

Submission  
No 103

**INQUIRY INTO INTEGRITY OF THE NSW  
BIODIVERSITY OFFSETS SCHEME**

**Name:** Name suppressed

**Date Received:** 24 February 2022

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Partially  
Confidential

## **Late submission**

The Hon Cate Faehrmann, MLC

Chair

Integrity of the NSW Biodiversity Offsets Scheme,

Dear Chair,

I write to express concern with the NSW Department of Planning and Environment (DPE) plan to rezone 5000 hectares of privately owned rural land in the Wilton and Greater Macarthur Growth Areas (WGA and GMGA respectively) to Environmental Conservation (E2). The plan will further erode the integrity of the NSW Biodiversity Offsets Scheme by its avoidance of the influence of market forces that would create a viable floor price for offset of eight distinct forested threatened ecological communities (TECs) that are found in the Cumberland Plain. The TECs include:

Shale Sandstone Transition Forest ( High Sandstone Influence),

Shale Sandstone Transition Forest ( Low Sandstone Influence),

Cooks River/Castlereagh Ironbark Forest,

Cumberland Plain Woodland,

Sandstone Ridgetop Woodland,

Upper Georges River Sandstone Woodland,

Western Sandstone Gully Forest, and

Shale Gravel Transition Forest.

The rezoning plan has been created to provide offsets for the destruction of 1,800 hectares of endangered ecological communities and koala habitat by large developers including the NSW Government owned Landcom. Less than 2% of the land to be rezoned is Federal or NSW Government owned land.

The DPE plan (the Cumberland Plain Conservation Plan, the CPCP) heralds a new form of compulsory land acquisition by which privately owned freehold land will be made worthless without the compensation currently afforded by State and Federal legislation. Of significance is that the environmental justification for the rezoning is at odds with every DPE sourced and/or funded koala habitat related study in the growth areas prior to 2019. If approved by the Federal Government this DPE landgrab in South Western Sydney will set a precedent for the use of spurious environmental research to justify the removal of rural land use rights throughout NSW.

If approved by the NSW Minister for Planning and the Environment (Minister Roberts) and his counterpart at the Federal Department of Agriculture, Water and the Environment (Minister Ley) the CPCP will further erode the biodiversity conservation offsets scheme by removing the market forces that properly establish the pricing of offset credits by reducing demand for them.

Artificially removing demand for biodiversity offsets will exacerbate the failure of the scheme to create supply through the only means available ie the establishment of a fair return for the 'biobanking' of threatened ecological communities (TECs) on private landholdings.

In what is a 'perfect storm' the low deeming rate used by the Biodiversity Trust to forecast income from the component of the sale price withheld for maintaining the offset land in perpetuity results in the landholder receiving almost nothing for the lock up of their land and supply is therefore not forthcoming.

Removing demand for Cumberland Plains vegetation offsets when combined with the small % of the sale price retained by the landowner has resulted in the asking price for land the DPIE/DPE needs to purchase for offsets for its development planning approaching the price of that of 'certified urban capable land'. Enter the need for new approach to secure the land.

At time of writing it is apparent that the Federal Regulator will not accept the repurposing of existing reserves and other non operational land owned by the State as National Parks or similar to create the necessary 'new conservation land'. This is a positive step and will reduce the NSW Government's penchant for double dipping.

Whilst planning for the Western Sydney Growth Area (WSGA) in early 2000s, the NSW Department of Planning set aside \$560 million to be raised from developer levies to purchase 3000 hectares of offsets. To date despite this generous provision DPIE has been unable to secure 25% of the target due to dwindling supply and escalating land prices.

The CPCP has a budget of just \$84 million over 28 years to buy nearly twice as much land as was/is still required for the WSGA in the GMGA and WGA for offsets. A challenge that is clearly unattainable and accordingly the DPE engaged the 'Open Lines Consultancy Group to assist in solving the problem. The lead consultant at Open Lines had previously been significantly involved in the design of the land acquisition elements of the WSGA. The consultancy provided a '*creative and rigorous approach (to) overcome a potentially project stopping obstacle (and do so) 'at the most reasonable cost'*'.

The problem for the DPE is that must either purchase the required 5,500 hectares in the Cumberland Plain via the open market from privately owned stock or adopt a '*creative and rigorous approach*' such as rezoning rural land to E2, a process that does not trigger 'just terms compensation' so as to achieve the *the most reasonable cost* aim.

The CPCP's purpose is to without compensation acquire 5,500 hectares of privately owned land from small landowners and to reserve it in perpetuity as 'new conservation land' and to do so with a creative and rigorous low cost approach. If the CPCP is not approved the cost of acquiring the new conservation land will be a *potentially project stopping obstacle*

The CPCP identifies 5,500 hectares of land in the WGA and GMGA as suitable for the new conservation land required by the DPE. However as all but less than 2% of it is privately owned, occupied and utilised in rural uses, would be prohibitively expensive to buy and the threatened ecological community on the land is already identified and protected by State and Federal conservation legislation it is arguably not new conservation land.

To overcome this additional iteration of a *potentially project stopping obstacle*, the CPCP has misidentified the land as 'important koala habitat and movement corridors', excludes the land from

development as 'avoided land' and will rezone this avoided land as Environment Conservation (E2) thus making it new conservation land and not paying a cent in compensation in the process

Worryingly the primary source relied on for the CPCP land grab (DPE's 2019 'Conserving Koalas in the Wollondilly and Campbelltown LGAs', the CKWC) uses koala habitat definitions that are ultra vires to every NSW planning instrument in force and fails to identify that >80% of the land to be rezoned has a soil type that does not support the threatened ecological community necessary for koala habitat.

The CKCW conclusion on the presence of koala habitat in the WGA stands in stark contrast to more than 20 published studies and DPIE/OEH/NPWS reports and mapping compiled over the past 40 years. A critique of the CKWC as forwarded to the NSW Office of the Chief Scientist and Engineer is attached overleaf.

The CPCP has not been publicly exhibited since the draft version released in August 2020 was met with disapproval from nearly every respondent other than the NSW Property Council. Despite the unmet DPE assurances that stakeholder concerns would be addressed in writing and a final draft made public before being approved, the CPCP was forwarded to the State and Federal Ministers for approval in Dec 2021.

The secrecy surrounding the finalised CPCP bodes ill of the contentious nature of a State sponsored land grab and will add to the looming electoral State and Federal political fallout over what is nothing less than an environmental hoax to disenfranchise small landholders to the benefit of the interests of big developers including the NSW Govt owned Landcom.

Despite the manifest impossibility of the claim the CPCP has sound environmental grounding, it is most likely the Plan will be approved by the NSW Minister as the DPE has already approved developments in the growth areas (including Landcom's) that rely on the CPCP rezoning to furnish the offset credits, prior to now retrospectively seeking the Federal Minister's approval for the Plan.

To date three years of patient efforts to inform the CPCP project directors of the weakness of the environmental justification for the rezoning of the land have met stony silence and stubborn hostility. Accordingly, your assistance is sought to bring to the attention of the NSW Government the deficiencies of the CPCP and the CKWC and the clear 'Wednesbury unreasonableness' of the planned rezoning. Attached is a document the author has previously sent to the NSW Office of the Chief Scientist and Engineer that shows in detail the errors in the 'evidence' the DPE has relied on for the land grab and which exposes the abject paucity of the environmental justification for the theft.

Yours sincerely,