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Biodiversity Legislation Review
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Biodiversity Legislation Review

I write this submission on behalf of my colleagues in Blacktown & District Environment Group Inc and we can regard the Panel's role with immense apprehension.

All that has happened since establishment of the Threatened Species Conservation Act, 1995, has been decline in the ecological communities on the Cumberland Plain. The administration of the Act has done little simply because the spirit of the Act has been negated measure by measure.

Now the present NSW Government appoints this Panel for, we suspect, the removal of even the spirit of the Act. Development interests steer government and space equals dollars to development interests. The Cumberland Plain will predominantly become a sea of brick, concrete and bitumen. It will become ugly, even hotter in Summer and devoid of viable populations of the flora and fauna which inhabited the Cumberland Plain.

Consider, overleaf, anecdotal comments on the nature of the Cumberland Plain as observed by early European Arrivals:

Anecdotal Historical Comments

[in 1788] "*The country through which we travelled was singularly fine, level, or rising in small hills of a very pleasing and picturesque appearance. The soil excellent, except in a few small spots where it was stony. The trees growing at a distance of from 20 to 40 feet [6-12 m] from each other, and in general entirely free from brushwood, which was confined to the stony and barren spots.*" (**Arthur Phillip 1789**)

On the 17th of April, after hiding their tents and the remains of their provisions, White's expedition made a forced march in a westerly direction (**White 1788** pp. 124-125): *.... of about fourteen miles, without being able to succeed in the object of our search, which was for good land, well watered. Indeed, the land here [Cumberland Plain], although covered with an endless wood, was better than the parts which we had already explored. Finding it, however, very unlikely that we should be able to penetrate through this immense forest, and circumstanced as we were, it was thought more prudent to return.* Later on the 22nd April, quoted in **Ryan et al.** (p. 7), White mentions traversing through a forest of enormous trees, free of underwood and then being blocked by 'brush-wood' somewhere west of Sydney. When taken together, these descriptions of the vegetation by White reveal that the vegetation around Sydney contained a mosaic diversity of vegetation with areas of heavily wooded forests (with both dense and open understoreys) and thickets of scrub and swamps. It is not possible to understand *precisely what White meant by 'well spaced trees' without measurements.* (**Benson & Redpath**, Nature of pre-European native vegetation in SE Australia)

[November 1788] Major Ross (the head of the military at Sydney) wrote to England decrying the capacity of the land to sustain the Colony said: " *... It is very certain that the whole face of it is covered with trees, but not one bit of timber have we yet found that is fit for any other purpose than to make the pot boil.*"

[May 1797] "*In the account already published of this colony, several instances were given of the danger and difficulty that attended travelling through the woods, in which many people have either wandered till they died, or have been assassinated by the natives.*" (**An Account of the English Colony in New South Wales : From its Inception in 1788, to August 1801 by Lieutenant-Colonel Collins, of the Royal Marines**)

"At the invitation of a friend I went out to his farm near Liverpool, ... *Daviesia corymbosa*, very frequent in the forest land, in flower. ... In the forest land I gathered seeds of a *Helichrysum*, leaves linear, flowers white. Like other farms in the neighbourhood it is overrun with the *Bursaria spinosa*, now in fruit." (**Allan Cunningham** 22/10/1817)

"... *the land immediately bordering upon the coast is of a light, barren, sandy nature, thinly besprinkled with stunted bushes; while, from ten to fifteen miles interiorly, it consists of poor clayey or ironstone soil, thickly covered with our usual evergreen forest timber and underwood. Beyond this commences a fine timbered country, perfectly clear of brush, through which you might, generally speaking, drive a gig in all directions, without any impediment in the shape of rocks, scrubs or close forest. This description of country commences beyond Parramatta on one hand, and Liverpool on the other; stretching in length south easterly obliquely towards the sea, about forty miles and varying in breadth nearly twenty*" (**Peter Cunningham** 1827)

(road building & surrounds - Cumberland Plain & elsewhere) "*Surveyors lay down the best course for the line, and gangs then occupy it, felling in one unbroken line a space of bush of many fathoms wide, and burning off the timber as they go. Finally, where the ground needs it, it is levelled; and where bridges are wanted they are made. The effect of these vast avenues, particularly before the grass is worn away, and all but the mere opening remains in its primitive and natural state, is singularly fine and striking; perhaps the term sublime would not be too strong to apply to the effect. In some places you may see miles along these magnificent openings; the timber on each side is sometimes of gigantic growth; tall regal-looking gums; black, gnarled, grim iron-barks, or stringy-barks swathed in their soot-mantles from the bush-fires: there, if the air be clear, and you catch sight of some other traveller a mile away, the sense of his conspicuous littleness is irresistible; and this the next act of reflection can scarcely fail to transfer to yourself.*" ("Settlers and Convicts" **Alexander Harris** 1820s-1840s)

[Elevated above the Nepean River looking back to the Cumberland Plain] "*As far as the eye could reach in front was an expanse of nearly level woodland, broken here and there by cultivated patches of a greater or less extent, and thinly studded with solitary farmhouses, cots and one or two hamlets with their churches.*" ("**Ralph Rashleigh**" Extract from Ch 19 - a novel allegedly written by convict James Tucker in the 1800's. The writer imports many events and scenes of real life of the time. The book is an interesting read with anecdotes of time as a prisoner of bushrangers describing bushland scenes on Cumberland Plain similar to the mosaic suggested by Benson & Redpath)

From the aforesaid anecdotes we conclude the Cumberland Plain (if viewed from space prior to European Arrival) presented as predominantly tree canopy but underneath the canopy would be a mosaic of dense shrub layer here and there and no shrub layer in other parts. In the mix would be areas, albeit not many, of swamp and accompanying swamp vegetation.

A Recent Analysis of Attempts to Conserve Something of Merit

I have to express the continued disappointment of our membership with the direction of NSW Government policy on the environment in what was the location of the earliest and broadest agricultural land clearing of the Penal Colony which became the nation of Australia. It was the clearing of the Cumberland Plain for agricultural interests which sustained the Penal Colony in its early years.

The nation is indebted to the Cumberland Plain for that which it sacrificed in natural heritage to, firstly, sustain the Penal Colony and, secondly, to make life profitable for settlers and emancipated convicts in the early part of the 19th Century. From that setting grew the most populated city of today's Australia and the assault continues.

Yes, it is recognised that areas nearer to Sydney Cove were soon cleared to house a burgeoning Sydney population and the natural heritage of areas between Sydney Cove and the Cumberland Plain were soon lost. Failure there is no justification for what almost happened on the Cumberland Plain. Only through 'accidental' regeneration on idle land, is any semblance of natural structure evident today on the Cumberland Plain.

Not until the latter part of the 20th Century did any real attempt arise to protect the natural heritage of New South Wales by way of legislation and government policy.

One would have thought that establishment of the NSW Scientific Committee and scientific methodology guiding government policy would ensure sustainable components of the natural heritage of the Cumberland Plain. Not so, and the circumstance of the ecological community that is Cumberland Plain Woodland defines the grip development interests have on government and the failure of government to achieve sustainable development on the Cumberland Plain. All the while the government has failed to nurture viable community life in regional New South Wales to take pressure off the Cumberland Plain.

Identified as 'endangered' by the NSW Scientific Committee in 1997 and subsequently listed as such under the Threatened Species Conservation Act, 1995, Cumberland Plain Woodland was deemed reduced to 6% of its original extent.

That (6%), surely, would have rung alarm bells and motivated government to develop planning policies to protect the Cumberland Plain from what happened in what is today the inner suburbs of Sydney. No, there was too much money to be made by development interests on the Cumberland Plain.

Buckling to the pressure, officers within the (now) NSW Dept of Planning and Environment (notice how two allegedly distinct entities formally came together to 'make respectable' a hitherto union of bodies) produced 'aerial' mapping which was not based on ground truthing. What a boon to development interests! The mapping declared there was actually 15% of

Cumberland Plain Woodland extant.

With such a weapon at their disposal development interests were an invincible opponent as members of Blacktown & District Environment Group Inc (and other conservationists on the Cumberland Plain) went into battle to convince Local and State Government to protect remnant stands of Cumberland Plain Woodland from destruction. No, it couldn't be done; development interests won the day time and time again because they claimed an erroneously inflated extent of Cumberland Plain Woodland would remain elsewhere if they were allowed to destroy remnant stands in their location of choice.

It mattered not that we argued the lack of ground truthing and that the 15% figure included areas where only canopy existed and no understorey - under the trees the land was mowed/slashed. The erroneous mapping was a double sided weapon for development interests because, if they wanted to develop an area with canopy and no understorey, they produced a report from one of their 'pet' environmental consultants declaring just that and saying there would be no impact on the extent of Cumberland Plain Woodland overall.

Again, the aerial mapping contained areas of predominantly African Olive which, again, erroneously inflated the extent of Cumberland Plain Woodland. We could go on but our point is made.

It was little surprise to genuine conservationists that the aerial mapping was later abandoned. Of course, that did not happen until Cumberland Plain Woodland was further reduced in extent.

The 6% extent of 1997 was further diminished by government policy and practice.

Another scheme introduced by those vested with responsibility for protecting the environment in New South Wales was that of 'offsetting'. Reduced to its bare substance, 'offsetting' permits the loss of a remnant of Cumberland Plain Woodland (in this example) on proviso an equal amount is conserved elsewhere. There were conditions for use of 'offsetting' but, in totality, it still produced a net loss of Cumberland Plain Woodland.

The extent of Cumberland Plain Woodland was to be further reduced by this government practice.

Even so, that was not enough for development interests including government development interests. Abuses of guidelines for 'offsetting' were freely applied by all. The loss of intact Cumberland Plain Woodland was 'compensated' through vegetative plantings in ostensibly already conserved areas elsewhere including government owned land such as Western Sydney Parklands which, when announced some years ago by the Premier of NSW, were to be the "Lungs of Western Sydney". Landcom, another government development interest, also got into this act - one notable instance being its "Bunya" development at Doonside!

Biobanking became another illegitimate child of the compromise of supposed environmental protectors with development interests. Biobanking perpetuates net loss of ecological communities and, consequently, species. Making the scheme all the more odious is the emergence of land already zoned for conservation attracting biobank funding at cost of

ecological communities being destroyed elsewhere.

The North-west and South-west Growth Centres Conservation Plan, with its imposition of Biodiversity Certification i.e. the notion of wide scale destruction of 2,000ha of TSC Act listed ecological communities while achieving an alleged "maintain or improve" outcome, was another assault upon the natural heritage of the Cumberland Plain. A lack of ground truthing again marked this strategy. So shabby was the strength of justification for Biodiversity Certification of the Growth Centres that, in the 'dark of night', the government passed, by one vote in the Upper House of Parliament, a Bill which quarantined Biodiversity Certification of the Growth Centres from legal scrutiny. Shameful!

All the while, the NSW Scientific Committee and the Commonwealth Scientific Committee were obliged to elevate the conservation status of Cumberland Plain Woodland from 'Endangered' to 'Critically Endangered' due to the continued reduced extent. This has been an indictment on the failure of alleged environmental protectors within government to protect the flora and fauna of the Cumberland Plain.

Returning to Biodiversity Certification of the Sydney Growth Centres, an attempted 'selling point' to conservationists was that of a fund derived from a developer levy which would accumulate \$397.5M to secure, for conservation outside the Growth Centres, 'offsets' for vegetative losses occurring within the Growth Centres. A cascading scale of options for use of the fund was presented with Priority Conservation Sites, most of which were on the Cumberland Plain, being identified by the government as first option.

Occurring around the same time was TSC Act requirement to ensure protection for listed ecological communities and species. This became the Cumberland Plain Recovery Plan. Taking the 'easy' option, the plan essentially sought to achieve recovery of ecological communities and species by concentrating on protection of the aforesaid Priority Conservation Sites. The Commonwealth Government was convinced by the NSW Government to endorse this plan to satisfy Commonwealth Environment Protection & Biodiversity Conservation Act requirements for Cumberland Plain ecological communities and species listed under that Act.

It was when the NSW Government sought Commonwealth Government agreement to Biodiversity Certification of the Growth Centres via the Strategic Assessment of the Sydney Growth Centres that conservationists saw an attempt to pass over conservation of Priority Conservation Sites on the Cumberland Plain and propose conservation of allegedly "like" ecological communities as far away as the other side of the Great Dividing Range that conservationists were, once again, alarmed. Such a strategy would accelerate losses of the natural heritage of the Cumberland Plain. Representations were made to Federal Members of Parliament on the Cumberland Plain. This resulted in certain amendments being made to the Strategic Assessment of the Sydney Growth Centres before agreement of the Commonwealth Government. Ostensibly, offsets for vegetative losses occurring within the Growth Centres are to be secured on the Cumberland Plain and a Technical Panel to advise use of the offsets fund was to include a nominee from a peak conservation group.

To underline why conservationists on the Cumberland Plain distrust people within the (now) NSW Dept of Planning and Environment we catalogue the

scurrilous lengths gone to by those people to keep their activities out of sight and beyond scrutiny of conservationists on the Cumberland Plain. The Nature Conservation Council of NSW (NCC) was asked to nominate a person from its member groups. Federal Members of Parliament sought a conservationist from the Cumberland Plain who was also from a member group of the NCC. By oversight, the NCC nominated someone from Cessnock. The NSW Government did not act on that nomination and conducted at least two meetings of the Technical Panel during which decisions were made with respect to administration of the Fund. That was in breach of the conditions of approval agreed to between the Commonwealth Government and NSW Government. Eventually, the NCC sought to alter its original nomination and, instead, nominate a conservationist from the Cumberland Plain. It was then that the (now) NSW Dept of Planning and Environment hastily and secretly sought to appoint someone from the Nature Conservation Trust (NCT) - someone, up to then, unfamiliar with all that has preceded this matter.

Such is the disgraceful behavior of public administration in New South Wales. There is obviously a lot to keep under cover! We are left to wonder what else is going on if nefarious nature within government.

Accompanying all that permitted destruction of the natural heritage of the Cumberland Plain, there arose pressure from the (now) NSW Dept of Planning and Environment upon Local Government Areas to complete their Local Environment Plans with haste.

When it came to Priority Conservation Sites on the Cumberland Plain what was a Local Government Area to do? There was no money in the Growth Centres Conservation Fund and the Local Government Area did not have the money to zone Priority Conservation Sites for conservation and subsequently buy and manage the land for conservation. Help from the then Department of Environment was not forthcoming despite that office premising an expectation that the Cumberland Plain Recovery Plan, Biodiversity Certification of the North-west and South-west Growth Centres and the Strategic Assessment of the Sydney Growth Centres would secure conservation of Priority Conservation Sites.

Local Government was abandoned. Priority Conservation Sites on the Cumberland Plain in private ownership were zoned for development as part of Local Environment Plans and were subsequently approved as such by the NSW Government.

It is unimaginable how "maintain or improve" outcomes will be achieved to fulfill Biodiversity Certification of the North-west and South-west Growth Centres. The whole plan presents as a fraud, with perpetrators protected thus far by a 'stealth of the night' Bill of Parliament.

The activities of unpaid, solely voluntary conservationists on the Cumberland Plain have secured commitment of over 1900ha of Commonwealth Government (Priority Conservation Site) lands to a conservation future, and the buy-back of 181ha of former Commonwealth Government (Priority Conservation Site) land for a conservation future.

Even the commitment of the former Shadow Minister for the Environment toward Green Corridors prior to the 2011 State Election was, after the election, diverted from original intent once left in the hands of certain people within the (now) NSW Dept of Planning and Environment. One, along

the way, led us to believe all was well but the money went to Local Government protecting already protected land elsewhere.

Meanwhile, the (now) NSW Dept of Planning and Environment has presided over the loss of extensive remnants of TSC Act listed ecological communities or has secured some remnant stands at cost of loss of remnant stands elsewhere.

Compounding failure of policy and practice within what was supposed to be the agency for protection of the environment is that no register of past 'offsets' was maintained and it is only conservationists on the Cumberland Plain having familiarity with past decisions who will be able to vouch for the legitimacy of future 'offsets' and biobanking agreements. Without that knowledge double dipping will occur to exacerbate past failure to protect the natural heritage of the Cumberland Plain. Disgraceful!

This all stands as a deplorable chapter in the management of the flora and fauna of the Cumberland Plain. People have sought to secure their own future through salary maintenance at the expense of the environment. That which was largely cleared in the early history of the nation of Australia; that which was largely lost to establish the nation but which recovered partly by accident has fallen into the hands of the worst of people for managing its future. Some have been presiding over this failure for some time. They should be utterly ashamed of what they are doing to the natural heritage of the Cumberland Plain.

Though this commentary gives offence let those offended live with the truth. Since introduction of the Threatened Species Conservation Act, 1995, there has been decline in what it was designed to protect and the fault can only be laid at the feet of those drawing salary to uphold it. That decline is accelerating and ratio of salary to protection becomes all the more disparate.

And now the shadow of a review of the Threatened Species Conservation Act, 1995, hovers and we can only "Bet London to a Brick on!" the course after will be further downward. It is amazing how the Second Law of Thermodynamics works out in so many aspects of life - order to disorder. Excesses of development interests in the latter half of last century produced extensive civil disobedience. Environmental protection legislation generally reduced the disobedience. Now development interests are demanding change and the government is listening. Back we go to extensive civil disobedience as a feature of society!

SOMETHING THE PANEL CAN RECOMMEND

National Parks & Wildlife Service has experienced cut backs in funding and staff. Management of land assets is compromised and additional holdings resisted on the Cumberland Plain.

There is a good supply of people volunteering assistance to bush regeneration and revegetation in Local Government reserves across Metropolitan Sydney.

There are also some voluntary community groups devout for flora and fauna conservation who would be willing candidates should the NSW Government hand over for management by them Crown land for a conservation future eg Regional Parks, National Parks or Nature Reserves. Such voluntary

Community Land Trusts operate successfully in England as does the Tasmanian Land Conservancy.

We recommend better engagement of the community by such means particularly in metropolitan areas where a sizeable population exists to draw resources from.

SUMMARY

We long for better management of the natural heritage of the Cumberland Plain. It has not been forthcoming from the agency entrusted with administration of the Threatened Species Conservation Act, 1995, and all that flows from that Act. We are fearful that the Biodiversity Legislation Review we produce a worse situation. We hope it does not. In the case of the ecological community called Cumberland Plain Woodland something significantly less than 6% of original cover is a failure of humanity to rightly manage its environment.

Finally, to assist in management of National Parks & Wildlife Service we encourage Trust in the community.

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Secretary

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