



THE HON JACKIE KELLY MP

Member for Lindsay

Senator the Hon. Ian Campbell
Minister for Environment and Heritage
Parliament House, Canberra 2600
December 7, 2004

Dear Minister,

I respond to comments received from Lend Lease, Penrith City Council and the Minister for Finance and Administration The Hon. Nick Minchin to the Emergency National Heritage Listing nomination for the Western Precinct ADI Site dated Monday the 22 November, 2004.

It is re-asserted that the Western Precincts outstanding National Heritage values are now under imminent threat due to the owner of the site, Lend Lease, commencing its urban development of the ADI Site.

It is re-asserted that the Western Precinct satisfies the following criteria:

- (a) The place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural history
- (b) The place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of a class of Australia's natural places and environments
- (c) The place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community

Comments received by Lend Lease and Penrith Council can actually be interpreted to mean that the Western Precinct may satisfy other criteria set out in the EPBC Regulations, being:

- (d) The place has outstanding heritage value to the nation because of the places' potential to yield information that will contribute to an understanding of Australia's natural or cultural history

Penrith Council claim there are 5 listed non-Aboriginal heritage items in REP 30 listed within the Western Precinct and that they have insufficient detail or information regarding their details. This indicates that the Western Precinct has the potential to yield information that will contribute to the nations understanding of our cultural history.

Lend Lease in its reference to a history of clearing of the ADI Site is demonstrating the historic importance of logging and the places role in providing natural resources to aid the development of Sydney. Lend Leases references to previous clearing of the site raises an important point in that in comparison to the regrowth occurring on the place today, the regenerative ability of Cumberland Plain Woodland can be mapped and this information is of enormous value to the nation.

The Minister should note the above points in his determination.

Essentially Lend Lease and Penrith Council are arguing that there is no justification for the Emergency listing, that the Western Precinct is not Cumberland Plain Woodland and therefore has no natural value and that the place has no outstanding aesthetic value to the nation.

Translocation of Macrofauna to Western Precinct

Lend Lease's Macrofauna Management Plan (MFMP) clearly states under section 9.2 of the MFMP its intention to translocate large numbers of Kangaroos to the Western Precinct. The MFMP states, that "...the eastern area of the St Marys Property will be fenced with appropriate macro-fauna proof fencing and all Kangaroos and Emus will be encouraged to move into the western portion of the SMP.¹

Lend Lease currently has a licence from DEC to hold and keep Macrofauna. As yet they do not have final approval from DEC to commence their fertility control program. Lend Lease have constructed temporary macrofauna paddocks within the Eastern Precinct and have moved some kangaroos to these fenced paddocks. The purpose of these fenced paddocks is to facilitate the sterilisation process. Once the sterilisation of Kangaroos commences the ultimate aim of the MFMP is to translocate large numbers of sterilised animals out of the eastern end of the ADI site to other precincts, namely the Western Precinct.

Lend Leases claim that only small numbers of Kangaroos will be translocated contradicts comments made in November 2004 by the DEC Officers who are monitoring the MFMP. Officer Jonathon Sanders stated that it is DEC's intent to fence off the Regional Park and that once sterilisation commences Kangaroos will be translocated to the Western Precinct.²

It is re-asserted that the implementation of the MFMP will increase rather than relieve grazing pressure on CPW and other threatened vegetation in the Western Precinct because of the intention to drastically increase Kangaroo numbers through translocation. This population increase coupled with a reduced foraging range (i.e. the fenced off Western Precinct) will significantly impact the outstanding natural heritage values of the Western Precinct.

The Western Precinct contains Cumberland Plain Woodland

¹ St Marys Macrofauna Management Plan

² Pers Comm with ADI RAG November 2004

Lend Lease and Penrith Council claim that the Western Precinct has no outstanding natural value to the nation and is not CPW.

They claim that information contained in the nomination contains no new information, is incorrect, is selective and re-presents information used in previous assessments of the place.

It is debatable that there is definitive data relating to the coverage of remnant CPW. Indeed information varies depending on where information is sourced. Information used in the nomination was sourced from the DEH website and that 6% of CPW exists. DEC claims that it is more like 9%.³ Arguing over these figures is irrelevant when the existence of such a vegetation community has been reduced to such low figures.

Lend Lease claims that studies by Ian Perkins in 1999 for the AHC proves that CPW does not exist on the Western Precinct. Lend Lease claim that Ian Perkins did 2 surveyed plots in the Western Precinct and walked the rest of the place and on this basis he made his determination that the Western Precinct could no longer be considered as CPW.

The NSW Land and Environment Court (LEC) decision in the Xavier College case supports claims that Perkins's work for the AHC in 1999 was conducted under express limitations. Ms Teresa James, a renowned expert in Western Sydney vegetation, provided evidence the CPW exists on an area of the Western part of the ADI Site that was claimed not to contain CPW. Teresa James also assisted Ian Perkins in 1999. The judge criticised Ms James in relation to this as to why when she worked with Perkins in 1999 to assess the western end of the ADI Site why the Xavier site was not considered CPW then. The Court report claims that Ms James stated, "she had now focussed directly upon the school site, that the Perkins Report did not do so and was in any event, subject to express limitations."⁴

The findings of Perkins and Biosis cannot be relied upon to claim that the Western Precinct has no outstanding natural heritage value today. Given that as recently as March 2002 a further 250 hectares was preserved, it may well be that further areas deserve preservation.

Lend Lease are also reliant upon NPWS mapping to support its argument that it is not CPW. This mapping is based entirely upon aerial photography & soil maps, and as such considers only the structure of an ecological community, specifically its canopy, and cannot therefore consider an ecological community's floristics. Floristics alone is enough to determine an ecological community under threatened species legislation. Michael Doherty, CSIRO Plant Ecologist, Canberra, says in a statement on the status of CPW on the Western Precinct attached to original nomination that, "Although structurally, parts of the Western Precinct have been modified, this does not affect the ecological or legal definition of CPW, which can be based entirely upon floristics (although much is still wooded and is structurally intact)" He states that the floristic diversity of the Western Precinct is high: "It has a high number of species diagnostic for CPW as well as being important habitat for a number of threatened plant and animal species associated with this ecological community".

³ http://www.nationalparks.nsw.gov.au/pdfs/eecinfo_cumberland_plain_woodland.pdf

⁴ Plumb V's Penrith City Council and Anor [2002] NSW LEC 223

Lend Lease claims that "...a high proportion of the Western Precinct has not regenerated and remains dominated by exotic grasslands"(p.17). This statement is false. Doherty states "Weed counts for the site are low."

Doherty more recently states that the Western Precinct is legally CPW: "The entire area defined as the Western Precinct of the ADI site is representative of CPW as set out under the Federal EPBC Act, and the NSW Threatened Species Act". Again, the that floristic characteristics of the Western Precinct as opposed to structural characteristics, and the high species diversity that makes up these floristic characteristics, make the Western Precinct nationally important for CPW.

Lend Lease claim that the Western Precinct has low resilience (p.11). Again, Doherty argues the opposite "...the resilience of the site is very high.."

It is important to note that CPW is a Nationally Endangered Ecological Community, and as such has national significance. The Western Precinct is one of the largest areas of CPW in the nation. Doherty affirms this: "It represents a substantial proportion of total habitat for this Endangered Ecological Community that is remaining".

Lend Lease claim that the application reveals no significant new data or information that was not previously available to the AHC (p.13). In fact, much new data has come to light since then which was not considered by either the AHC or Perkins (1999). Over the past five years, since the cessation of slashing, the degree of vegetation regrowth and increase in biomass has been substantial. This has led not only to a rapid increase in structural integrity, but probably has led to an increase in both species density and species diversity to their current high levels. Tree regrowth where this slashing has ceased is commonly over five metres tall.

New species have been found and species distribution and abundance increase have been mapped by both Rapmund (2003, see attached) and Laurie (2003 NPWS atlas & July 2003 survey) Of particular note during these very basic and poorly resourced surveys was the discovery of *Pimelea spicata*, a nationally listed endangered plant. In the five years since the Perkins and AHC assessments, we have seen changes to legislative protection of some plant species. Examples include: *Grevillea juniperina* ssp. *juniperina* as vulnerable under the TSC Act. *Micromyrtus minutiflora* has been upgraded to endangered under the TSC Act. Other TSC listed plants found on the Western Precinct include *Dillwynia tenuifolia*, *Pultanaea parviflora* and there is a NPWS atlas record for *Persoonia nutans*. The populations of *Marsdenia viridiflora* on the ADI site have also since been listed as endangered subsequently under the TSC Act. The significance of these species has thus increased, and would need to be reviewed differently when deciding heritage values, compared to 1995.

Comments by Penrith Council also claim that old studies of the site prove the place has no national value, yet their newly released 'Penrith Biodiversity Strategy' questions the usefulness of data collected thus far on the biodiversity of Penrith. They question the usefulness of vegetation mapping at such large scales as used by NPWS, which Lend Lease is heavily reliant upon. They claim that more detailed information needs to be gathered if the community is to conserve its biodiversity in the long term. They claim that systematic ground surveys and on going assessments are needed.⁵

⁵ Penrith Biodiversity Strategy pg 5

Comments Penrith councils senior environmental planner, Roger Nethercote, appear to be incongruent with Penrith Council's Biodiversity Strategy which claims that little is known about Penrith's natural areas.

Indeed comments made by Mr Nethercote appear to be incongruent with Council as a whole. Several councillors at a meeting of December 6 2004 took him to task over his comments. They claim his comments were extremely negative and did not reflect the opinion of all Councillors.

Mr Nethercote implies that Doherty, who commissioned a report for Council critiquing prior studies of the ADI Site, by supporting Perkins's finding that the north west sector of the ADI Site has National Estate value, also support Perkins claim that the Western Precinct is not CPW. This is not the case evidenced by Doherty's supporting letter to the emergency nomination.

Mr Nethercote is wrong to try to influence DEH by including reference to funding arrangements and Development Agreements in his response. Overall Mr Nethercote appears poorly advised.

Response to the Hon. Nick Minchin's submission

In response to Senator the Hon. Nick Minchin's letter expressing his opposition to an emergency National Heritage Listing of the Western Sydney precinct, I would like to point to a number of items he mentioned, with which I disagree.

The Minister stated that he oversaw the sale of the site which was completed in June 2004. However, the buyers of the site bought the site for a very good price, knowing that they were only guaranteed development of the Eastern Precinct. In fact one of the justifications the government used for the seemingly-low price was that there was no guarantee the company could get approvals for developing the rest of the site. The Federal Government made no promises to the company that they would be able to develop the western and central precincts.

The Minister correctly states that the conservation values of the site have been assessed in the past, but as I stated in my submission the site has evolved since then and warrants further assessment by the National Heritage Council. Broad acre slashing ceased on the site two years ago and previously unrecorded stands of *Pimelea spicata* (EPBC Act 1999) have been found along with the regeneration of other species in the Cumberland Plain Woodland.

It is true that the Federal Government has secured two thirds of the site for parkland, but this parkland is not properly protected because the management plan for National Parks and Wildlife will not be out until next year, yet Lend Lease is developing the site for housing before that.

The flora and fauna are not properly protected because there is no management plan for the Federal Government's vermin-proof fence in place. That is why there is an urgency to this nomination – development will begin before the flora and fauna are properly managed. And we have the imminent threat of more kangaroos further degenerating the Cumberland Plain Woodland.

At this stage the development is set to go ahead with the minimal amount done by the State Government to protect the species the Federal Government has offered to save through the establishment of a vermin-proof fence and the listing of two thirds of the site on the Register of the National Estate. The State Government is failing to protect this site adequately.

Western Precinct has outstanding national value because of its aesthetic characteristics

I re-assert the claim that the Western Precinct has outstanding national aesthetic value.

The comments received objecting to these values are themselves unsubstantiated and reflect a view that is out of step with the wider community.

Again I claim that the Western Precinct has outstanding national aesthetic values which are characterised by the following:

- § Being a natural landscape unique to the Cumberland Plain and Western Sydney
- § Being a large intact CPW remnant of some 230ha
- § Being a large remnant of an Endangered Ecological Community within a highly populated area
- § Being the only large remnant of CPW that can be readily viewed by thousands of members of the public and overseas visitors on a daily basis.
- § Offering 2 km's of uninterrupted views of intergrading Shale Plains and Shale Hills CPW.
- § Being the only place in Sydney, the largest city in the nation, where a wild population of Kangaroos can be readily viewed grazing in a natural area consisting of CPW.
- § Being the only place within hours of Sydney, the largest city in the nation, where a wild population of Emus can be readily viewed grazing in a natural area consisting of CPW.
- § Being a place that is said to resemble typical pre 1788 Cumberland Plain savannah/landscape.
- § Offers a sense of Australiana with its combination of open plains/savannah, woodland, wetlands and macrofauna.
- § Landmarks that remind of its previous use as a munitions manufacturing facility 1940's - 1994.
- § Natural attributes that are recognised as having value to the Australian Film Industry
- § Its natural landscapes offer the public inspiration for creativity and expression such as: painting, poetry and verse
- § The places natural landscapes have inspired democratic processes valued by the Australian community [conservation].
- § Efforts to conserve the place have defined an era in Western Sydney's history.
- § The place is the foremost visual reminder of the conservation campaign.

Summary

The nominated place is of outstanding natural and aesthetic value to the nation. These values are under imminent threat due to Lend Leases MFMP, future urban and industrial

development.

Should these outstanding heritage values be listed it is suggested that the Western Precinct be added to the proposed Regional Park. This would allow sustainable numbers of macrofauna to be retained in the Western Precinct, visible to the public from the Northern Rd.

I urge you to let this heritage nomination go through to the National Heritage Council for further assessment.

Yours sincerely,

JACKIE KELLY MP