16 December 2014

Department of Planning and Environment
Greenfield Housing
GPO Box 39 Sydney NSW 2001

By mail and email: community@planning.nsw.gov.au

Dear Sir/Madam

Submission in relation to the proposed Leppington Precinct Plan on behalf of the Sydney Anglican Schools Corporation

We act for the Sydney Anglican Schools Corporation (SASC) which is the registered proprietor of 50 Heath Road and 26 Byron Road, Leppington. The Anglican Church Property Trust is the registered proprietor of an adjoining property, 30 Heath Road, Leppington. These sites were purchased adjoining each other to ensure that a church and a low fee Anglican School could be associated with all the benefits arising with that integration allowing common use of facilities, both of buildings and of carparking areas. These 3 properties form part of the recently released Leppington Precinct. At the time of purchase of the land, approximately 4 months ago, the Section 149 Certificate on each parcel of land stated that the land did not include or comprise critical habitat.

In accordance with section 126H of the Threatened Species Conservation Act 1995 the Minister conferred Biodiversity Certification on the land known as 50 Heath Road, Leppington. In accordance with the Biodiversity Certification made on 11 December 2007, all the land within 30 and 50 Heath Road and 26 Byron Road, Leppington were certified for development. Pursuant to section 126ZA of the Threatened Species Conservation Act 1995 the Biodiversity Certification remains in force indefinitely or for such period as the Minister determines and specifies in the order conferring certification. To amend the certification the Minister may, by order published in the NSW Government Gazette modify the certification pursuant to section 126ZP of the said Act.

Instead of following the procedure set out under the Threatened Species Conservation Act 1995, the modification to the certification is purported to be occurring pursuant to the Precinct Plan for Leppington.

Now, pursuant to the Precinct Plan for Leppington, it has become clear that approximately 1.7 hectares on the northern part of 50 Heath Road, Leppington is proposed to be zoned RE1 Public Recreation. Educational establishments are not permissible on the RE1 Public Recreation zoned land. We reiterate that this land fell within the Biodiversity Certification dated 11 December 2007.

The SASC relied upon the Section 149 Certificate produced by Camden Council and also the Biodiversity Certification set out in Council's website as follows:

"Biodiversity Certification has been granted over the Growth Centres SEPP. This is a first for New South Wales and balances the protection and management of conservation values with the efficient supply of land for urban development in Sydney.

Biodiversity Certification addressed biodiversity issues upfront. Land owners, Councils and developers will no longer need to undertake a threatened species assessment with Development Applications in areas classified as 'certified' under the Biodiversity Certification Order."

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"Certification also provides $530m to purchase areas of high conservation value or to enter into private conservation agreements both inside and outside the Growth Centres.

Importantly, it cuts red tape by strategically addressing biodiversity issues and enables better conservation outcomes, with improved protection for the highest quality and most sensitive bushland areas inside and outside the Growth Centres. In addition, land owners, Councils and developers will not have to look at biodiversity issues individually for Development Applications in areas which are certified."

Now it appears that by zoning 1.7 hectares of 50 Heath Road, Leppington as RE1, the Biodiversity Certification as issued on 11 December 2007 is worthless in relation to this land. It cannot, and should not be the case.

It appears that the zoning RE1 has arisen to "protect" Biodiversity values identified in a report by Eco Logical Australia Pty Limited. That report is called: the Growth Centres Biodiversity Certification, Assessment of Consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct dated June 2014 by Eco Logical Australia Pty Limited. My client has had an ecologist ground truth the land in question, being 1.7 hectares at 50 Heath Road, and has been advised that the land is not worthy of being removed from the Biodiversity Certification dated 11 December 2007.

The Assessment of Consistency also indicates that the 1.7 hectares of land does not contribute to the 2,000 hectares of existing native vegetation to be retained pursuant to Condition 6 of the Biodiversity Certification. The vegetation is therefore not necessary to be retained for the biodiversity measure in Condition 6 to be met.

The further difficulty with zoning part of 50 Heath Road, Leppington as RE1 is that there is no road access to this land — it will be contained wholly within the boundaries of the proposed low fee Anglican School. For obvious reasons it is not appropriate to give public access to school grounds.

We respectfully request that the integrity of the Biodiversity Certification dated 11 December 2007 be respected and that the proposed RE1 zoning be reversed, and that the land be zoned either SP2 for schools or R2 Low Density Residential as is proposed by the surrounding land. As the Minister is no doubt aware, schools are a permissible use in an R2 Low Density Residential zoning.

We would be happy to meet with members of the Department to discuss this matter further and trust that the Biodiversity Certification dated 11 December 2007 will be honoured.

Yours faithfully

Hunt & Hunt

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