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**Attention: Ms. Karen Luka**

Dear Sir

**Draft Lithgow LEP 2013 – Lot 1 DP 933666, Claret Ash Drive, South Bowenfels**

We act on behalf of Paul and Catherine Ledger, registered proprietors of the above land which forms part of the Fairview Estate. We have been provided with a copy of correspondence prepared on behalf of the proprietor by Le Fevre & Co. that addresses issues with the proposed zoning of the land under the Draft Lithgow LEP 2013. This submission is an addendum to the submission from Le Fevre & Co., and seeks an alteration to the zone boundary as outlined on the aerial photo overleaf.

The subject site is currently zoned by Lithgow LEP 1994 part 2(a) Residential and part 1(a) Rural (General). The Draft Lithgow LEP 2013 proposes to translate these zones, along identical zone boundaries, R2 Low Density Residential and E3 Environmental Management. As a result of the previous submission by Le Fevre & Co. Council officers have indicated a willingness to amend the E3 zone boundary to correctly follow the precise boundary between existing vegetation and cleared land. However, this request deals with the area of pine plantation in the northern portion of the land that is also proposed to be zoned E3.

For the reasons outlined below, we request that the pine plantation be zoned R2. The principal reason for this request is to correct the error in the Lithgow LEP 1994, which identified the radiata pine on the site as native vegetation, when in fact the vegetation is a commercial plantation.

**Subject site**

The subject site is located to the north of Claret Ash Avenue, and forms an extension to the residential subdivision known as Fairview Estate previously developed by Ledger Enterprises Pty Ltd. Once developed, the subject site will form a connection between Claret Ash Avenue and Munbinga Drive to the north. A development application (168/2002) has been approved by Council for earthworks related to the future development of the site into a residential estate.

The site comprises three distinct vegetation components, being pine plantation, cleared pasture and timbered slopes, indicated in the aerial photo overleaf. The north of the site comprises a patch of mature radiata pine plantation of approximately 1.6 hectares. The plantation is bordered by adjoining dwellings to the north east with frontage to Fourth Street, and a patch of native vegetation to the north west located at the rear of adjoining dwellings with frontage to the Great Western Highway. Surrounding the pine plantation on the subject site is an area of cleared land that

connects Claret Ash Avenue to Munbinga Drive. This cleared area then rises to vegetated slopes to the south-east.



The following photographs give an indication of the pine forest density and maturity, with little to no understorey.







The pine plantation is suitable for harvest in its current condition, and the proprietor has received quotes for such harvest. It is proposed that it be harvested prior to development of the land into residential lots, in part due to the bushfire hazard that the plantation presents in its current form.

### **Proposed zoning**

Draft Lithgow LEP 2013 identifies the site as R2 Low Density Residential and E3 Environmental Management, as indicated below:



The E3 Environmental Management zone is shown on the Lot Size Map as having a minimum lot size of 40 hectares, with the R2 Low Density Residential zone being 800m<sup>2</sup>.

The above zoning is a direct translation of the Lithgow LEP 1994, with the 2(a) land translated to R2 Low Density Residential and the 1(a) zone translated to E3 Environmental Management. It is

understood that the zone of the pine plantation in the Lithgow LEP 1994 resulted from analysis of aerial photos of vegetation, which aimed to protect remnant native vegetation. In creating the 1(a) zone in LEP 1994 it would appear that an error in interpretation occurred, which identified the pine plantation as native vegetation, when in fact the area of 1(a) in the north of the subject site is almost entirely commercial pine plantation.

The existing pine plantation forms that part of the site shown as E3 in the north of the subject site. The E3 zone prohibits “forestry” as a land use, defined as:

*“(a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or*

*(b) the harvesting of forest products, or*

*(c) on-going forest management operations, namely, activities relating to the management of land for timber production such as thinning and other silvicultural activities such as bee-keeping, grazing and bush fire hazard reduction, or*

*(d) ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations”.*

The existing pine plantation would become a prohibited use, and given the definition of forestry includes harvesting of forest products, the harvest of the existing pine would also become prohibited.

### **Environmental zone guidelines**

The use of environmental zones such as E3 Environmental Management proposed for the subject site is guided by the NSW Department of Planning and Infrastructure’s LEP Practice Note 09-002: Environmental Protection Zones. The practice note provides guidance to councils on how environment protection zones should be applied in the preparation of local environmental plans. Specifically, the practice note states that prior to applying an environmental protection zone, the following should be considered:

*“application of these zones is also to be consistent with relevant legislation, State and regional planning policies and subregional strategies” and*

*“The zones are to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses”.*

The application of the E3 Environmental Management zone to the existing pine plantation results in the existing land use of “forestry” becoming prohibited under the proposed Lithgow LEP 2013. Such a prohibition does not exist under the current 1(a) Rural zone, and the proposed prohibition is inconsistent with the treatment of private plantations under the Native Vegetation Act 2003 and the Private Native Forestry Codes 2007.

The E3 Environmental Management zone has been applied to the heavily timbered slopes to the south west of Lithgow. This area comprises a large contiguous area of native vegetation, whose environmental attributes are in stark contrast to the small patch of pine plantation in the north of

the subject site. Application of the E3 zone to the pine plantation is therefore considered to diminish the value of the significant vegetation also attributed a E3 zone to the east.

### **Recommendation**

This submission seeks to raise for Council's attention to the historic error in zoning that has resulted from incorrect aerial photo interpretation of pine plantation as native vegetation. The translation of the current 1(a) zoning to an E3 Environmental Management zoning will not only continue the existing error, but will result in a prohibition of the plantation as a land use and seek to prevent its harvest. It is therefore requested that the zone boundaries be altered to apply the R2 Low Density Zone to the pine plantation, similar to the zone of surrounding land.

The exhibited Lot Size Map currently applies a 40 hectare minimum lot size to E3 land, and this development control should also be reviewed in line with the R2 zone standard. Should Council not support a similar minimum lot size to that applied to surrounding R2 land, a larger minimum lot size would be considered by the proprietor of the land.

I trust the above information is sufficient for Council to consider the request to amend the zone boundaries of the subject site as outlined above. Please do not hesitate to contact the undersigned should you require clarification on any matter in this submission.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'B. Carmady'.

Brad Carmady

CC Ashley Albury, NSW Department of Planning & Infrastructure