

ADI Residents Action Group

Submission: Remediation Action Plan

16th January 2004

Department of infrastructure Planning and Natural Resources

The ADI Residents' Action Group submit the following in response to Comland's Development Application to conduct Remediation Activities within the Eastern Release Area of the ADI site, St Mary's.

The ADI RAG is extremely concerned that the landowner proposes to undertake activities which have not been provided for under the SREP 30. The Remediation Plan constitutes planned actions which were not revealed to the public during the public exhibition period for SREP 30 and which the public was therefore not given an opportunity to comment on at that stage.

In effect the public have been misled, by being given to understand that the Eastern Sector (Regional Park) area in particular would remain as a restricted access conservation area (surrounded by a high chain mesh fence and other conditions as stipulated by the NSW State-accredited auditor in the 1999 Site audit), due both to its outstanding conservation value and to the fact that the area had not been fully decontaminated and remediated and therefore posed a risk to human health and safety.

See: Site Audit Statement CHK001/2, dated 7/6/99: Auditor states "I certify that the site is suitable only for "Conservation reserve with restricted access by the public/ subject to Conditions.." including "1. that the area be surrounded with a high chain mesh fence" and "3. Visitors to the area be accompanied by a guide and movement be restricted to boardwalks and well marked paths".

It is difficult to see how the current plans, which do not go much beyond the requirements laid down for the above land use, will result in an area rendered safe enough for unfettered public access. Capping of the burning grounds in Site 15 and extra surveying of Zone 2 (post-hole disposal area) will not ensure that the rest of the site, which may have been subject to extensive unrecorded dumping and explosive testing/disposal is rendered completely safe and risk-free.

ADI RAG believes that any further remediation works carried out in the Eastern Sector should only be considered if they can be guaranteed to result in vastly improved health and safety conditions for the public, balanced against minimal adverse impact on the outstanding conservation values of the site. The current D.A. is not reassuring on either count: bringing down the fence without conducting extensive testing, decontamination and remediation across the whole of the Eastern Sector will only mean exposing the public to unnecessary risk whilst severely jeopardising the integrity and future survival of the threatened species and endangered ecological communities currently present.

In the executive summary the proponent acknowledges that "The Eastern Sector was not as thoroughly remediated because effective remediation for unrestricted access would have destroyed the ecological values of part of the area". How then will the proponent achieve remediation to the level required, when such broadscale removal of vegetation and fauna habitat is not being proposed?

Under SREP 30, Part 4, Development Applications, clause 20, consent “must not be granted with respect to any development on land to which this plan applies unless the consent authority is satisfied that the proposed development will not be inconsistent with achievement of performance objectives..”. Yet the D.A. is not consistent with stated performance objectives and goals such as:” minimisation of adverse impacts on the natural values of the regional park”(St Marys EPS 2000).

ADI RAG are not convinced that the proposed remediation activities have placed health and safety issues as the uppermost concern. The D.A. seems to reflect a cynical aim on the part of developers to have the site audit statements changed to expediate their desire to have the fence and restricted access conditions removed with the minimum of effort and expenditure on their part. It is clear that the Restricted Access and high mesh fence symbolise a hazard that Council view as an impediment to approval of the Developers' Precinct Plans. The danger is that in removing this symbol of risk without removing all of the risks themselves the public will be exposed to harm and the conservation values of the site will be compromised.

A further concern is that there seems to be a strong reliance on the adequacy and accuracy of the site records to provide a level of confidence about the possible risks. ADI RAG are aware of existing and extensive anecdotal and recorded evidence (video testimonies, journalists' transcripts etc) suggesting the contrary. These include ex-workers' and foreman's statements to the effect that records were destroyed or not kept documenting widespread dumping of chemical, explosive ordnance and other toxic waste on the site. These claims have been borne out by findings of large numbers of unrecorded burial pits and dumped materials in previous decontamination works.

ADI RAG is therefore of the opinion that further extensive inquiries are called for before any remediation plans are consented to by the State Government.

We also note with concern that a possible Consent to Destroy may be applied for and granted with regard to the Aboriginal Heritage areas. ADI RAG believe that a greater level of community awareness and involvement should be allowed before such a Consent is granted, given the extremely high conservation value and significance of these cultural relics, particularly in-situ, as they are.

Submission on the Remediation Action Plan: Comments on the Flora and Fauna Assessment

The Flora and Fauna Assessment prepared by ERM consultants for the developers fails in its stated purpose:

‘ To provide an assessment of the likely impacts of the works for the Remediation Action Plan for the Eastern Sector of the St Marys Property to flora and fauna within the eastern sector... of the St Marys Property. The assessment describes the flora and fauna within the areas to be investigated for remediation, lists the threatened species that are likely to occur and assesses the impacts from the proposed works by completing the “eight part test” as required under Section 5A of the Environmental Planning and Assessment Act 1979.

To be specific, the Assessment fails to achieve its purpose because it:

- Fails to fully list known occurrences of many TSC Act listings
- Fails to consider for impact assessment TSC Act listings, even when these are noted in the Assessment
- Fails to list any EPBC Act listings other than Cumberland Plain Woodland.
- Fails to accurately map those TSC Act listings that are presented
- Fails to correctly calculate specimen numbers using its own estimates

Incomplete Threatened Species Information

The developer’s consultants fail to consider listings on the Australian Museum Database for animal records, or the Royal Botanical Gardens Database for plant records.

The assessment used only online database records for NPWS Atlas. Not only are the online records advised by NPWS to be an inadequate method of accessing the database, but the information was accessed at or before 1/2/03. The final Assessment was signed off by the Project Director on 12/9/03 with the Remediation Action Plan being available for public comment from November 2003. Thus, old data was relied upon.

The assessment claims it uses a 5km radius range for noting threatened species records on the NPWS Atlas. This is misleading as 5km from a central point is the measurement methodology used, rather than 5km from the study area boundary. This is particularly relevant when the study area itself is almost 3.5 km across.

The Application of the Commonwealth EPBC Act is not considered for any of the listings except for a single reference to Cumberland Plain Woodland (p1). This is all the more relevant as this is Commonwealth owned land, making the EPBC Act even more binding.

The claim is made in the Statement of Environmental Effects that Commonwealth environmental assessment has been made under the EPIP Act 1979. However as no copy of any approval under this Act has been attached to the document it is impossible to judge whether this approval covers all relevant listed species.

Migratory species are also covered under Commonwealth Law (EPBC Act), yet no reference to any species under this section of the EPBC Act is made.

There are at least three species known to occur on the ADI site, including:

- White throated needletail (NPWS & ERM)
- Rufous fantail (NPWS & ERM)
- Black faced Monarch (NPWS & ERM)

The assessment claims that all of the records of *Persoonia nutans* (Endangered Both EPBC Acts and TSC Acts) are within the proposed Regional Park, and that none will be impacted by the proposed remediation works (p1). In fact, of the 5 populations on the ADI site (out of a total world total of only 14 populations) one is in the Western Precinct Development area (not the proposed Regional park). Tragically, this population may well have been recently slashed during slashing for 'fire control'. The other population of *Persoonia nutans* occurs alongside track 5j in the Eastern Triangle, making it subject to slashing under the current D.A. being discussed.

There is no discussion of *Pimelea spicata* (Endangered TSC Act) in the assessment, despite it being listed in the developer's consultant's attached maps and on the NPWS Atlas as occurring in the Study area. In contradiction, it is not listed in the consultant's Flora Species List. Suitable habitat occurs throughout the study area.

There is no discussion of *Marsdenia viridiflora* (Endangered Population TSC Act) in the assessment, despite it being listed on the developer's consultant's Flora list, and being listed on the NPWS Atlas. The ADI site is also given as the species' occurrence in the Final Determination in the TSC listing by the NSW Scientific Committee. Suitable habitat occurs throughout the study area.

There is no mention in the Assessment of the Cumberland Land Snail *Meridolum corneovirens* (Endangered TSC Act). This species is listed on the NPWS Atlas as occurring in many areas over the ADI Site, including three records in the study area.

There is no mention in the assessment of Green and Golden Bell Frog *Litoria aurea* (Endangered TSC Act). This species is listed on the NPWS Atlas as occurring in the Study Area. Suitable habitat occurs throughout the study area.

No mention is given in the Assessment to many other listed records of Threatened Species either occurring on the ADI site or within the 5km quoted of the site.

These species include:

- Koala (official WIRES records submitted to NPWS Atlas)
- Swift Parrot (NPWS Atlas)
- Square Tailed Kite (NPWS Atlas)

- Black Bittern (ERM & Kinhill Consultants)
- Large footed Myotis (NPWS Atlas)
- Speckled Warbler (NPWS Atlas)
- Glossy Black Cockatoo (NPWS Atlas)
- Regent Honeyeater (NPWS Atlas)
- Allocasuarina glareicola (NPWS Atlas)

None of the above species are given an eight part test, when all should have been considered.

Of the four flora species that were considered in the assessment for the eight part tests, there are a number of inconsistencies.

The numbers cited for specimens of *Dillwynia tenuifolia* 'impacted' by the proposed D.A. are given as '3,298' but using the consultant's own figures, it actually totals '3928' or 630 more plants than suggested.

It gives a total of 'zero' for specimens impacted outside the regional park. This is inaccurate, as is evidenced in previous compliance cases referred to NPWS and reports supplied to NPWS (ADI RAG 2003/4, Laurie2003, Rapmund 2002)

Micromyrtus minutiflora (Endangered TSC Act, Vulnerable EPBC Act) is quoted in the D.A. Assessment as not occurring outside the Regional Park (p9), and hence not being directly affected by 17.1 hectares of proposed slashing, yet evidence abounds that possibly the world's largest population of this endangered plant occurs within this proposed area. This evidence can be seen in the Developer's consultant's Biodiversity report for the Eastern Precinct, which estimates only 1340 plants in the entire Study Area, with 150 of these being outside the proposed Regional Park. We are now told in the Remediation D.A. Assessment that there are over 16,319 in the Study area with none outside the proposed Regional Park.

It should be noted that the NSW Scientific Committee estimates possibly only 1800 plants left as a global total in it's recent upgrading of this plant from Vulnerable to Endangered status.

ADI RAG estimated for NPWS Compliance that conservatively over 1000 plants were slashed in the proposed development area. ADI RAG hold photographic and video footage of this population. This alone disproves the variety of the developer's consultant's figures regarding population numbers and distribution.

There are in fact specimens of *Micromyrtus* growing in the site along the main gate entrance road.

The Eight Part Tests carried out on the selected four species of plant are based on inaccurate data, and derive inaccurate, incorrect and misleading answers to each part of the tests.

For all applicable questions in the Tests for the Threatened plant species and ecological Communities, the response is in the positive. All this data to support these affirmative responses is given in the Scientific Committee's determination, NPWS mapping and the D.A. Flora and Fauna assessment.

This means that Species Impact Statements are applicable for those eight part test attempted by the developer's consultants. Eight part tests need to be carried out on at least those species mentioned previously.

SEPP 44 consideration should have been applied in this D.A. as all dominant Tree species present in the Eastern Sector are Koala food trees. Koala records exist adjacent to and within 5 km of the Study area.

Additional Relevance to Eastern Precinct Plan

As the Eastern Precinct Plan is yet to be accepted or rejected by Blacktown Council, the effects on biodiversity that are proposed by this Development application must be considered within the Eastern Precinct Plan.

Likewise, as the assessments for this D.A. are derived from the most recent report commissioned by the developers - 'The Biodiversity Assessment for the Eastern Precinct by ERM', which were shown to be lacking in credibility, the D.A.'s credibility needs to be reassessed.

The two reports contradict each other in many places and these discrepancies need to be compared and checked with the consultants to ensure accuracy in both cases, as important decisions will hinge on the information provided.