



Thursday, July 07, 2011

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

**Objection to DA11/0511, DA11/0512, DA11/0514, DA11/0515, DA11/0516, DA11/0517**

To Whom It May Concern:

The Western Sydney Conservation Alliance Inc (WSCA) objects to the above named Development Applications (DA) by Delfin Lend Lease (DLL).

The consent authority determining these DA's must not issue development consent due to the impact the development proposals will have on Cumberland Plain Woodland (CPW) which is listed as a Critically Endangered Ecological Community (CEEC). 59 hectares of this CEEC will be destroyed if consent is given for these DA's. Maryland Development Company (Delfin Lend Lease) admits in its Species Impact Statement (SIS) at page 7.2 that a total of 189 hectares of CPW will be impacted by development proposed within the Western Precinct.

The proponent concludes in its SIS that such huge losses of CPW do not constitute a significant impact. They go on to argue that an existing public reserve (the proposed Regional Park) can be used by them (a private company) as an offset to mitigate the impact their development proposal will have on CPW within the subject site and other development areas elsewhere within the ADI Site. The consent authority needs to seek out where such a significant impact with no real offset outcome has been allowed elsewhere within the Cumberland Plain.

The SIS relied upon by Maryland Development Company is flawed and fails to meet statutory requirements under the NSW Threatened Species Conservation Act 1995. Therefore it cannot be relied upon by a consent authority to inform approval. The SIS fails to adequately assess the impact on a local occurrence of CPW, that being the unique remnant within the Western Precinct and part of the Regional Park. It fails to assess the impact that the clearing of 59 hectares of CPW plus the uses and management practices within the proposed Regional Park will have on this local occurrence of CPW. It fails to consider the impact that the clearing of 59 hectares of CPW plus the uses and management practices within the proposed Regional Park will have on Priority Conservation Land (the RP is mapped as a Priority Conservation Land) which the Cumberland Plain Recovery Plan states equates to Critical Habitat.

Yours sincerely,



Geoff Brown  
President  
WSCA

**ADI – DEVELOPMENT APPLICATIONS FOR  
STAGES 2A, 2B, 2C, 2D, 3A, 3B AND NORTHERN ENTRY ROAD  
Comments on Species Impact Statement**

**Effect of the proposal on Cumberland Plain Woodland (CPW)**

The proposed development of Villages 2 and 3 within the western precinct is likely to have a significant impact on a local occurrence of CPW and its habitat. The Species Impact Statement (SIS) is deficient in not providing a full and adequate assessment of likely impacts as required under Section 110 of the TSC Act (1995).

**Key issues**

**1. Significant impact on a local occurrence of CPW**

The seven-part test (paragraph c) requires consideration of impacts on a local occurrence of CPW. Although the seven-part test (chapter 7 of the SIS) fails to clearly define the extent of the local occurrence it is assumed that CPW within the Regional Park is part of this occurrence. In the context of the seven-part test (DECC Threatened Species Assessment Guidelines 2007) the study area comprises the subject site and any additional areas that are likely to be directly or indirectly affected by the proposal. The assessment provided in the SIS underestimates the impact of the proposal on the local occurrence of CPW by including vegetation outside of the impact zone (diluting the impact).

According to the DECC guidelines a local occurrence may include adjacent vegetation if areas of the same community are contiguous and that exchange of genetic material is likely to occur but no such justification is provided in the SIS. There is an argument for the local occurrence to include some CPW to the north and north-east, however, the extent adopted in the SIS is not ecologically justified with significant barriers identified including a creek-line and different vegetation types (Alluvial Woodland, Shale Gravel Transition Forest); cultural landscape features that contain cleared areas, earth mounds, roads and buildings that will be largely preserved as cultural heritage values and existing access tracks and roads. These features create degraded or sub-optimal habitat for CPW species. Restoration of CPW is known to be significantly impaired in sites that have been exposed to soil disturbance including earthworks, cultivation and use of fertilisers (Paragraph 14 of Final Determination). Future development of visitor facilities within the Western Visitor Precinct as outlined in the Regional Park Masterplan (Dec 2010) will create additional barriers (and enforce existing ones) to plant/animal movements and genetic exchange. In such circumstances it is clearly not appropriate to extend the "local occurrence" of CPW as has been done in the SIS or to undertake an impact assessment across this larger area.

**2. Underestimation of CPW**

It is highly likely that the extent of CPW to be affected within the subject site has been underestimated. Over 50% of vegetation within the subject site is identified as exotic dominated grassland despite the broad classification criteria established in the Final Determination. Paragraphs 2 & 6 of the Final Determination refer in detail to the variable and degraded nature of CPW. An analysis of quadrat data from grassland identified in the SIS as exotic dominated and excluded from CPW indicates that >50% of the species recorded in several quadrats were native and characteristic species as listed in paragraph 3 of the Final Determination. The native grasses

identified in these quadrats e.g. A11APR-46 were reasonably well represented with cover/abundance values of between 2 and 5 (25%-100% cover in modified Braun-Blanquet system used). This vegetation is consistent with the critically endangered CPW as listed under the TSC Act.

This level of classification undertaken for CPW within the western precinct has not been applied within the Regional Park with no consideration of cleared or exotic dominated areas in comparative assessment. The outcome is that the extent of CPW within the western precinct has been underestimated and the extent within the Regional Park overestimated resulting in a flawed impact assessment.

### **3. Importance of CPW to be impacted**

The importance of CPW to be impacted within the western precinct to the long-term survival of CPW in the locality has been significantly undervalued in the SIS for the following reasons:

- It is representative of a critically endangered community (CEEC) that faces an extremely high risk of extinction. The recent upgrading of CPW reflects the ongoing loss of this community and the lack of any effective recovery planning. Only 9% of remaining CPW is on NPWS estate and 39% on priority lands as identified in the Cumberland Plain Recovery Plan (CPRP 2011).
- It is part of one of the largest extant remnants of CPW on the Cumberland Plain and contributes to the overall size of the remnant and associated flora and fauna values, increases east-west connectivity and support and buffering for areas within the Regional Park.
- CPW within the subject site is of similar conservation value to that within the north-western precinct of the Regional Park. Native species richness is comparable (as supported by survey data) and if allowed to regenerate the structure would also be similar. Much of the CPW within the north-western precinct of the Regional Park had similar canopy cover, structure and native species richness to current vegetation within the subject site prior to recognition as a protected area.

### **4. Impacts on the Regional Park**

Impacts on the adjoining Regional Park are not fully identified and assessed in the SIS. The boundary is presently buffered by scattered trees and derived grassland in relatively good condition. The "new" environment will largely comprise roads, pathways and houses. The requirements for bushfire protection minimize the retention of existing trees and new landscape plantings. There will be significant changes in local environmental conditions that will cause "edge effects" over a distance of at least 20-40 m. Such edges can act as traps and concentrators for wind-borne nutrients and pollutants from adjoining urban landscapes with cascading effects on ecological processes. There is likely to be degradation of habitat for many species, increased weed invasion, greater predation pressure on native fauna and reduced opportunities for pollination and dispersal of plant propagules. Further impacts are also likely due to proposed works connecting the perimeter road to roads and pathways within the Regional Park (Masterplan, 2010) resulting in increased edge effects in the vicinity of these access points and along the road/cycleways. The mitigation measures identified in the SIS are inadequate; no functional buffer zone is provided.

Adjoining land within the Regional Park has been identified as Priority Conservation Land (PCL) in

the Cumberland Plain Recovery Plan (CPRP 2011). PCL is equivalent to critical habitat with no additional requirement to identify critical habitat (CPRP 2011). Paragraph (e) of the seven-part test requires consideration of whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly). The SIS should have clearly identified that critical habitat is no longer required for CPW and the importance of adjoining PCL. Impacts on PCL should be treated seriously.

## **5. Regional Park as a proposed offset**

The Regional Park is not considered to be an appropriate offset for impacts on CPW and other threatened biota resulting from this proposal. The only real reason provided in the assessment for concluding an insignificant impact is that larger and better areas of CPW are protected within the Regional Park. This assumption is flawed and reliance on the Regional Park as an offset is challenged for the following reasons:

- There is insufficient information or evidence to conclude that CPW within the north-western part of the Regional Park is of greater conservation value than CPW in parts of the western precinct. Aerial photographs testify to the extent of past clearing across this area and an analysis of quadrat data indicates that CPW within the subject site is of similar floristic value. The regeneration potential of CPW has been ignored despite the regeneration that has occurred within adjoining areas in recent years. Over 50% of CPW within the Regional Park has been subject to clearing, fragmentation and grazing. It is fragmented by roads, degraded areas and development (existing and proposed).
- Regional Parks are multi-use reserves that cannot provide a level of conservation commensurate with a CEEC. The management objectives and conservation outcomes are limited by legislation (National Parks and Wildlife Act 1974 No 80), the St Mary's Development Agreement (2002) and SREP 30 St Mary's. To achieve a primary conservation focus CPW on priority conservation land should be protected within a nature reserve or national park. Only around 40% of extant CPW will be managed primarily for conservation within a Primary Habitat Focus zone. Remaining areas will be affected by development and operation as visitor or recreational precincts e.g. western, southern central, northern central and main precincts or managed as secondary habitat focus areas where conservation is one of a range of management objectives. This is despite the entire park being identified as "priority land" in the Cumberland Plain Recovery Plan (2011) and contrary to the objectives of the plan.
- The Regional Park is an existing reserve that is invalid as a further offset for a current development application. It was determined by national criteria and listed in 1999 prior to any development planning or proposals.
- There is no or limited evidence provided to indicate that CPW or other threatened biota to be lost or modified is well represented and secure within primary conservation areas of the Regional Park.

## **6. Cumulative impacts**

Cumulative impacts of proposed development within the western precinct and across the SMP is significant. The SIS claims, that within the Western Precinct alone, a further 189 ha of CPW will be impacted by development. Some 40 ha have already been cleared by Stage 1. This is a significant

loss of an important remnant as determined by its critically endangered status and as part of one of the largest remaining areas of CPW, much of which is identified as priority conservation land. Only a small percentage of the total area of CPW on the SMP will be protected and managed at the level required within the Regional Park. This is not consistent with a CEEC or the objectives and principles of the Cumberland Plain Recovery Plan (2011). It is also inconsistent with the principle of environmental sustainability as identified in Section 11.14 of the St. Marys Development Agreement (2002) to achieve preservation, protection and improvement (where possible) of biodiversity values.

**ADI – DEVELOPMENT APPLICATIONS FOR  
STAGES 2A, 2B, 2C, 2D, 3A, 3B AND NORTHERN ENTRY ROAD  
Comments on Species Impact Statement**

**LEGISLATIVE CONTEXT**

Section 78A(8) of the *Environmental Planning and Assessment Act 1979* provides that, if a development application (**DA**) is in respect of development on land that is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the DA must be accompanied by a species impact statement (**SIS**) prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995* (TSC Act).

If a SIS is required under the EP&A Act, the applicant must request and comply with the requirements of the Director General (**DG**) concerning form and content: section 111 of the *Threatened Species Conservation Act 1995* (TSC Act). The DG also has power to limit or modify or dispense with the SIS requirements set out in section 110 of the TSC Act: section 111(3) & (4) TSC Act.

The SIS must comply also with the matters set out in section 110 of the TSC Act (“Content of species impact statement”). We note that the DG’s requirements generally capture the matters in section 110 and expand on them.

An SIS dated May 2011 has been prepared and is available on council’s website. It addresses the impacts on proposed subdivision and works for “Village 2” and “Village 3” in the Western Precinct, as follows (SIS at 2.8):

*Stage 2A – subdivision to create 75 residential lots, public roads and residue lots, and works including bulk earthworks, landscaping and tree removal;*

*Stage 2B – subdivision to create 70 residential lots, public roads and residue lots, and works including bulk earthworks, landscaping and tree removal;*

*Stage 2C – subdivision to create 111 residential lots, public roads and residue lots, and works including bulk earthworks, landscaping and tree removal;*

*Stage 2D – subdivision to create 102 residential lots, public roads and residue lots, and works including bulk earthworks, landscaping and tree removal;*

*Stage 3A – subdivision to create 139 residential lots, public roads and residue lots, and works including bulk earthworks, landscaping and tree removal;*

*Stage 3B – subdivision to create 75 residential lots, public roads and residue lots, and works including bulk earthworks, landscaping and tree removal;*

*Northern Entry Road – creation of Northern Entry Road (part), works including bulk earthworks, landscaping and tree removal.*

DG's requirements have been provided and a copy is annexed to the SIS.

## **SIS – GENERAL COMMENTS**

### **Issue 1:**

The SIS points to Regional Park as the primary mitigation measure for impacts on CPW (see from S.9).

At S.12 it is stated that the mitigation measures (including the regional park as the foremost mitigation measure) are part of the "offset package". As such, the issue of whether the regional park meets the requirements for offsetting per DECCW's Principles should be assessed. The consultant's assessment of the project against the principles of offsetting at para 6.3.3, pg 6.7 are woefully inadequate.

At page 7.2 the consultant concludes:

*The proposed development of the subject site will collectively remove an area of approximately 23ha of regenerating CPW and a total of 36ha of derived native grasslands that are in poor condition, being dominated by exotic species. Additionally, cumulative impacts of the Western Precinct development are likely to remove or modify a further 62ha of regenerating CPW and 68ha of derived native grassland. This is not likely to have an adverse effect on the extent of the community such that its local occurrence is likely to be placed at risk of extinction because the community is well-represented within the adjacent Regional Park where it has a higher conservation value and is in better condition.*

However, the SIS does not identify management regimes within the Regional Park and activities that do not have a conservation purpose.

### **Issue 2**

At SIS pg 7.3 the consultant considers whether there is likely to be any adverse impact on critical habitat and concludes that "No critical habitat for this endangered ecological community has currently been identified by the Director-General of the OEH.

This is true, but fails to acknowledge that the approach taken in the CPW Recovery Plan is that the declaration of critical habitat is not a priority because other measures will be employed to increase security of regional conservation priorities, including "priority conservation lands". The Regional Park is part of those priority conservation lands.

## **SIS - COMPLIANCE WITH DIRECTOR GENERAL'S REQUIREMENTS**

Note, the structure of the SIS and the comments below is based on the Director General's Requirements.

### **Issue 3:**

SIS 1.3 - states that sections 110(2)(g) & 110(3)(d) do not need to be addressed by the SIS, however, no justification is given. Although the DG has power to limit or modify the SIS requirements under section 110, the DGR is silent on explicit exclusion of sections 110(2)(g) & 110(3)(d). Therefore, sections are not validly excluded and should be included in the SIS.

Those sections require that a SIS must include the following information as to threatened species and populations/ecological communities: 'a full assessment of the likely effect of the action on

those species and populations, including, if possible, the **quantitative effect of local populations in the cumulative effect in the region**.

**Issue 4:**

DGR 2.3 - requires reference to the Scientific Committee determinations. SIS 2.4 does not specifically refer to this.

<http://www.environment.nsw.gov.au/determinations/cumberlandwoodlandsFD.htm>

**Issue 5:**

Assessment of the likely impacts on threatened species and populations that are known or are likely to occur in the area under section 110(2)(b) must include all species **known or are likely to occur**. SIS Table 3.1 details which fauna & flora species are like to occur in the area. There are 26 fauna species and 8 flora species considered as likely to occur in the locality, however, SIS Chapter 5 does not assess all species listed in Table 3.1. DGR 5.1 states 'If adequate surveys/studies have been undertaken to categorically demonstrate the species does not occur in the study area, or if not resident, will not utilise habitats on site on occasion, or if off-site, be influenced by off-site impacts of the activity, that species does not have to be considered further.' SIS Chapter 5, Section 4.5 & 5.2 excludes many of the species listed on Table 3.1 without justification in accordance with DGR 5.1.

**Issue 6:**

DGR 5.3.1- in describing the condition of the habitat, the subject site's fire history and source of the fire must be provided. SIS does not include this anywhere nor state that no fires occurred.

**Issue 7:**

DGR 5.5.3- 'The SIS must include details of the condition and use of other parts of the subject area and why these can or cannot be considered as feasible alternatives.' SIS 5.7 refers to SREP 30 (which is effectively Figure/Map 1.2)- this shows uses of other parts, but not their **condition**.

DGR 6.4- comparable section regarding feasible alternatives for endangered ecological communities. SIS 5.7 fails to justify the alternatives 'having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development' (as stated in s110(3)(e)). Those considerations are not specifically referred to in SIS 5.7 nor does it refer to the relevant sections of a Statement of Environmental Effects, Environmental Impact Statement or Review of Environmental Factors (if any & if dealt with): DGR 6.4. DGR 6.4- '*SIS must also include details of the condition & use of other parts of the subject area and why these can or cannot be considered as feasible alternatives*' – SIS 5.7 does not specifically state this.

**Issue 8:**

DGR 6 – Assessment of likely impacts on threatened ecological communities. SIS 5.1 does not comprehensively assess the impacts –the nature, extent and timing of the proposal and all associated actions. SIS 5.1 covers only one or two of the possible actions listed in DGR 6.

**Issue 9:**

SIS Chapter 6- some of the measures proposed to mitigate adverse effects possibly do not include a **proper justification** as required under section 110(2)(i) & 110(3)(f)

Section 110(2)(i):

*A full description and justification of the measures proposed to mitigation any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement)*

of those measures.

Section 110(3)(f) is the equivalent section for ecological communities.

**Issue 10:**

DGR 6.2.1- assessment of habitat in the study area (whole area, Western Precinct being a small part of it), must include:

- Description of each CEEC including:
  - a) *'Description of those areas where the community may only be represented by soil stored seed with no or few above-ground components'*- SIS 5.4 does not appear to address this.
  - b) *'Description of disturbance history and recovery capacity... Consideration should be given to the results (preliminary or otherwise) of restoration projects being undertaken at other sites that contain the ecological community when assessing its recovery capacity'*- SIS 5.4.1 fails to do this. Rather it limits the comparison of the Western Precinct to the proposed Regional Park. Also, it treats the grasslands (paragraph 3) as a 'more degraded form of the community' which inherently dismisses the importance and integral nature of the grasslands to the Cumberland Plain Woodland.
- *Comparison of the affected community with the CEEC as determined by the NSW Scientific Committee*- SIS 5.4.1 does not appear to address/reference this.

**Issue 11:**

DGR 6.2.2- *discussion of other occurrences of each CEEC populations in the locality must be provided. This must include:*

- *Comparison of other known occurrences and their habitats with those of the study area in terms of remnant sizes, connectivity, species diversity, abundances, quality & condition (including level of disturbances, weed diversity and abundances) – SIS 5.3 & 5.6.2 does not properly compare on the basis of remnant sizes, connectivity, species, abundances, quality & condition for each CEEC.*
- *Relative significance of the subject site for each CEEC in the locality and region – SIS 5.3 under each CEEC, under subtitles 'habitat in the locality' and 'distribution of similar habitats in the region' fails to properly address this requirement. Only describes, but does not state the actual 'relative significance'. More detailed required.*

**Issue 12:**

Section 110(2)(e1) & 110(3)(b2)- an assessment of whether any of those species, populations or ecological communities is at the limit of its known distribution.

The wording of the Act suggests the **general** known distributions rather than that in the study area specifically. Hence, SIS 5.5 approach of limiting it to the study area may be insufficient to satisfy s110.

**Issue 13:**

DGR 6.3 & 6.4.1- requires a discussion of the **'relative significance'** of the subject site of each CEEC in the locality. Followed by discussion of other known occurrences of each affected CEEC. The assessment must **'consider and compare'** the differences in remnant sizes, connectivity, species diversity, abundances, quality & condition (including level of disturbances, weed diversity and abundances), tenure and long-term security of other known occurrences and habitats in the

**locality with those in the study area.**

SIS 5.5 & 6.3 fails to properly assess the differences as it does not 'consider and compare'; rather it only describes and does not come to a conclusion of the 'relative significance' of each CEEC.

**Issue 14:**

DGR 6.4.2- *The location, nature and extent of habitat removal or modification which may result from the proposed action including the cumulative loss of habitat from the study area (including all proposed DAs and those areas in the subject area already with development consent or identified for development) and the impacts of this on the viability of the CEEC in the locality.*

SIS 5.6.1- does not sufficiently satisfy this requirement. It only describes the impact of the subject site (Western Precinct) compared to the subject area (ADI site) & does not consider or compare the impact of Western Precinct's site's with the other all proposed DAs such as the Central or Eastern Precinct (marked pink) on Figure 1.2.

SIS 5.6 refers to Table 5.1. But Table 5.1 only considers the proportion in terms of the Western Precinct site with the general ADI site. It does not specifically consider the cumulative impacts of the other proposed DA sites.

DGR 6.4.2- also requires '*an assessment of the proportion of the CEEC to be affected by the proposal, in relation to the extent of the CEEC, and the impact of this on the viability of the endangered ecological community at the local level.*' SIS 5.6.1- does not directly address this for each CEEC.

**Issue 15:**

DGR 7.1 – '*Measures proposed to avoid, reduce or ameliorate impacts should only be proposed where it can be **clearly demonstrated** that they have been **successfully applied elsewhere**. The **likely efficacy** of such measures with respect to the current proposal should be **assessed in detail.***'

SIS 6.2 & 6.3 do not refer to any examples of successful application of the suggested management strategies or refer to their likely efficacy in any detail. Relevantly, the SIS does not identify management regimes within the Regional Park and activities that do not have a conservation purpose.