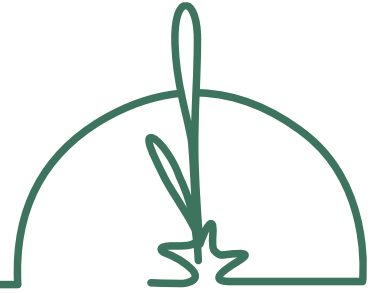


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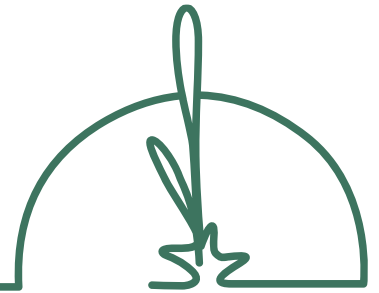
Lot A in DP 392643 and Lot 21 in DP 1010514
Kemps Creek

Residential Subdivision Development Application

Ecological & Riparian Issues & Assessment Report

F Dominic Fanning
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October 2019



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This document and the intellectual material it contains have been prepared by the principal author (Mr F Dominic Fanning) for the specific purposes described herein.

It has been prepared in cognisance of Division 2 Part 31 of the *Uniform Civil Procedures Rules* (UCPRs) and the *Expert Witness Code of Conduct* contained in Schedule 7 to the UCPRs – as practised *inter alia* in the NSW Land & Environment Court.

Any interpretation of this *Report* or any extraction from it are subject to the approval of the author.

LOT A in DP 392643 and LOT 21 in DP 1010514

KEMPS CREEK

RESIDENTIAL SUBDIVISION DEVELOPMENT APPLICATION

ECOLOGICAL& RIPARIAN ISSUES & ASSESSMENT REPORT

October 2019

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- Appendix A** Relevant maps and plans
- Appendix B** Photographs of the site and environs

**LOT A in DP 392643 and LOT 21 in DP 1010514
KEMPS CREEK**

RESIDENTIAL SUBDIVISION DEVELOPMENT APPLICATION

ECOLOGICAL& RIPARIAN ISSUES & ASSESSMENT REPORT

October 2019

1 INTRODUCTION

1.1 The Subject Land

The land which is the subject of this *Ecological & Riparian Issues & Assessment Report* (ERIAR) consists of two parcels at Kemps Creek in western Sydney (Figures 1 and 2) – part Lot A in DP 392643 (which is located in the Penrith LGA) and Lot 21 in DP 1010514 (which is located in the Fairfield LGA). Lot 21 occupies a total area of 3ha and the RU4 component of Lot A occupies a total area of 33ha (Figure 2).

The smaller lot in the southeast (Lot 21 in DP 1010514) is zoned *RU4 – Primary Production Small Lots*; whilst Lot A is zoned partly *RU4* (in the south and southeast) and partly *IN1 – General Industrial* (the majority of the land in the north and northwest). The *IN1*-zoned portion of Lot A has a *Concept Plan Approval* for industrial development; and is not the subject of this ERIAR.

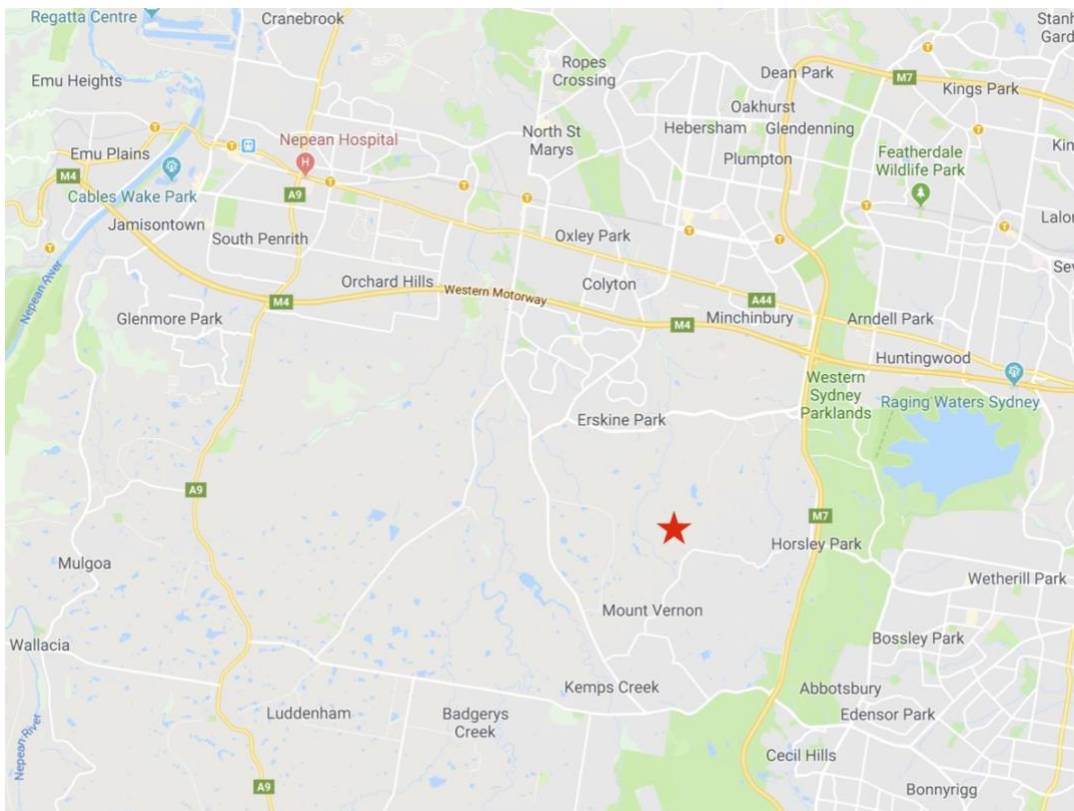


Figure 1 Location of the subject land at Kemps Creek

Lot A, including the RU4-zoned portion (a 250m wide band along the southern and southeastern boundaries), is currently cleared and has long been so – having been used for a variety of agricultural purposes over the past 60 years (at least). Lot 21 is a developed rural-residential allotment; and has similarly long been cleared and/or highly modified. There is very little native vegetation present on the subject land (see details in Chapters 3 and 4).

The land is the subject of two separate *Development Applications* (DAs) for rural-residential subdivision (see Figure 3 overleaf) - one DA for the relevant part of Lot A (to be determined by Penrith Council) and a separate DA for Lot 21 (to be determined by Fairfield Council). This ERIAR addresses the DAs for both lots.



Figure 2 The subject land at Kemps Creek and environs

Figure 3 (overleaf) Plan of proposed subdivision

1.2 Statutory Considerations

The *Development Application* (DAs) for the rural-residential subdivision of the two lots at Kemps Creek is the subject of the standard statutory requirements and environmental planning provisions – as addressed in the following chapters of this ERIAR.

- *Environmental Planning & Assessment Act 1979* (EP&A Act).
- *Threatened Species Conservation Act 1995* (TSC Act).
- *Water Management Act 2000* (WM Act).
- *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act).

It is noted that the DAs are being lodged pursuant to the EP&A Act as in force prior to the commencement of the *Biodiversity Conservation Act 2016* (BCon Act); not as amended by the BCon Act.

This circumstance arises because the DAs are the subject of Part 7 of the *Biodiversity Conservation (Savings & Transition) Regulation 2017* (the ‘Regulation’) – which relevantly states that the “*former planning provisions*” (those applicable prior to the amendments to the EP&A Act as a consequence of the BCon Act) apply to a “*pending or interim planning application*” made on or before 24 November 2019. The DAs will be lodged with the relevant Councils (Penrith and Fairfield) before 24 November 2019; and those Councils are listed in Clause 27(3) of the Regulation.

1.3 Background and Assumptions

As detailed below, the subject land is highly modified and has no natural areas or unmodified native vegetation - having been used for a variety of agricultural purposes over a considerable period (in excess of 60 years for Lot A and at least 20 years for Lot 21 – M Tooker *pers comm*).

This ERIAR has been prepared on the basis that the subject land, once subdivided, will be cleared for rural-residential development purposes - including dwellings (and associated features and infrastructure) and effluent disposal areas (by sub-surface irrigation). Neither part Lot A nor Lot 21 contains any relevant native vegetation (see Chapters 3 and 4) - other than the small stands of eucalypts (which can likely be retained on the subdivided lots) and the small patch of Cumbungi in the farm dam on Lot 21 (see Photographic Essay in Attachment B).

2 INFORMATION BASE

This ERIAR is based on a variety of sources of information, including *inter alia* the following.

- Inspections of the subject land by the principal author of this *Report* in 2008, 2010 and on 07 October 2019.
- A dedicated survey of the subject land for flora and fauna (undertaken on the 23 July 2010 by Environmental InSites staff at the direction of the undersigned).
- Previous investigations on other similar lands in the general vicinity and *Reports* prepared therefor, including *inter alia* the following.
 - Ecological investigations at Templar Road, Erskine Park (Environmental InSites 2008).
 - Investigations on Lot 5 Ropes Creek over a number of years, and an *Ecological Issues & Assessment Report* for that site (Environmental InSites 2010).
 - Ecological investigations on Lot 4 Ropes Creek - for Land & Environment Court *Proceedings* in 2009 (by the principal author of this *Report*).
 - A variety of investigations undertaken by Gunninah Environmental Consultants, Environmental InSites and/or SLR Consulting (involving the undersigned) within the *Erskine Park Employment Area* and on other developments along Old Wallgrove Road and the old Australian Wonderland site.

Other relevant sources of information include -

- the Office of Environment & Heritage (OEH) Atlas of NSW Wildlife records for the locality
- the 'Protected Matters' database pursuant to the EPBC Act
- information regarding threatened biota contained on the OEH website
- the general published literature on threatened biota.

3 SITE DESCRIPTION and HISTORY

3.1 Part Lot A

The relevant part of Lot A for the purposes of this ERIAR (that portion zoned RU4), and indeed the remainder of Lot A, has long been cleared and used for agricultural purposes (grazing, pasture improvement and cropping for cattle) over a period in excess of 60 years. Most of the original native vegetation has been removed – with only low densities of native grasses remaining patchily through the land; a few small copses of native trees present at scattered locations; and minor concentrations of sedges and other moisture-dependent plants at scattered sites (see aerial photographs in Attachment A and Photographic Essay in Attachment B).

The relevant part of Lot A (a 250m wide band along the southern and southeastern boundaries) is gently undulating. There is a low east-west ridge through the southern part of the subject land – with slopes to the north and south (Figure 3). The eastern part of the subject land slopes to the east from the upper elevations along its western boundary – with existing rural-residential lots (most of which are already developed) upslope to the east (along Greenway Place). The slopes are gentle; with no steep lands or incised watercourses throughout the relevant part of Lot A.

The relevant part of Lot A is surrounded by the following land uses (Figure 2).

- An industrial site (approved for new industrial development) to its immediate north.
- A relatively recent industrial development to its immediate west.
- Industrial and employment development lands (on the remainder of Lot A) to its immediate northwest – which have an existing approval.
- Existing rural-residential development to its immediate east.
- Proposed future rural-residential development to its immediate south.

3.2 Lot 21

Lot 21 has also long been cleared of most native vegetation and has been used for agricultural activities and/or residential purposes. It is characterised by weeds, introduced grasses and artificial structures (see aerial photographs in Attachment A and Photographic Essay in Attachment B).

There is essentially no relevant native vegetation on Lot 21 (other than the few remnant eucalypts around the existing dwelling).

In addition, the land to the north, east and south of Lot 21 is already developed; and land to the west (Lot A) is zoned for rural-residential purposes.

4 FLORA and VEGETATION

4.1 Vegetation Types and Flora Assemblage

The RU4 land on Lot A consists predominantly of an introduced pasture grassland dominated by exotic grasses and pasture weeds. Native groundcover species are scarce, with only small patches of hardy native species present at scattered locations across the subject land and few native trees.

Typical introduced pasture species present (which dominate the grasslands on the subject land) include Paspalum, Kikuyu, Perennial Rye Grass and Couch; along with pasture weeds such as Shivery Grass, Rhodes Grass, Spear Thistle, Fireweed, Cats-ears, Lambs Tongues, Paddys Lucerne and Purpletop. Native groundcover species present (in small numbers and at scattered locations) include Kangaroo Grass, *Aristida vagans* and Kidney Weed, with occasional specimens of Native Geranium, Berry Saltbush and the Mat-rush *Lomandra longifolia*.

There are two small copses of native trees (Broad-leaved Ironbark *Eucalyptus crebra*) present on the RU4 land on Lot A – one on the ridge in the southeastern part of the land (near the existing farmhouse) and a second near the eastern boundary (Figure 4). These patches do not have a native groundcover or understorey; and there is no new recruitment of trees (saplings). Several of the trees in the more elevated copse are now dead.

The few small shallow drainage swales on the RU4 land on Lot A contain isolated individuals of or small patches of sedges (*Juncus acutus* and Common Rush *Juncus usitatus*) and a variety of pasture grasses and weeds.

Lot 21 similarly supports a highly modified and predominantly introduced vegetation layer – with most of the Lot being covered with pasture grasses and weeds. There are a few eucalypts (as well as introduced trees) present in the southeastern part of Lot 21 – around the dwelling at this location (see Photographic Essay in Attachment B). These are set within mown and maintained gardens and lawns.

There is a small farm dam in the northwestern part of Lot 21 with a breached dam wall. This dam is ‘fed’ by road stormwater drainage - which exits a pipe and headwall just upslope of the dam (see Photographic Essay in Attachment B). The dam contains a dense sward of Cumbungi.

4.2 Threatened Biota

No “*threatened species*” nor any “*endangered populations*” of flora listed in the TSC Act are present on the subject land at Kemps Creek (both the RU4 land on Lot A and Lot 21). Further, there is no likelihood of any such species or populations being present on the subject land – given the long history of extensive and intensive agricultural use, disturbance and weed infestation.

The only “*threatened ecological community*” which could potentially be present on the subject land is the Cumberland Plains Woodland (CPW) community – listed as a “*critically endangered ecological community*” (CEEC) in the TSC Act.

As noted above, there are two small copses of Broad-leaved Ironbark present on the RU4 land on Lot A, although there is essentially no native understorey or groundcover present but rather a groundcover of dense weeds and pasture grasses. On the basis of the lack of native understorey, these copses of trees are not regarded as constituting examples of the listed CEEC. They certainly do not satisfy the criteria in

the listing of the CPW community (or actually its equivalent) as a CEEC in the Commonwealth *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act); as discussed in Chapter 8.

Similar considerations apply to the stand of trees around the dwelling on Lot 21.

In addition, the stands of woodland are in extremely poor condition and are of very limited ecological value. Further, many of the trees could be retained in the proposed subdivision of the subject land and its eventual development.



Figure 4 Details of the subject land

5 FAUNA and FAUNA HABITATS

5.1 Fauna Habitats

The subject land at Kemps Creek (both the RU4 land on Lot A and Lot 21) contain only very limited habitat types and resources for native vertebrate fauna – being a largely artificial environment dominated by introduced plant species and with little habitat variability.

The introduced pasture grassland which dominates both the RU4 land on Lot A and Lot 21 does provide resources for a number of native species which have evolved to utilise such habitats – but is predominantly introduced. It is of extremely low biodiversity conservation value.

The few trees present on the RU4 land on Lot A and on Lot 21 provide scant nesting or foraging resources for a few species of native fauna. There are no tree-hollows present (although there are two dead stags present with hollows in paddocks), and there are no other resources of particular value (such as rock outcrops or significant water features) on the subject land. The small farm dam on Lot 21 does provide habitat for amphibians and a few bird species (see below); although those resources will be lost once the dam is fully drained.

5.2 Fauna Species

The fauna species present or likely to occur on the subject land (the RU4 land on Lot A and Lot 21) at Kemps Creek are predominantly cosmopolitan, generally abundant and tolerant of modified rural environments.

The bird species recorded (the Rainbow Lorikeet, Willie Wagtail, Richard's Pipit, Masked Lapwing Australian Kestrel and Australian Magpie) are all typical of rural and semi-urban environments throughout western Sydney. Any additional bird species which are likely to occur would also be tolerant of such landscapes.

No reptiles were observed on the subject land (the RU4 land on Lot A and Lot 21), although cosmopolitan species (such as the Dark-flecked Garden Sunskink and Red-bellied Black Snake) would be likely occur. Characteristic urban amphibian species (the Common Eastern Froglet and Striped Marsh Frog) were heard at the farm dam on Lot 21, and a few other common amphibian species could also be present.

The only native mammal species likely to occur on the subject land are microchiropteran bats. A number of cosmopolitan microchiropteran bat species (typical of the urban areas of Sydney) may utilise parts of the subject land (particularly the tree copses on the two lots and the farm dam on Lot 21) for foraging purposes. However, no such species would be likely to reside on the subject land.

5.3 Threatened Fauna

The only threatened fauna species considered likely to occur on the subject land are wide-ranging and highly mobile species tolerant of highly modified rural and peri-urban environments – such as a few microchiropteran bat species and possibly occasional individuals of a few threatened bird species.

The farm dam could theoretically provide habitat for the Green & Golden Bell Frog – but this species was not recorded on the land either in this occasion or during the previous survey (Environmental InSites

2010). The presence of other amphibian species indicates the established nature of the dam; rendering it of less potential value for the Green & Golden Bell Frog. It is not likely that this species is present.

Given the nature and context of the subject land, however, there is no likelihood that even individuals of any such species would be dependent on the subject land (the RU4 land on Lot A and Lot 21) for their survival at this location. There is no possibility of a “*viable local population*” of any such species being resident on or dependent on the subject land at Kemps Creek.

6 GENERAL IMPACTS on the NATURAL ENVIRONMENT

The proposed subdivision and future development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) for rural-residential development and associated purposes has been considered pursuant to Section 4.15 (previously Section 79C) of the EP&A Act – which requires a consent authority to consider “*the likely impacts of .. development, including environmental impacts on both the natural and built environments*”.

The proposed future development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) for rural-residential development and associated purposes (based on the design in Figure 3 of this *Report*) is not likely to be of significance or concern with respect to the natural environment in general or with respect to biodiversity conservation outcomes in particular.

The subject land has long been cleared and utilised (intensively and extensively) for grazing and/or residential purposes. There is little natural vegetation present, being restricted to three small copses of trees (two on Lot A and the stand around the dwelling on Lot 21) with an introduced understorey, and the whole of the subject land is of extremely low biodiversity conservation value. There are no resources of limited or restricted distribution or abundance present.

The vegetation types present are predominantly artificial, and do not provide a relevant or significant ecological function at this location. The flora and fauna species present or likely on the subject land are cosmopolitan, abundant and tolerant of highly modified rural and peri-urban landscapes.

The proposed future development of the subject land at Kemps Creek (both the RU4 land on Lot A and the whole of Lot 21) for rural-residential development and associated purposes, as illustrated indicatively in Figure 3, will not involve the imposition of any impacts on the natural environment that could be considered unreasonable or inappropriate.

7 SECTION 5A of the EP&A ACT

7.1 The Statutory Regime

The *Threatened Species Conservation Act 1995* (TSC Act) has modified the *Environmental Planning & Assessment Act 1979* (EP&A Act) by including a requirement to determine "*whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats*".

The relevant factors of Section 5A of the EP&A Act "*must be taken into account*" by a consent or determining authority when considering a *Development Application*, and in administering Sections 78A, 79B, 79C, 111 and 112 of the EP&A Act, as relevant.

In addition to the seven factors which "*must be taken into account*" (where relevant) pursuant to Section 5A(2) of the EP&A Act (see below), Section 5A(1)(b) of the EP&A Act requires that "*any [relevant] assessment guidelines*" promulgated by the relevant authorities (particularly in this instance the OEH and its antecedents) also "*must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats*".

In undertaking the *Section 5A Assessment of Significance* documented below, the author of this *Report* has "*taken into account*" the *Threatened Species Assessment Guidelines: the Assessment of Significance* prepared by the then Department of Environment & Climate Change (now OEH) - dated August 2007.

The general *Section 5A Assessment of Significance* provided below deals with threatened biota which could theoretically or potentially occur on the subject land (the RU4 land on Lot A and Lot 21) at Kemps Creek (as discussed in Chapters 4 and 5 above).

7.2 The Seven Factors of Section 5A

Factor a Threatened Species – Risk of Extinction

It is not likely that a "*viable local population*" of any "*threatened species*" known from the general locality, or even potentially present on the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21), would be dependent on the subject land, or any element of the land, for its survival in the locality.

There are no threatened flora species present, or likely on the subject land at Kemps Creek.

Whilst individuals of a small number of highly mobile and wide-ranging threatened fauna species could potentially or theoretically utilise the subject land as part of a larger home range, the subject land *per se* could not be critical for the survival of even an individual of any such species.

It is not likely that the future development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) as proposed would place a "*viable local population*" of any species "*at risk of extinction*" (emphasis added).

Factor b Endangered Populations – Risk of Extinction

The TSC Act defines an "*endangered population*" as "*a population specified in Part 2 of Schedule 1*" of the Act. There is no relevant "*endangered population*" of any species listed in the TSC Act.

Factor c Threatened Ecological Communities – Risk of Extinction

The TSC Act defines a “*threatened ecological community*” (TEC) as “*a community specified in Part 3 of Schedule 1, Part 2 of Schedule 1A or Part 2 of Schedule 2*” of the Act.

The only possible TEC on the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) is represented by three small copses of trees (two in Lot A and one in Lot 21).

It is noted, however, that these copses of trees do not possess a native groundcover or understorey layer; and arguably do not constitute examples of the CPW CEEC. They have all been extremely modified and degraded as a result of long-term grazing and pasture improvement practices and/or residential activities.

Furthermore, the proposed future development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) for rural-residential development and associated purposes would likely facilitate the retention of most of the healthy trees on the subject land.

There is no prospect of the proposed future development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) for rural-residential development and associated purposes adversely affecting the “*local occurrence*” of the CPW community (if indeed it is present) to any significant extent, or placing the “*local occurrence*” of the CPW community “*at risk of extinction*”.

Factor d Impacts on Habitat for Threatened Biota

The subject land at Kemps Creek does not constitute important, significant or critical habitat for even individuals of any of the threatened biota that could possibly occur in or around the land (given its current circumstances and the history of disturbance, agricultural uses and other activities). Nor is it likely that either Lot A or Lot 21 would or could be important (or even relevant) for the survival of a “*local population*” of any such species.

Given the circumstances described above, the following considerations apply to the future development of the subject land at Kemps Creek with respect to Factor (d) of Section 5A of the EP&A Act.

- The future rural-residential development of the subject land at Kemps Creek will not result in the removal or modification of a significant quantum of habitat (or indeed any habitat) for any of the known or potential threatened biota that could occur potentially on the subject land or in the general area - Factor (d)(i).
- Future development of the subject land would not result in any relevant habitat for any even potential threatened biota becoming “*fragmented or isolated from other areas of habitat*”, given the surrounding extent of existing and future planned or approved urban development – Factor (d)(ii).
- Future development of the subject land at Kemps Creek as currently envisaged would not result in disturbance to important or significant habitat for any threatened biota. As discussed above, the subject land is not of any importance with respect to “*the long-term survival ... in the locality*” of any of the potential threatened biota known or likely to occur – Factor (d)(iii).

Factor e Critical Habitat

The TSC Act defines “*critical habitat*” as “*habitat declared to be critical habitat under Part 3*” of the Act.

The subject land at Kemps Creek does not contain any listed “*critical habitat*” for any threatened biota.

Factor f Recovery Plans and Threat Abatement Plans

There are no *Threat Abatement Plans* of relevance to the subject land at Kemps Creek.

None of the approved *Recovery Plans* listed in the TSC Act is of relevance to the proposed development of the subject land at Kemps Creek. The approved *Recovery Plan* for vegetation on the Cumberland Plain is not relevant because arguably there is no CPW or other relevant vegetation present. In any case, most of the ‘potential’ CPW (the two copses of Ironbarks and the stand of trees around the dwelling on Lot 21) are likely to be retained in the future rural-residential development of the land.

Factor g Key Threatening Processes

The proposed future rural-residential development of the subject land at Kemps Creek will not result in the relevant imposition of any “*key threatening processes*” – given the nature and circumstances of the subject land and the resources present on it. As noted above, the proposed future development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) for rural-residential development and associated purposes would likely facilitate the retention of most of the healthy trees on the subject land.

The proposed future development will not result in the relevant imposition or exacerbation of any “*key threatening process*”.

7.3 Conclusions

Given the considerations outlined above, the proposed future rural-residential development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) generally in accordance with the attached plans (Attachment A) would not be “*likely*” to impose a “*significant effect*” upon any “*threatened species, populations or ecological communities, or their habitats*” that are present in the vicinity or that could occur at this location, pursuant to Section 5A of the EP&A Act.

There is no requirement for the preparation of a *Species Impact Statement* (SIS) for the proposed rural-residential development of the subject land at Kemps Creek.

8 APPLICATION of the EPBC ACT

The *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act) requires consideration of the potential for a “*significant impact*” to be imposed by an activity on a *Matter of National Environmental Significance* (MNES).

In the event that such an “*impact*” is “*likely*” to be imposed, the activity proposed must be referred to the Commonwealth for determination as to whether it constitutes a “*controlled action*”. Where a development activity does constitute a “*controlled action*”, an approval from the Commonwealth Minister of the Environment is required.

The proposed future rural-residential development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) in accordance with the current zoning of the land and generally in accordance with the attached plans (Attachment A) could not possibly affect any MNES other than (theoretically at least):

- listed threatened species and ecological communities
- migratory species

The future development of the subject land at Kemps Creek as currently envisaged for rural-residential purposes would not be considered even potentially likely to impose a “*significant impact*” upon any threatened or migratory species – given:

- the nature and condition of the subject land (predominantly cleared and/or partly developed);
- the circumstances of the subject land (being girt by existing and future industrial and rural-residential development and/or exotic grasslands);
- the life-history and habits of the theoretically possible species; and
- the extent of suitable habitat and resources in the region for such species.

The three small copses of trees on the subject land (the two copses on Lot A and the stand of trees around the dwelling on Lot 21) do not satisfy the EPBC Act criteria for the relevant Cumberland Plains Woodlands CEEC – as the groundcover is substantially less than 50% native species.

There is no likelihood of a “*significant impact*” being imposed upon any threatened or migratory species listed in the EPBC Act as a consequence of the future development of the subject land at Kemps Creek.

There is no requirement for ‘*Referral*’ of the proposed future rural-residential development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) to the Commonwealth pursuant to the EPBC Act.

9 WATER MANAGEMENT ACT

9.1 The Statutory Regime

The *Water Management Act 2000* (the WM Act) defines “waterfront land” relevantly as:

“the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river”.

The “*prescribed distance*” is defined in the WM Act (relevantly) “*40 metres*”.

The WM Act also describes a “*river*”, relevantly, as:

“any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially improved”.

Future development activities along or adjacent to watercourses that constitute “*rivers*” (*ie* within 40m of the upper bank of a “*river*”), including the construction of roads, stormwater treatment features and adjoining development, may require a *Controlled Activity Approval* (CAA) from the Natural Resources Access Regulator (NRAR).

The NRAR has provided the following documents.

- The Strahler (1957) System for the stratification of watercourses as the appropriate system in NSW.
- The Hydroline mapping system for watercourses in NSW.
- A set of “*Guidelines for Riparian Corridors on Waterfront Land*” (2012).

9.2 Relevance of the Subject Land

None of the drainage features on the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) are “*rivers*” according to the definitions provided in the WM Act (see above); as none of the features contains a “*bed*” or a “*highest bank*”.

Therefore, the subject land at Kemps Creek does not possess any “*waterfront land*”.

No element of the proposed future rural-residential development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) triggers any requirement for referral of the DA to the NRAR or the provision of a CAA by the NRAR.

10 CONCLUSIONS

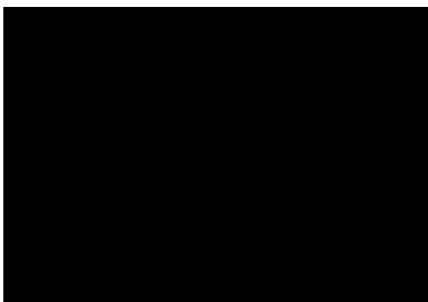
The subject land at Kemps Creek (the RU4 land on Lot A and Lot 21) has been substantially cleared and managed over a very long period for agricultural and/or residential purposes. The overwhelming majority of the subject land consists now of an exotic pasture grassland, with only relatively sparse native groundcover species, and two small copses of remnant eucalypts (as well as the trees around the dwelling on Lot 21). The subject land is of no biodiversity conservation value or significance.

The proposed future rural-residential development of the subject land at Kemps Creek (as depicted generally in the attached plans in Attachment A) will not require the removal of any significant or notable native vegetation. Most of the healthy trees present would likely be retained in the future development of the land. The proposed future rural-residential development of the subject land will not adversely affect the protection of the “*natural environment*” to any significant or relevant extent.

Furthermore, with respect to threatened biota, the proposed future rural-residential development of the subject land at Kemps Creek, generally in accordance with the plans provided in Attachment A of this *Report*, would not involve the removal or modification of any habitat of relevance or significance for the threatened biota that could occur on the subject land. The development area is not considered important for the survival of a “*viable local population*” of any threatened biota – given the circumstances and condition of the subject land.

The proposed future rural-residential development of the subject land at Kemps Creek (the RU4 land on Lot A and Lot 21), generally in accordance with the plans provided in Attachment A of this *Report*, is not “*likely*” to impose a “*significant effect*” upon any threatened biota or their habitats – pursuant to Section 5A of the EP&A Act. A *Species Impact Statement* is not required for the proposal or any future *Development Application*.

Similarly, the proposed future rural-residential development of the subject land at Kemps Creek, generally in accordance with the plans provided in Attachment A of this *Report*, would not be “*likely*” to impose a “*significant impact*” (if indeed any impact at all) upon any threatened or migratory species listed in the EPBC Act. A *Referral* of the project to the Commonwealth is not required.



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GLOSSARY

Biota	<i>“Biota” means the animals and plants, and other organisms, of a geographic region or locality</i>
CEEC	A <i>“critically endangered ecological community”</i> listed in the TSC Act
DA	<i>Development Application</i> - prepared pursuant to the EP&A Act
DEC	Department of Environment & Conservation
DECC	Department of Environment & Climate Change
DECCW	Department of Environment, Climate Change & Water
EEC	Endangered Ecological Community - <i>“an ecological community specified in Part 3 of Schedule 1”</i> of the TSC Act
Ecological Community	TSC Act - <i>“an assemblage of species occupying a particular place”</i>
Endangered Population	A <i>“population specified in Part 2 of Schedule 1”</i> of the TSC Act
EP&A Act	<i>Environmental Planning & Assessment Act 1979</i>
EPBC Act	<i>Environment Protection & Biodiversity Conservation Act 1999</i>
MNES	Matters of National Environmental Significance - as listed in the EPBC Act
NOW	NSW Office of Water
OEH	NSW Office of Environment & Heritage
Recovery Plan	A <i>“plan prepared and approved under”</i> Part 4 of the TSC Act and/or Division 5 of Part 7A of the <i>Fisheries Management Act</i>
Region	A <i>“bioregion defined in a national system of bioregionalisation that is determined (by the Director-General by order published in the Gazette) to be appropriate for those purposes”</i> (TSC Act)
SIS	<i>Species Impact Statement</i> - prepared pursuant to Sections 109, 110 and 111 of the TSC Act
TEC	A <i>“threatened ecological community”</i> – as specified in Schedule 1 of the TSC Act
Threatening Process	A <i>“process that threatens, or may have the capability to threaten, the survival or evolutionary development of species, populations or ecological communities”</i> (TSC Act)
Threatened Species	A <i>“species specified in Part 1 or 4 of Schedule 1 or in Schedule 2”</i> of the TSC Act
TSC Act	<i>Threatened Species Conservation Act 1995</i>

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