behalf of our Client in relation to the Draft Cumberland Plain Conservation Plan ('**DCPCP**') and associated mapping and **enclose** the following documents for your review and consideration:

1. Statement prepared by Travers Bushfire and Ecology dated 26 October 2021;
2. Bushfire Protection Measures Diagram prepared by Conacher Travers dated 5 September 2005;
3. Bushfire Protection Assessment prepared by Travers Bushfire and Ecology dated 6 July 2021; and
4. Assessment of Lot 21/100643 Campbelltown: Koala Occupancy and Habitat prepared by Biolink dated June 2021.

It is acknowledged that the public exhibition period for the DCPCP has passed, however we understand that the Department is currently reviewing the feedback received and has not yet finalised the mapping. For this reason, we seek your indulgence to consider our Client's **important** submission now within that process and ahead of finalising the plan and its mapping.

**Background**

The Site and the adjoining property at 72 Glendower Street are currently zoned RU2 – Rural Landscape under the *Campbelltown Local Environmental Plan 2015* (NSW) (the '**CLEP**'). Under the *CLEP* RU2 Rural Landscape zoning, the Site enjoys a range of permissible uses, most of which

**NOTICE**

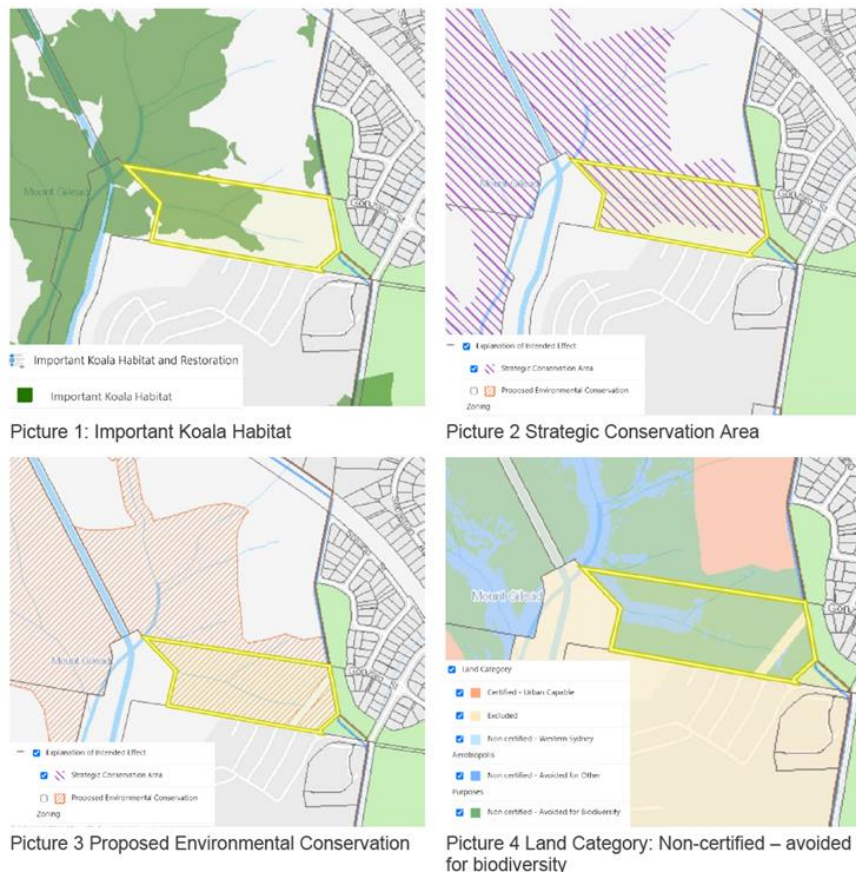
The information contained in this email/facsimile is confidential and intended only for the use of the addressee and it may also be privileged. If you are not the intended recipient, any use, disclosure or copying is prohibited. If you have received this email/facsimile in error, please telephone the sender and return it by mail to the sender.

**would not** be available on the Site under the zoning and mapping proposed by the DCPCP.

The DCPCP proposes to rezone the whole of our Client's Site to E2 – Environmental Conservation as part of an extensive strategic conservation plan for the wider Western Sydney area (see **Figure 1** below). We note however that the adjoining site at 72 Glendower Street, also owned by our Client, has been appropriately excluded from the DCPCP.

As can be seen in Figure 1 below, the DCPCP proposes to map the following **constraints** over the Site:

- a) Important Koala Habitat;
- b) Strategic Conservation Area;
- c) Proposed Environmental Conservation; and
- d) Non Certified – Avoided for biodiversity.



**Figure 1: Proposed Mapping for Site - Source: DCPCP**

For the reasons that will follow, in our view these constraints are **inappropriate and unjustified**.

### **Failure to Ground Truth**

We are instructed that the Site was **not ground truth surveyed or assessed** as part of the 'strategic conservation planning process' undertaken in connection with the preparation of the DCPCP, **despite**

#### **NOTICE**

The information contained in this email/facsimile is confidential and intended only for the use of the addressee and it may also be privileged. If you are not the intended recipient, any use, disclosure or copying is prohibited. If you have received this email/facsimile in error, please telephone the sender and return it by mail to the sender.

**indication to the contrary in the Department's notification letters to our Client.** Rather, the identification of the Land for the purposes of rezoning arose from superficial 'desktop' studies without actual assessment of site-specific considerations relevant to the Land. The Department's 'Highlights' publication on the DCPCP dated August 2020 emphasised the importance of such an assessment of site specific considerations, as it provided that '[t]he department will review and, where necessary, update the mapping of urban-capable land and strategic conservation areas following feedback from the exhibition'. Our Client seeks for that to happen in relation to the Site before the plan and mapping are finalised.

### **Our Client's Submissions**

We submit that the proposed zoning of our Client's Site under the DCPCP, is both **inappropriate and unjustified** for a number of important reasons, which we outline in detail below.

1. In 2006, DA/2828/2005 was approved which granted consent for the construction of a retirement village at 72 Glendower Street, which immediately adjoins the Site to the south – and appropriately is proposed to be excluded from the operation of the DCPCP. In accordance with the conditions of consent, a Vegetation Management Plan was prepared ('VMP'). The VMP has been endorsed and now forms part of the development consent. Relevantly, the VMP provides a 50m wide Asset Protection Zone ('APZ') that extends along the northern boundary of 72 Glendower Street which is extracted in **Figure 2** below (see also Bushfire Protection Measures Diagram enclosed). As identified above, under the DCPCP, the approved APZ is proposed to be zoned E2 – Environmental Conservation which is **entirely inconsistent and antipathetic with its current approved use.**



**Figure 2: Approved APZ**  
**Source: Statement prepared by Travers - 26 October 2021**

#### **NOTICE**

The information contained in this email/facsimile is confidential and intended only for the use of the addressee and it may also be privileged. If you are not the intended recipient, any use, disclosure or copying is prohibited. If you have received this email/facsimile in error, please telephone the sender and return it by mail to the sender.

2. The proposed zoning under the DCPCP **does not** accurately reflect the actual extent and location of the core koala habitat in the area. As demonstrated in the enclosed assessment prepared by Biolink, the Site **does not contain core koala habitat**, rather it contains potential koala habitat (see page 11). On that basis, we are instructed that our Client has engaged with Council, in accordance with the assessment and for the purposes developing the Site, to prepare and implement a management plan for koala re-vegetation.
3. The creeks and waterway features are mapped incorrectly over the eastern portion of the Site.
4. In addition and as outlined in the enclosed Statement prepared by Travers Bushfire and Ecology dated 26 October 2021, the DCPCP provides that certain categories of land are excluded from the application of the plan (as 72 Glendowner Street is). This includes land that is already developed, land where development is underway, land that is environmentally protected, or land that has a **specific special purpose**. The material enclosed demonstrates that parts of the Site have a special purpose, being the APZ, and therefore **should be excluded from the DCPCP**. Further to this, we are instructed that our Client is in the process of developing the Site to extend the existing retirement village into the eastern part of the Site.
5. The material enclosed **clearly demonstrates** that it is **only** the north western portion, rather than the whole Site, that is appropriately identified as being subject to the proposed rezoning and mapping under the DCPCP. The remainder of the Site is either subject to a previously approved APZ or does not require rezoning owing to existing conditions demonstrated in the assessment prepared by Biolink.
6. The failure to actually carry out the level of survey and assessment in respect of the Site as claimed to have been carried out in the notification letters issued to our Client (and, more than likely, other land in the locality proposed to be similarly rezoned) impedes the opportunity for not only our Client, but the wider community to make informed submissions on all aspects of the DCPCP, and prevents a proper assessment of the intended effect of the plan, which offends the objects of the *Environmental Planning and Assessment Act NSW 1979* ('Act') in respect of community engagement, including under Division 3.3.
7. In circumstances where the Department has not carried out any on-site surveys and where the mapping contains errors, the findings of the enclosing material should be applied and the E2 conservation zoning of the eastern and southern portions of the Site should be **removed**.
8. 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 DCPCP, were it to be made in this form, and based upon the available data.

#### NOTICE

The information contained in this email/facsimile is confidential and intended only for the use of the addressee and it may also be privileged. If you are not the intended recipient, any use, disclosure or copying is prohibited. If you have received this email/facsimile in error, please telephone the sender and return it by mail to the sender.



9. The failure to carry out the requisite ground truth assessment despite indications to the contrary in the notification letters would likely raise issues of a denial of procedural fairness that may leave the validity of any resulting planning instrument open to challenge.

The enclosed material **clearly supports** our Client's position that the rezoning proposed by the DCPCP in respect of the Site is not warranted as it is without site-specific and strategic merit. In our view this clearly warrants an amendment of the DCPCP to reflect that the Site **will not be rezoned** as currently proposed. Rather, the Site should be mapped to reflect the effect of the development consent and VMP that applies to it, and to reflect to actual situation on the ground.

If the Site were rezoned as proposed, the current use of the Site would be essentially frustrated as it would prevent necessary clearing of vegetation to maintain the APZ, in addition to any proposed future use.

Could you kindly respond within **14 days of the date of this letter** to confirm that this letter and the enclosed documents have been received and will be considered by the Department in its assessment and finalisation of the DCPCP accordingly.

If you have any questions or require further information, please contact Anthony Whealy on (02) 8035 7848 ([awhealy@millsoakley.com.au](mailto:awhealy@millsoakley.com.au)) or Ben Salon on (02) 8035 7867 ([bsalon@millsoakley.com.au](mailto:bsalon@millsoakley.com.au)).

Your Sincerely



Ben Salon  
Senior Associate  
**Enc**

**NOTICE**

The information contained in this email/facsimile is confidential and intended only for the use of the addressee and it may also be privileged. If you are not the intended recipient, any use, disclosure or copying is prohibited. If you have received this email/facsimile in error, please telephone the sender and return it by mail to the sender.