

09 October 2009

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**RESPONSE TO DECCW LETTER OF 1 OCTOBER 2009 REGARDING THE  
PROPOSED DEVELOPMENT AT 35 WATER STREET, WAHROONGA**

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Dear Ben

I have read the letter from the Department of Environment, Climate Change and Water (DECCW) regarding ecological issues at the aforementioned site and am perplexed that DECCW have mapped an additional large area of Blue Gum High Forest (BGHF) in cleared areas where there are no trees and where there are established lawns, garden beds and paths.

In providing the new suggestion for mapping of BGHF, DECCW have essentially ignored the opinions of three experts who have collectively spent many hours on the site (Dr Peter Smith, Dr Gary Leonard and myself) in favour of James, who I believe has only spent approximately two hours on the site before writing her original letter about the nature and extent of native vegetation. DECCW must be called upon to explain why they are radically going against the Land and Environment Court mapping of the Blue Gum High Forest (BGHF) and adding approximately 40% to the area of this community mapped by the Court Appointed Expert.

DECCW have not collected any field data themselves and:

- Rely almost entirely upon James data and, presumably, some informal observations by Sarah Burke of DECCW;
- Have no quantitative plant data from the large additional area of Blue Gum High Forest that they have mapped – Cumberland Ecology has surveyed this area and have provided data but it is not discussed or apparently used by DECCW; and
- Have ignored the Court appointed expert, Dr Peter Smith's argument that there is nothing in the Final Determination for Blue Gum High Forest that

says it can be found to exist **in the absence of a canopy**. Almost the entire additional area mapped by DECCW lacks a canopy and is dominated by weeds and garden plants.

In the letter below, I have copied other key points raised by DECCW in italics and provide my response in plain text.

*DECCW maintains the position provided in previous correspondence, that although it could be argued that these areas of regenerating or even colonising native species on site may not meet the definition of BGHF as per the final determination, they still have biodiversity values as they are likely to represent part of the gene pool of the original BGHF that existed on site.*

This statement implies that the additional mapped area **is not BGHF**. For this reason, the subsequent DECCW mapping of the community is flawed. The Final Determination of the BGHF is a very broad determination in that it allows for even scattered trees over a weedy understory to be considered as the community. However, on the site where DECCW have mapped the additional BGHF, there is no canopy.

The additional native biodiversity values are confined to a few very hardy species of herbs and grasses. They include the grasses *Microlaena stipoides* and *Oplismenus aemulus*, and herbs such as *Pratia purpurascens*, which can be found in lawns and gardens over much of northern Sydney. There are some scattered wattles of *Acacia decurrens* but these grow together with exotic wattles and other garden plants that have been introduced to the site as landscaping. **These are virtually the only native species present and are not sufficient reason on their own to map an additional 40% of BGHF on the site, nor are they a reason why there is a need to conserve such an area.**

*CE (September 2009) states that a buffer is not required as the BGHF will be actively managed through the implementation of the Vegetation Management Plan (VMP). However, James (September 2009) considers that the vegetation should be buffered, particularly in the vicinity of the proposed East Wing, to improve resilience and reduce the dependency on intensive management. Smith (September 2009) agrees that it would be beneficial to retain at least a 10 m or better, a 20 m buffer around the BGHF.*

In 2009, Dr Peter Smith has reviewed the recent SIS and VMP and has written that he believes that the proposed rehabilitation of the BGHF will lead to a substantial improvement in its quality in the long term. This is in agreement with Robertson and Leonard.

DECCW puts great weight on the opinion of James, who has only spent such a short time on site, and by implication, refutes the opinions of all other parties in favour of James. It is inappropriate that a simple letter from James (2009) is touted as the major reference in this situation. The James letter is based upon limited fieldwork, has no formal quantitative data and is just based upon the opinion of the author. Furthermore, James stated on the recent site inspection, at which Sarah Burke from DECCW attended, that her figure in the original letter (2008) was **not a vegetation map** and that it needed additional fieldwork to make sure it was valid.

*DECCW agrees with Smith that it would be beneficial to retain at least a 10 m buffer. If a buffer is not retained, it may still be possible with active management to conserve some BGHF species to the edges of the buildings, but the lack of a buffer will make the conservation of an intact community (ie trees, shrubs, ground covers) more difficult, and it is likely that the vegetation that does remain will be less diverse than if a buffer was provided, particularly along the edges.*

The native vegetation that is currently in the area referred to is dominated by exotic grass with a smattering of hardy native plants such as *Microlaena stipoides* and *Pratia purpurascens*. There are essentially no trees and no shrubs in this area at present so it is incorrect to indicate that in the future “conservation of an intact community” will be difficult to achieve. At present there is no intact community and the vegetation needs to be restored in this area before it can be truly said to be BGHF.

The DECCW letter makes this vegetation sound very diverse and implies that with the building construction, diversity will diminish. This is absurd. If implemented, as discussed, additional plants will be grown in this area and significantly more species will be present in the future than are present now. Moreover, this is highly likely to succeed, as it is not difficult to grow these plants and the techniques proposed in the VMP are appropriate, feasible and known to work on BGHF species.

*DECCW considers that a more acceptable outcome for BGHF on site would be achieved from a proposal that has:*

- *a reduced footprint to minimise direct impacts on the BGHF. The proposed East Wing, in particular, is resulting in much of the direct impact;*
- *reducing the scale of the buildings to minimise indirect impacts, particularly from overshadowing;*
- *providing a buffer (ideally at least 10 m wide) to the existing BGHF remnant; and*
- *permanently protecting the BGHF remnant on site, enforcing strict controls during construction and providing for its active management in perpetuity.*

*The DECCW notes that these recommendations are consistent with the Land and Environment Court recommendations for the site (Murlan Consulting Pty Limited v Kuring-gai Council no.11193 of 2006).*

The DECCW recommendations are not consistent with the Land and Environment Court recommendations for the site because the DECCW mapping is radically different from that determined by the Court appointed witness Dr Smith. The Land and Environment Court completely accepted Dr Smith’s mapping and also noted Dr Smith’s advice that this area should be largely protected.

**DECCW has substantially increased the area mapped on site**, going well beyond the mapping of Smith that was accepted by the Land and Environment Court and adding approximately 40% to the area mapped as BGHF. The DECCW map:

- differs from the Smith mapping because it maps areas as BGHF regeneration based simply on the presence of some hardy grasses and herbs, **without canopy, even though DECCW acknowledges that the mapped vegetation “may not” currently comply with the Final Determination;**

- includes pathways and brick walls;
- includes elevated, landscaped garden beds;
- includes the croquet court, where the soils have been excavated and levelled and held in place by a 1.5 metre high retaining wall;
- includes essentially no Blue Gum trees.

It is also important to point out that the Land and Environment Court found that the proposed development at the time should apply Section 5A of the EP&A Act (the seven part test) to see if a Species Impact Statement was required. If a Species Impact Statement was to be prepared, it would have to examine in detail the impacts of the proposal and, would go further than the Land and Environment Court findings. In that sense, the Land and Environment Court findings should not be regarded as the final word on the development.

It is manifestly unfair of DECCW to map such a large additional area of BGHF that goes well beyond that determined by the Land and Environment Court, when in DECCW's own words, such vegetation does not comply with the Final Determination for BGHF. No adequate data or justification has been provided to support this additional area mapped by DECCW.

*The known extent of BGHF on the ground has been mapped, rather than the extent of the canopy. Therefore, the existing remnant is somewhat smaller, taking into account the lack of canopy trees of BGHF on the croquet lawn and lack of BGHF on the access path from Young St.*

- *Figure 2 includes a larger area of clearance around the East Wing and stables than was indicated in the CE mapping, to provide for an access path around these structures.*
- *Figure 2 includes 'additional regeneration areas'. These areas will be separated from the larger remnant areas due to pathways. Given these areas will be significantly affected by edge effects, it is considered unlikely that vegetation in these areas could be regenerated to 'BGHF', as indicated in the CE mapping. However, they may provide some ecological land buffer values.*

This "justification for mapping" is flawed. The first sentence states that the known extent of BGHF on ground has been mapped, rather than the extent of the canopy. Yet, in the previous section of the letter, DECCW states that such areas "may not" be BGHF:

*"although it could be argued that these areas of regenerating or even colonising native species on site may not meet the definition of BGHF as per the final determination, they still have biodiversity values as they are likely to represent part of the gene pool of the original BGHF that existed on site"*

The comment about separation of remnants seems to imply that areas will be separated due to pathways. This is not true as pathways will at most be only several metres wide. According to DECCW's own policy (eg BioBanking) remnants within 100 metres are effectively regarded as having connectivity. The narrow paths in question will not separate these areas.

Yours sincerely



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Director

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