

16 December 2021

Our ref: BMSS/AJWS/3546751

All correspondence to:  
PO Box H316  
AUSTRALIA SQUARE NSW 1215

Mr Alex O'Mara  
Group Deputy Secretary  
Department of Planning, Industry and Environment  
Place Design & Public Spaces Division  
12 Darcy St  
PARRAMATTA NSW 2150

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

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

**BY ELECTRONIC SUBMISSION TO  
DEPARTMENT WEBSITE**

**CC: Steve Hartley, Executive Director**  
**Elizabeth Irwin, Director Conservation & Sustainability**

Dear Mr O'Mara

**Submission on Draft Cumberland Plain Conservation Plan  
70 Glendower St, Gilead (Rosemeadow)**

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

**Background**

On 29 October 2021, we made a submission on the Draft Cumberland Plain Conservation Plan (the '**DCPCP**') and associated mapping on behalf of our Client. On 1 November 2021, Mr Steve Hartley confirmed receipt of our Client's submission on the DCPCP. A copy of the submission is **enclosed** for your reference.

At the heart of our Client's detailed submission is that **a failure to ground-truth the desktop studies** that produced the constraint mapping proposed by the DCPCP means that the proposal to zone the whole of the Site E2 – Environmental Conservation is erroneous as the environmental qualities of the whole Site do not warrant that zoning. For example, the Site **does not contain core koala habitat** as detailed in the constraint mapping. Further, it is **only** appropriate that the north western portion of the Site, rather than the whole site, be zoned and mapped as proposed by the DCPCP.

Our Client's submission is **founded** by the documented studies of highly regarded biodiversity (Travers Environmental) and koala experts (Bio Link) who have been surveying, monitoring and managing this land and adjacent land over the past years. These studies demonstrate the errors highlighted in our Client's submission on the DCPCP.

As detailed in our Client's submission, if the Site were rezoned as proposed by the DCPCP, the current use of the Site would be **unnecessarily frustrated** for reasons including that it would prevent necessary clearing of vegetation to maintain an APZ required by a vegetation management plan associated with DA/2828/2005 (which benefits the adjoining land at 72 Glendower St), in

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addition to any **proposed future use of the Site**. In our Client's view this is entirely unacceptable as the proposed mapping and zoning **does not reflect the environmental qualities of the Site**.

Our Client's submission, and subsequent correspondence with Ms Irwin, seek an amendment to the DCPCP mapping to reflect the actual situation on the Site before the Cumberland Plain Conservation Plan (the '**CPCP**') is made.

### **The Department's Response**

On 4 November 2021, Mr Hartley advised by letter, amongst other things, that:

... future formal modification to the approved CPCP is expected and this will be able to resolve any minor errors or inconsistencies at a site scale.

Our Client is troubled by this response in circumstances where it appears to be proposed that constraint mapping and zoning will (presumably only for expediency) be erroneously imposed on the Site, hampering its use, and at some unknown future time there will be an unknown process to possibly modify the constraint mapping and zoning to correct minor errors or inconsistencies.

It seems absurd to us that the CPCP would be **erroneously made**, knowing the constraint mapping and zoning do not reflect the actual environmental qualities of the Site, and that Government agencies are willing to **ignore** errors that have already been identified.

### **Next Steps**

In light of the above, our Client seeks an on-site meeting with the appropriate Department Officers, including Ms Irwin, so that the errors in the proposed DCPCP mapping and zoning can be highlighted and discussed with the view to seeing constraint mapping and zoning amended before the CPCP is made.

We note that should the CPCP be made without such an amendment, the validity of the CPCP would be **liable to legal challenge** on grounds including that there has been a **denial of procedural fairness by way of a failure to give proper and genuine consideration of our Client's submission, and that the CPCP has been made for in improper purpose**. This would be especially so as we have squarely raised these issues. Accordingly, if the CPCP was made without amendment it would be a brazen and flagrant breach of the *Environmental Planning and Assessment Act 1979* (NSW) and the rules of natural justice.

We ask that you confirm the steps the Department will take in response to these issues within **7 days of the date of this letter**.

If you have any questions, please call Anthony Whealy on direct line +61 2 8035 7848 or Ben Salon on direct line +61 2 8035 7867.

Yours sincerely



**Anthony Whealy**  
**Partner**

Accredited Specialist — Local Government and Planning

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