



Wednesday, September 01, 2010

The General Manager  
Penrith City Council  
PO Box 60  
PENRITH NSW 2751

**Objection to DA10/0790  
Stage 1E - Staged Torrens Title Subdivision x 98 Residential Lots, 5 Residue Lots & Public  
Roads**

To Whom It May Concern:

The Western Sydney Conservation Alliance Inc (WSCA) objects to the above named Development Application (DA) by Delfin Lend Lease (DLL). The DA will result in the clearing of a significant amount of Cumberland Plain Woodland (CPW) which is listed at a State and Federal level as a critically endangered ecological community. It also destroys the habitat for the endangered Cumberland Land Snail which has been found on the DA site. Council must demand that Species Impact Statements (SIS) be provided to address the impact to CPW and the snail. Council must insist that DLL address the provision of offsets within their development land as the Regional Park (RP) can not be considered an offset as per *the Principles for the use of biodiversity offsets in NSW*

<http://www.environment.nsw.gov.au/biocertification/offsets.htm>

The DA is part of a development proposal that is not in the public interest. It fails miserably to meet the principles of Ecologically Sustainable Development, it destroys Penrith's natural heritage, it fails to provide sustainable transport solutions, it will add to the overpopulation of the Penrith region, it will exacerbate Penrith's traffic congestion and public infrastructure problems.

The Statement of Environmental Effects (SEE) is flawed. DLL's consultants have again doctored reports that paint a picture that this DA and the development of the ADI Site will result in positive environmental and social outcomes.

WSCA asserts that this DA is not in the Public Interest and will have a significant impact on Penrith's natural heritage notably its critically endangered CPW which provides habitat for a range of flora and fauna species. We add the following comments specifically in regards to the impact the DA will have on the environment.

**Comments**

Cumberland Ecology, notably David Robertson, has been employed by DLL since the late 1990's and has consistently produced flawed environmental assessments on their behalf. He, again, has authored a document that claims the clearing of critically endangered CPW is negligible and in any case is offset by the adjacent 900 ha RP. Again he states that for those reasons a SIS is not required. Council needs to review his poor record for rigorous environmental assessment especially in decisions decided in the Land and Environment Court.

Penrith Council needs to carefully consider this DA in regards to the provision of offsets for the

clearing of CPW. Has Council sighted any document that states categorically that the Regional Park has been set aside for the purpose of offsetting the loss of vegetation zoned by SREP 30 as urban or employment? Cumberland Ecology's report attached to the SEE consistently and categorically states that the RP is the offset measure for the clearing of CPW and other vegetation within DLL development areas. The RP is DLL's magic offset pudding. Where's the register keeping track of how much land has been offset, who is calculating the offset ratios. All of this so-called offsetting appears piece meal and ad-hoc with consent authority's simple turning a blind eye due to being on side with DLL.

This whole matter of the RP being DLL's offset mechanism needs to be addressed and investigated by Penrith Council.

DLL had nothing to do with the conservation of the RP. In 1997 a nomination was lodged with the Australian Heritage Commission (AHC) to list 1100 hectares (including the entire Western Precinct) on the Register of the National Estate (RNE). DLL objected to that interim listing nomination, as they were allowed to, and Biosis was employed by the AHC to assess DLL's objection. Biosis upheld the objection reducing the interim listing area by 20 or so hectares. DLL then objected again and, in an unheard of decision, was allowed this second chance to object by the AHC. This time their objection was assessed by Ian Perkins, who surveyed the Western end of the site, including the location of this DA, during a time when the vegetation was routinely slashed to the ground, and they upheld DLL's objection reducing the AHC listed area to 828 ha. (Our claim that the Perkins study was flawed is now justified by this DA which finds those very areas considered not to contain CPW now are mapped as CPW by Cumberland Ecology – who helped oppose the interim listing in 1997)

In 2001 Robert Hill the then Federal Environment Minister made a political decision due to pressure placed on Jackie Kelly the local member for Lindsay to declare that the Federal Govt would ensure the protection of the entire 828 ha area listed on the RNE. Robert Hill was obliged under the AHC Act to ensure the protection of the RNE lands. DLL was opposed to the protection of the RNE lands.

When master planning for the ADI Site began DLL had proposed a development as large as 12000 houses with the only conservation outcome being the protection of creek lines and a golf course. This then morphed into 10,000 houses a conservation area of a few hundred hectares, then into 8000 houses and a conservation area of only 600 ha then the draft SREP 30 proposed a 630 ha Regional Park. Throughout the whole planning process there has been no mention that this was an offset for the clearing of the development areas. Again Council needs to produce that official document.

In essence the RP was created due to the Federal Govt being obligated under the AHC Act to protect all 828 ha listed on the RNE. DLL had no role in this conservation outcome. The St Marys Development Agreement 2002 makes no mention of the RP as an offset measure. It merely mentions the method of the transfer of ownership and DLL agreed to contribute funding to its management. Again this funding is not an offset measure. The RP was always meant to stay in public ownership. It is only in DLL's hands due to transitional arrangement following the sale of the ADI Site to DLL. Again the transitional arrangement is clearly outlined in the St Marys Development Agreement.

Penrith Council needs to put this DA through the mill. It must be brought before the full council. Council officers should be advising Councillors of the issue with offsetting the destruction of CPW. This is an opportunity for Council to review the entire ADI Site development and to seek the protection of substantially more than 100 ha of CPW within the Western Precinct. WSCA's proposed Cumberland Conservation Corridor is severely compromised by DLL's ADI Site plans. This is Council's chance to get this right and to once and for all adequately conserve the CPW within DLL development areas.

This development would not be allowed if it were any other developer. They would be required to offset the loss of CPW. Again we stress that *the Principles for the use of biodiversity offsets in NSW* specifically

Section 12 need to be used by Council to assess this DA.

## 12. Offsets must be supplementary

They must be beyond existing requirements and not already funded under another scheme. Areas that have received incentive funds cannot be used for offsets. Existing protected areas on private land cannot be used for offsets unless additional security or management actions are implemented. **Areas already managed by the government, such as national parks, flora reserves and public open space cannot be used as offsets.**

Council needs to look at the possible use of the Biobanking calculator or similar as a means to calculate the level of offset DLL must provide. The requirement of a SIS should see DECCW insist on a sizeable offset. They would normally require this although DECCW's impartiality in regards to this development is questioned by WSCA. They have in the past been strong allies of DLL and allowed dubious environmental outcomes. However, Council must first accept the principle that the RP cannot be deemed a DLL offset site. As per *the Principles for the use of biodiversity offsets in NSW*

We seriously doubt Cumberland Ecology's assessment of this DA site. We believe an assessment of this DA by an ethical ecologist would result in a more accurate assessment of the sites conservation values and the need for an SIS. WSCA has received the below comments from an independent ecological consultant:

1. Nothing repeatable in the survey methods, no species lists, no plot data, no data at all (hard to know what local gov is relying on in the report).
2. *Pimelea spicata* has been detected there on previous occasions and may not have been detectable during June, despite assertions that weather conditions in June being favourable to plant growth. DECC notes that *Pimelea spicata* 'Can appear anytime of year but mostly in summer. Difficult to detect when not in flower (typically flowers following periods of rainfall)'. In light of recent prosecutions, we'd hope to see a more cautious approach. e.g. see below for link.
3. p2.3 '*Although the majority of plants could be identified to species level, some were identifiable to genus level only.*' We suggest that for such a high profile site, that species should be identified properly. Much of the variability in CPW occurs in the ground-cover strata and if plants could only be identified to genus level, there is a real chance that a raft of threatened species could have been overlooked.
4. No mention is made of the objective of the surveys undertaken in Nov and Dec 09....did they involve threatened species searches? If not, targeted survey time could be significantly less.
5. p 2.3 notes the use of random meander techniques for veg mapping. This method was not devised for this purpose and its usefulness in vegetation mapping and searches for Cumberland Land Snail is untested. Vegetation mapping would have required analysis of the plot data and CLS searches would have required targeted searches. None are mentioned.
6. CLS, p2.4 '*This involved one person searching for twenty minutes at eight locations, centered on the points shown in Figure 2.1, giving a total of 2.5 person hours on the subject site. Additional surveys were also conducted in the approved Stages 1a-d development areas in 2009, totaling six person hours.*' DECC profile notes that the species 'Can dig several centimetres into soil to escape drought.' Were surveys undertaken in drought? p.3.10 notes that '*A number of Cumberland Land Snail shells were recorded in the stands of CPW and regenerating CPW on the subject site on 24 May 2010.*' No mention is made of quantifying its extent, yet the s5A states no significant impact. All maps of the species distribution have broken links so it's not possible to ascertain how clearing this area would impact on fragmentation of its habitat - little is known about the effects of fragmentation. The EIA guidelines note that '*M. corneovirens is morphologically diverse both within and between populations. No genetic studies have*

*been conducted to gain an insight into the overall population structure or the levels of gene flow among populations.'*  
7. SEE, E.2 s5A '*The proposed development, of all three stages, will remove an area of 0.6ha of CPW and a further 2ha of derived native grassland and 2ha of regenerating CPW.*' However, this veg type has been mapped in various mapping projects and we know it to be *derived native grassland* which is regenerating CPW, resulting in the removal of 4.6ha of CPW. 3.2 of the F&F report states that '*This community has been highly modified from its pre-European condition but most was likely to be **in viable condition** and was in various stages of regeneration. The concentration of exotic species varied but was typically limited to the ground cover, ranging between 2-50% of the projective foliage cover of the stratum.*' The final CPW critically endangered determination by the NSW Scientific Committee notes that '*Small trees or saplings may dominate the community in relatively high densities after partial or total clearing, and the groundcover may be relatively sparse, especially where densities of trees or shrubs are high. The community also includes 'derived' native grasslands which result from removal of the woody strata from the woodlands and forests.*' **Surprising that no SIS has been requested.**

This DA is located north of the current development stretching to the Borrowdale Way lights. We warn Council that there is a great deal of community angst against the development occurring at the ADI Site. This DA if approved by Penrith Council will outrage thousands of already ticked off locals.

### Summary

- This DA, and the ADI Site development in general, is not in the public interest and will result in the degradation of the environment and the quality of life of the people of Penrith
- The projected population increase associated with this DA, and the ADI Site development in general, will dramatically increase traffic on the Northern Rd and exacerbate current traffic congestion in the Penrith region
- The DA will have a significant impact on Cumberland Plain Woodland (CPW) which is listed as a critically endangered ecological community at a State (TSC Act) and Federal (EPBC Act) level and the endangered Cumberland Land Snail
  - DLL must provide a Species Impact Statement
  - Penrith Council must ignore the claim of DLL that the adjacent Wianamatta Regional Park - public land – is their offset mechanism. Council must note and be guided by DECCW's *the Principles for the use of biodiversity offsets in NSW*
- That substantially more than 100 hectares of the CPW within the Western Precinct be protected within a Cumberland Conservation Corridor
- This DA, and the ADI development in general, ruins the open space view and aesthetics of the Cranebrook area currently enjoyed by thousands of local residents
- That this DA be determined by Councillors not under delegated authority

Yours sincerely,



Geoff Brown  
President  
WSCA