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30 November 2004

Mr Robert Bruce
Director Heritage Inventory and Referral Section
Department of the Environment and Heritage
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Dear Sir

I refer to your letter dated 26 November 2004 concerning the request received by the Commonwealth Minister for the Environment and Heritage under Section 324F of the Environment Protection and Biodiversity Conservation Act for Emergency National Heritage listing of the Western Precinct of Lend Lease's St Marys property in Western Sydney. You have sought comments on the heritage values of the area, any known threats to the claimed heritage values and on other matters raised in the application received by the Minister.

You should be aware that the St Marys property, including the Western Precinct, has been the subject of extensive study and debate for the past 10 years in terms of urban and conservation outcomes. This has included independent assessment and consultation under Commonwealth legislation (EPIP, ERCP, EPBC and AHC Acts) and State legislation (EP&A, NPW and TSC Acts). The comments in this submission are supported by thorough and independent research and legislative processes including that of your department in both its current and predecessor forms.

Lend Lease submits that the Minister should reject the request for emergency or other listing of the Western Precinct because:

1. The rigorous and independent Commonwealth and State statutory processes concluded that the totality of the Western Precinct did not justify listing on the Register of the National Estate (RNE).
2. The Western Precinct proposed for emergency listing does not meet the threshold criteria for the National Heritage list and is not of "outstanding heritage value to our nation".
3. The Western Precinct does not comprise 230 hectares of Cumberland Plain Woodland (CPW) as stated; rather it is "...so degraded as to no longer have a potential to be considered as Cumberland Plain Woodland as defined under the TSCA..." (Perkins, February 1999)
4. There is no immediate or imminent threat to "an area of outstanding heritage value to our nation".

Each of the above points is addressed below:

+61 2 62742090

- 2 -

Rigorous and Independent Statutory Processes

The following table provides an overview of the legislative processes and outcomes that have taken place:

Legislative Process	Outcome
<p>Australian Heritage Commission Australian Heritage Commission Act (AHC Act)</p>	<p>Australian Heritage Commission:</p> <ul style="list-style-type: none"> o Considered nomination in 1996 and subsequently listed 850 ha of 1,545 ha St Marys property on the Register of the National Estate (RNE) in 1999. o Agreed, in November 2002, that the arrangements for ongoing management and protection of RNE listed land provided "as much protection for RNE listed land as is practicable....". <p>Commonwealth Special Minister for State:</p> <ul style="list-style-type: none"> o On 12th March 2002 advised the then Landowner (a Commonwealth subsidiary) that "any development undertaken by ComLand at St Marys should be based on protecting all RNE listed land". o On 11th December 2002 confirmed that the then Landowner (a Commonwealth subsidiary) could enter into the Development Agreement Deed for ongoing ownership and management of all RNE listed land.
<p>Environment Australia: Environment Protection and Impact of Proposals Act (EPIP Act); Environmental Reforms and Consequential Provision Act (ERCP Act); Environment Protection and Biodiversity Conservation Act (EPBC Act).</p>	<p>Relevant authorities agreed that Commonwealth Environmental Assessment of the Project for the designated development activity would remain under EPIP following the introduction of EPBC (this was permitted under transitional provisions). Subsequently, Environment Australia:</p> <ul style="list-style-type: none"> o Completed the Commonwealth environmental assessment of the designated development activity; and o Provided the associated certification of related activities required under ERCP.

NSW Government Environmental Planning and Assessment Act (EP&A Act)	Following extensive study SREP 30, prepared under provisions of EP&A Act, allocates land uses for the site comprising: urban; employment; Regional Park; and Regional Open Space. Subsequently agreed that all land listed on RNE will be protected from development (amendment to SREP in progress).
NSW National Parks and Wildlife Act (NPW Act)	All land listed on the RNE is protected from development and will be transferred to NPWS for ongoing ownership and management as a Regional Park under the NPWS Act.

Following an exhaustive and transparent planning process spanning over 10 years across all levels of government, the NSW Government rezoned the St Marys property in January 2001 thus achieving a balanced urban and conservation outcome. This was enshrined in a Development Agreement Deed (executed in December 2002) between the Federal Government, NSW Government and Lend Lease to implement a sustainable long term ownership and management plan for the conservation areas. This was reconfirmed in the execution of the ComLand Share Sale Agreement between Lend Lease and the Commonwealth Government, completed in June 2004.

Criteria for Listing

It is noted that "The National Heritage List will be a list of places with outstanding natural, indigenous or historic value to the nation" and that "to reach the threshold for the National Heritage List, a place must have 'outstanding' heritage value. This means that it must be important to the nation, that is, to the Australian community as a whole".

The nomination for emergency listing of the Western Precinct:

- o Contains no new information;
- o Contains incorrect information;
- o Contains selectively reported information; and
- o Merely re-presents information that has already been considered and used as a basis for the Environmental Assessments by the Federal Government including the AHC. The AHC assessment of the values of the St Marys property led to the preservation of parts of the site but excluded that part of the site now proposed for emergency listing.

The proposed emergency listing fails on all relevant criteria. None of the statutory or other assessments have described the CPW already listed on the RNE as "of outstanding heritage value to our nation". The Western Precinct proposed for emergency National Heritage listing has already failed to satisfy the less onerous criteria for listing on the RNE. There has been no material change to any relevant circumstances since this AHC decision. It follows that the Western Precinct does not satisfy the more rigorous criteria for National Heritage listing.

+61 2 62742090

- 4 -

The Western Precinct does not comprise 230 hectares of CPW

The nominated area is highly disturbed and predominantly cleared as a result of previous land uses. This fact has been comprehensively documented during the planning assessment process. This level of disturbance was supported by the report prepared for the AHC (Perkins, February 1999) to provide an independent assessment of disputed areas from the Interim RNE Listing and concluded:

"...these areas would be generally so degraded that they would no longer have a potential to be considered to be Cumberland Plain Woodland as defined under the TSCA"

This conclusion refers directly to the Western Precinct of the site.

There is no immediate or imminent threat

Lend Lease submits that it is not appropriate to attempt to have the Western Precinct listed under an emergency listing as there is no immediate or imminent threat to CPW in the Western Precinct as a result of development commencing in the Eastern Precinct.

The contractual obligations to transfer the Regional Park area (including all RNE listed land) at no cost to the NPWS for ongoing ownership and management together with a progressive financial contribution of \$6.9m to establish the Regional Park will have precisely the opposite impact to that claimed. It is the outcome of this agreed process that will protect, preserve and enhance the CPW in the St Marys property.

The implementation of the Macrofauna Management Plan (MFMP) will also protect the remnant CPW on site. The MFMP is a highly regulated and structured programme implemented under strict licence conditions imposed by the NPWS. In approving the MFMP, a specific condition has been imposed on the landowner to protect endangered plant communities from grazing pressure and will be closely monitored. The initial movement of animals from the first development area involved less than 2% of the population (60 kangaroos and no emus) and not 33% (1,000 – 1,200) as stated.

- 5 -

Conclusion

In conclusion Lend Lease submits that:

- o The Western Precinct does not possess aspects of Australia's natural history that are uncommon, rare or endangered to an extent to justify National Heritage Listing.
- o Due to its degraded nature, low resilience and low biodiversity value (as identified in statutory assessment processes) the Western Precinct does not demonstrate the principal characteristics of a definable class of Australia's natural places or environments to justify an emergency or other listing.
- o The Western Precinct itself does not exhibit any aesthetic characteristics of outstanding heritage value.

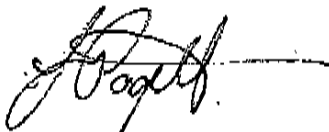
The proposed Regional Park, to be funded and managed as an integral part of the development of the St Marys property, will exhibit significant aesthetic characteristics which will enable this area to be valued by the community into the future. In this respect, the Regional Park will open opportunities for public enjoyment and access to the site for the first time in 50 years.

Finally, a detailed response to the technical issues raised in the application is attached. The St Marys property has undergone a rigorous and independent statutory process involving all stakeholders culminating in a balanced urban and conservation outcome. It is the position of Lend Lease that an emergency National Heritage listing of the Western Precinct is neither warranted nor appropriate.

It is noted that this response will be provided to the proponent. Lend Lease reserves the right to review any further comments from the proponent and to prepare a response. Further given the extremely tight timeframe to respond to the proposed emergency listing, Lend Lease also reserves the right to make further submissions as it may deem necessary.

Should you require further information, please contact the undersigned on (02) 9236 6111.

Yours faithfully



Simon Pagett
LEND LEASE COMMUNITIES
REGIONAL GENERAL MANAGER - NSW / ACT

Response to the Application requesting
Emergency National Heritage Listing of
the Western Precinct, St Marys Property

General Comment

The application reveals no significant new data or information that was not previously available to the Australian Heritage Commission (AHC) when the original listing of the St. Marys property was being considered. Furthermore, much of the information used is demonstrably dated and the application does not make use of some significant recent literature that should be used when examining the Western Precinct which shows that Cumberland Plain Woodland is largely absent from the Western Precinct (eg the National Parks and Wildlife Service - now Department of the Environment and Conservation or DEC - Mapping of the Cumberland Plain). As a consequence, out of date and erroneous media releases and other similar literature is used in place of empirical data.

The application claims that the proposal within the Macrofauna Management Plan (MFMP) to move kangaroos into the Western Precinct will degrade Cumberland Plain Woodland. However, the reverse is true as the MFMP has been designed to bring about a reduction in grazing pressure by kangaroos and among the conditions imposed upon the Plan by DEC, there is a condition that states that kangaroo density will be maintained below 2.5 kangaroos per hectare within CPW for the life of the Plan. This condition has been designed to ensure that the extensive remnants of Cumberland Plain Woodland within the Regional Park are protected from over grazing.

The application makes no use of up to date maps, aerial photographs or on-ground site photographs to support this case. Such materials are readily obtainable. The NPWS/DEC vegetation map and recent aerial photographs show the highly cleared nature of this area of the site. On ground photographs, objectively and systematically taken would also show this. The lack of such information in the application detracts markedly from its credibility.

In conclusion the application is flawed, misleading and relies heavily upon outdated and inappropriate citations of literature. The findings of the application should be disregarded and there is no reason for the AHC to vary the current Place description or area mapped for St Marys property.

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RESPONSE TO THE APPLICATION REQUESTING FOR EMERGENCY NATIONAL
HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY

Place in Application	Statement In Application	Comment
Page 1, para 2	"The Western Precincts outstanding National Heritage values are now under imminent threat"	The Western Precinct is a highly disturbed, largely cleared area "so degraded as to no longer have a potential to be considered as CPW as defined under the TSCA" (Perkins 1999). As such it cannot be regarded as outstanding National Heritage value.
Page 1, para 2	Large numbers of kangaroos are to be removed from the Eastern Precinct	Currently, there are only relatively small numbers of kangaroos in the Eastern Precinct
Page 1, para 2	230 hectares of Cumberland Plain Woodland exist in the Western Precinct	This is not supported by a series of past analyses, including NPWS/DEC vegetation mapping. The Application claims that most of the site is Cumberland Plain Woodland, whereas it was selected as a development precinct because it is highly disturbed and largely cleared.
Page 1, para 2	Kangaroo grazing will impact upon the nationally threatened flora including <i>Pimelea spicata</i>	<i>Pimelea spicata</i> is confined to a small area of the Western Precinct where a very small number of plants are known. They are in a location that can and will be fenced to exclude kangaroo grazing. No significant impacts are likely upon the species. Larger occurrences are conserved within the Regional Park and the species occurs at a considerable number of other sites in Western Sydney.
Page 1, para 3	"A further threat is urban and industrial development of the entire Western Precinctto commence in 2007"	As the area in question does not possess outstanding National Heritage values there is no threat as stated.
Page 1, para 3	Urban development has been recognized as a key threatening process to Cumberland Plain	Agreed. However, almost all of the remnants, including all remnants of high and medium quality are to be

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HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY

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	Woodland.	conserved within the Regional Park. Development will be confined to degraded areas of the St Marys Property, such as the Western Precinct.
Page 1, para 4	33% of the kangaroo population of 3000 to 3500 animals will be translocated from the first development area to the Western and Central Precincts.	A total of 60 kangaroos and no emus have been relocated under licence from the NPWS/DEC, as a result of the first development area. This represents less than 2% of the total macrofauna population on site.
Page 2, para 3	The MFMP will increase rather than relieve grazing pressure upon Cumberland Plain Woodland	The reverse is true. The plan has been specifically designed to reduced grazing pressure in the medium to long term. The plan has been formulated with the help of kangaroo experts and has been endorsed by the DEC.
Page 3, para 3	230 hectares of CPW occur in the Western Precinct	The Application continually states that the Western Precinct "contains approximately 230 hectares of Cumberland Plain Woodland", implying that virtually the entire area is such vegetation and that it is of such high quality it should be included in the Register of National Estate. This view is not supported by NPWS/DEC vegetation mapping that shows the area is largely cleared. It is also not supported by the Perkins report, which was prepared for the AHC and which found much of this area was either cleared or in poor condition with low resilience (ie little prospect of returning to a near natural condition). The Western Precinct contains relatively few trees but has roads, ditches, broad

**RESPONSE TO THE APPLICATION REQUESTING FOR EMERGENCY NATIONAL
HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY**

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		areas where the original soils have been entirely removed or greatly modified, some buildings and also extensive areas dominated by exotic grassland.
Page 3, para 3	<i>Pimelea spicata</i> only occurs in CPW	This is incorrect. It also occurs in other vegetation types to the southeast of the Cumberland Plain around Kiama.
Page 3, para 6 and Page 5, para 3	Only 6% of the CPW remains	This figure is incorrect and out of date. According to current NPWS/DEC estimates, more than 10% remains.
Page 5, para 3	Only 6,420 hectares of CPW remains.	Incorrect and out of date. See above
Page 6, para 7	"It is clear from the determinations of the Endangered Species Scientific Committee that the 230 ha of CPW in the Western Precinct has outstanding National heritage value."	The Scientific Committee determination makes no mention of this area. Furthermore we note the area in question has not even met the less rigorous criteria for listing on the RNE.
Page 6, para 8 & 9	The Application refers to the National Trust listing in March 1996.	This is simply a restatement of information detailed in the Regional Environmental Study conducted by the NSW Government in determining the development and conservation outcomes for the site.
Page 7, para 7	The Application cites a study of National Estate values by the Biosis report and indicates that the Biosis report should be given serious consideration with respect to the Western Precinct.	The Biosis study only entailed a single day site inspection by the Biosis study team in the company of Dr David Robertson (now director of Cumberland Ecology). No quantitative field data was collected by Biosis. The AHC were not satisfied with the investigations by Biosis and elected to commission a second, more detailed study by Perkins that involved collection of field data.

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RESPONSE TO THE APPLICATION REQUESTING FOR EMERGENCY NATIONAL
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Page 7, para 2	Perkins only surveyed one plot in the Western Precinct.	Perkins actually placed two plots in the Western Precinct due to the disturbance of the vegetation there. However, he also traversed the entire area when determining where to place plots and made notes about the nature, extent and condition of native vegetation within the Western Precinct. He concluded that the vegetation in this area was so degraded that it should not merit inclusion on the Register of National Estate.
Page 7, para 3	The vegetation in the Western Precinct has substantially regenerated since the time of Perkins and this is a major factor in the nomination for emergency listing.	A high proportion of the Western Precinct has not regenerated and remains dominated by exotic grasslands. The area also has roads, ditches, a building and areas of plantations that are not native. There is no reason to suggest that there has been major additional regeneration that would warrant inclusion on the Register of the National Estate.
Pages 7 & 8	a "legal precedent" that it claims was made by Justice Martha Pearlman in her decision concerning the Land and Environment Court hearing <i>Plumb v Penrith City Council and Anon (2002)</i> . The application claims that the decision found that Cumberland Plain Woodland occurred across the Xavier College School site, which is true. The Application then states that because of this, the Western Precinct should be considered to be of National heritage value.	The Court case in question set a precedent in that it clearly ruled in favour of the developer and permitted development of the site. i.e. it found that although Cumberland Plain Woodland, it was highly disturbed. The application omits to provide further details about the findings of Justice Pearlman. That is, the application is silent about the fact that although Justice Pearlman agreed that Cumberland Plain Woodland occurred across the Xavier College site, the Judge also

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RESPONSE TO THE APPLICATION REQUESTING FOR EMERGENCY NATIONAL
HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY

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		found in favour of the proponent and allowed the School to be built. Furthermore, the Judge did not agree that the construction of a school on the site would have a significant impact upon Cumberland Plain Woodland and as such no Species Impact Statement was required.
Page 9, para 5	The Western Precinct is a Western Sydney icon.	This is an unsupported statement.
Page 9, para 6	The wetland in the Western Precinct is claimed to be a feature of beauty.	This is a dam of the type that occurs widely in western Sydney. Many other artificial waters have been so constructed in western Sydney. It is not unique or special or of relevance for consideration for inclusion on the National estate.
Page 10, para 2	Millions of Australians and overseas visitors have experienced and developed a deep appreciation of the Western Precinct.	This is an unsupported, emotive statement.
Page 10, dot points	<ul style="list-style-type: none"> o Being a natural landscape unique to the Cumberland Plain and Western Sydney o Being a large intact CPW remnant of some 230ha o Being a large remnant of an Endangered Ecological Community within a highly populated area o Being the only large remnant of CPW that can be readily viewed by 	<p>This is not a unique natural landscape as claimed. It has been highly modified, degraded and largely cleared.</p> <p>This assertion by the applicant is not supported by empirical evidence or verified by independent research. See also comment page 3, para 3 above.</p> <p>This assertion by the applicant is not supported by empirical evidence or verified by independent research. See also comment page 3, para 3 above.</p> <p>This assertion by the applicant is not supported by empirical evidence or verified by</p>

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HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY

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	thousands of members of the public and overseas visitors on a daily basis	independent research.
	o Offering 2 km's of uninterrupted views of intergrading Shale Plains and Shale Hills CPW	This assertion by the applicant is not supported by empirical evidence or verified by independent research.
	o 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.	The kangaroos on site are not wild, but have been introduced and are held captive by the fence. The owners of the site have been licensed to hold the captive animals;
	o 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.	The emus on site are not wild but have been introduced and are held captive by the fence;
	o Being a place that is said to resemble typical pre 1788 Cumberland Plain savannah/landscape.	The place is not like the original savannahs that were witnessed by the early European settlers. The original vegetation was sparsely treed with huge old eucalypts. The Western Precinct is largely cleared and has small, scattered regrowth trees. It also has extensive areas of exotic grassland, roads and other disturbances. It is far from a facsimile of the original landscape.
	o Offers a sense of Australiana with its combination of open plains/savannah, woodland, wetlands and	This assertion by the applicant is not supported by empirical evidence or verified by independent research. See also comment on page 3, para 3.

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RESPONSE TO THE APPLICATION REQUESTING FOR EMERGENCY NATIONAL
HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY

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	macrofauna.	
	<ul style="list-style-type: none"> o Landmarks that remind of its previous use as a munitions manufacturing facility 1940's - 1994. 	This conflicts with the claim that the area is a natural landscape unique to Western Sydney.
	<ul style="list-style-type: none"> o Natural attributes that are recognized as have value to the Australian Film Industry. 	This assertion by the applicant is not supported by empirical evidence or verified by independent research.
	<ul style="list-style-type: none"> o Its natural landscapes offer the public inspiration for creativity and expression such as: painting, poetry and verse. 	This assertion by the applicant is not supported by empirical evidence or verified by independent research.
	<ul style="list-style-type: none"> o The places natural landscapes have inspired democratic processes valued by the Australian Community (conservation) 	This assertion by the applicant is not supported by empirical evidence or verified by independent research.
	<ul style="list-style-type: none"> o Efforts to conserve the place have defined an era in Western Sydney's history. 	This assertion by the applicant is not supported by empirical evidence or verified by independent research.
	<ul style="list-style-type: none"> o The place is the foremost visual reminder of the conservation campaign. 	This assertion by the applicant is not supported by empirical evidence or verified by independent research.
Page 11, para 1	The nominated place is of outstanding natural and aesthetic value to the nation. These values are under imminent threat due to	The nominated place is cleared and highly disturbed. It does not contain 230 hectares of CPW. It is an area that has experienced

+61 2 62742090

RESPONSE TO THE APPLICATION REQUESTING FOR EMERGENCY NATIONAL
HERITAGE LISTING OF THE WESTERN PRECINCT, ST MARYS PROPERTY

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	overgrazing by macrofauna and future urban and industrial development.	mowing for more than 50 years and which has also experienced road construction, soil remediation, removal of concrete bunkers and plantation of exotic trees (in patches). It is clearly not of outstanding natural value.
Page 11, para 1	The nominated place is of outstanding natural and aesthetic value to the nation.	Many of the aesthetic values referred to for this area, such as the dam/wetland, are not natural and are replicated in many other areas of western Sydney. Moreover, they can be readily artificially created and are not unique. The Application lacks objective photography or mapping of the nominated place to support this assertion. Photographs and vegetation maps would reveal the highly altered state of this site.