

9 October 2020

Mr Steve Hartley
Department of Planning, Industry and Environment
Green and Resilient Places Division
Locked Bag 5022
Parramatta NSW 2124

Via email: [REDACTED]@planning.nsw.gov.au

Dear Steve,

RE: UDIA NSW Submission on the Draft Cumberland Plain Conservation Plan

UDIA is pleased for the opportunity to make a submission to the Draft Cumberland Plain Conservation Plan (the draft Plan).

The Urban Development Institute of Australia (UDIA) NSW is the peak body representing the interests of the urban development industry in New South Wales. We represent over 500 member companies that are directly involved in the industry including developers, consultants (engineering, planning, legal, environmental, design) and local government, for the goal of Liveable, Affordable & Connected Cities.

UDIA welcomes the exhibition of the draft Cumberland Plain Conservation Plan. UDIA has been a key proponent for strategic biodiversity certification (biocertification) in Western Sydney for over a decade, believing that the strategic process would create a fast and transparent method to meet biodiversity obligations in a more affordable manner.

Finalising the Cumberland Plain Conservation Plan is a necessary step to support the growth of the Western Parkland City, and it will underpin the process for new development in Western Sydney by providing certainty on costs and land use.

We acknowledge the enormous task undertaken to produce the draft Plan and we commend the Department for the work done to date.

Unfortunately, we are concerned that substantial further work is required to finalise the Plan in order to fully achieve the promised benefits of strategic biodiversity certification for Western Sydney.

We offer the following headline recommendations (on the following page), which are explained in greater detail in the body of our submission and we welcome the opportunity for further constructive engagement with the Department as it works to finalise the Plan:

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1. UDIA seeks clarification that from the date of adoption of the final Plan all certified-urban capable land identified in the plan will be deemed to have fulfilled all biodiversity obligations including under the BC Act, EPBC Act and Koala Habitat Protection SEPP.
2. Significant mapping errors must be rectified by a two-step verification process.
3. The Department should commit that the maps in the final Plan will be updated concurrently and expeditiously as the Precinct Plans are finalised.
4. Housing supply should not be constrained by the timing of offset land acquisition; and the NSW Government should commit to fund the procurement of offsets fully and adequately such that the offset liability threshold is never triggered.
5. The rights of landowners must be provided through an appeals process and adequate compensation if land is rezoned.
6. Funding of the Plan should be broad-based and from all beneficiaries and not rely solely on contributions from new homes.
7. The Plan should develop a process to streamline the assessment of development-related infrastructure that may fall outside boundaries of the certified land.

Fulfillment of Obligations

The draft Plan and the proposed SEPP refer to “certified - urban capable land”. The draft Plan states “The Plan has been developed to meet requirements for strategic biodiversity certification under the Biodiversity Conservation Act 2016 (NSW) (BC Act) and strategic assessment under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)”. Appendix D and Table 7 of the draft Plan detail the EPBC Act and BC Act matters to be offset through the (draft) Plan and list the specific plant community types and threatened ecological communities covered by the draft Plan.

However, the draft Plan does not explicitly state that all land in the Plan identified as “certified - urban capable” will be deemed to have fulfilled all biodiversity obligations under the Acts, nor does it mention the Koala Habitat Protection SEPP.

UDIA seeks positive confirmation and a clear statement in the final Plan that from the date of adoption of the final Plan, land identified as “certified - urban capable” will be deemed to have fulfilled all biodiversity obligations under the BC Act, EPBC Act and Koala Habitat Protection SEPP.

Mapping

Based on input from our members (including land holders and ecologists), **UDIA has low confidence in the accuracy of the mapping that underpins the draft Plan.** This is deeply concerning, as the effectiveness of the Plan will be compromised by these errors and its overall value in providing certainty to support the sustainable development of Western Sydney must be seriously questioned.

A deeper analysis of individual sites is essential to better determine their viability as conservation land. Our members have provided examples where the mapping is inconsistent and, in many instances, inaccurate or may actually lead to poorer environmental outcomes where mapping of vegetation is prioritised over other actions that offer superior environmental protection outcomes.

The draft Plan notes that a risk-based approach was adopted in land assessment. In addition, the Assessment Report (Biosis 2020) states (on page 10-3) that the peer review report¹ concluded that in general:

- *The methods used [in the Assessment Report] are generally conservative and are unlikely to under-represent the presence or distribution of any TEC or species, and are **more likely to over-predict** presence and distributions.* [emphasis added]

This is a **serious** concern. As discussed below, the mapping of Shale Sandstone Transition Forest (SSTF) and Cumberland Plain Woodland (CPW) at many locations within the draft Plan is incorrect. Consequently, the calculations that 1,014.6 hectares of CPW and 487 hectares of SSTF will be 'impacted' in 'the nominated areas' cannot be relied on (see below). The areas of SSTF and CPW which would need to be offset have been significantly 'over-predicted'.

We are concerned that the underlying maps that informed the Plan are themselves flawed. Due to inaccurate mapping, we believe that the offset requirement is overstated and should be reduced following proper mapping. Any offset cost savings that may be realised would be in all stakeholders' interests.

Examples of our concerns are listed below:

- "Important Koala Habitat"
The mapping in the draft Plan is incorrect in many instances and clearly has not been validated. There are numerous examples where the mapping of "Important Koala Habitat" includes roads, bridges and other urban infrastructure; cleared paddocks with little or no actual native vegetation; dwellings, sheds and other farm infrastructure; and where there is no evidence of Koalas.
- Threatened Ecological Communities (TECs)
Our members have identified many inaccuracies with regard to TECs. We are concerned that the assessment was based on flawed existing NSW and/or local government mapping without updated validation. Again, there are numerous examples where the mapping of TECs includes roads, bridges and other urban infrastructure; cleared paddocks with little or no actual native vegetation; dwellings, sheds and other farm infrastructure.

For example, Shale Sandstone Transition Forest (SSTF) at Wilton includes extensive areas of grasslands with no trees. These areas do not meet the definition pursuant to SSTF listing. Similarly, extensive areas of Cumberland Plain Woodland (CPW) grassland are mapped at Wilton, contrary to extensive field work exhibited by a range of experts during rezoning of the Wilton Growth Area. Often single field trees in paddocks are included as CPW.

¹ The Peer review report on the Biosis Assessment Report

In another example grasslands in the Wollondilly suburb of Maldon are shown as SSTF or CPW. However, these areas have already been zoned and development is complete (or proceeding), or they are planned for development but are currently constrained by known legal agreements.

- **Riparian zones**
The mapping of riparian zones across the draft Plan is inconsistent and, in some cases, inaccurate. For example, some 'streams' are identified as 'non certified – avoided for other' despite not being present at all or being located at the bottom of long-standing farm dams.
- **Infrastructure and Easements Corridors**
Existing easements, most major (and some minor) road and other transport corridors and other miscellaneous infrastructure corridors are shown as 'excluded'. This is based on a stated assumption in the Plan that these lands are already developed.

This assumption is either incorrect or flawed. It is incorrect as many existing easements are redundant or may be removed or amended over time as part of development. It is flawed as no developed land could be considered as developed in perpetuity with no prospect for alteration. For example existing roads are often widened or upgraded.

Consequently, these areas should be included in the 'urban capable land' to avoid any problems with any future development footprint requiring separate assessment/approval at a later stage. Parts of these excluded areas are also mapped as 'native vegetation' and if not included in the land to be certified - urban capable will require separate assessment and approval (thus circumventing the purposes of the Plan).

Many land parcels identified for E2 – Environmental Conservation zoning are of questionable conservation value due in part to fragmented ownership and also to current quality and condition (as described above). Their classification may be unreasonable (resulting in significant constraints on landowners who have purchased land 'in good faith') whilst their "potential for restoration" in some instances is problematic at best.

Furthermore, we have **serious** doubts that many of these lands would or could practically convert to Biodiversity Stewardship Agreements as the draft Plan asserts. UDIA supports the concept of Stewardship Agreements as a means to realise economic benefits from the biodiversity attributes on a parcel of land. However, based on consistent feedback from our members since the implementation of the BC Act, the correlation is more complex. It seems the appropriate incentives do not currently exist to support the belief that entering into a Stewardship Agreement would be a financially attractive option to many landowners.

UDIA recommends that the process for entering into Stewardship Agreements, including the tax treatment of the arrangements, be amended to increase their utility as a reliable conservation method. Given our support for Stewardship Agreements we would be pleased to meet to discuss this separate topic in greater detail.

Given the high number of errors and inaccuracies already identified in the mapping which underpins the draft Plan, we urge the Department to:

- provide validated “ground-truthing” of the maps on which the Plan is based; and
- provide a meaningful review (or appeal) process for landowners who question the classification or biodiversity values assigned to their land.

We make this request guardedly as we do not under-estimate the scale of the task involved and the threat that this may create in delaying the adoption of the Plan. Therefore we suggest a two-step verification process:

1. An immediate meeting with motivated landowners familiar with the characteristics of their properties to address obvious and unambiguous errors; and
2. A second subsequent review after the Plan is adopted to address other possible minor or more ambiguous errors.

Proposed SEPP and Planning Controls

UDIA is in favour of the intention to introduce a State Environmental Planning Policy (SEPP) to support the implementation of the Plan.

Consistency clause

We support the intention to include a clause that “requires consistency between the certified — urban capable land in Precinct Plans and the areas of biodiversity certified land covered by the biodiversity approvals”.

We strongly recommend that the final Plan explicitly states that its maps must be updated concurrent with the finalisation of Precinct Plans. The experience in the North West and South West Growth Centres has been that the certification maps were not updated when the precinct plans were finalised. This has created confusion and undermined the value of the biocertification in the Growth Centres. We are hopeful that the biocertification process has learned from the experience in the Growth Centres and the process in this Plan will ensure the effectiveness of the consistency clause.

Environmental conservation (E2) zoning for avoided land

Whilst the UDIA supports the inclusion of Environmental Conservation (E2) zones to protect important environmental lands, we again stress that the UDIA has extremely low confidence in the mapping that underpins the classifications in the exhibited Plan.

As a consequence, landowners **must** be provided with a meaningful appeal process to address any disputes. The draft Plan also lacks a mechanism to ensure that any individual landowner is compensated for the constraint imposed upon their land that may be rezoned E2. **The UDIA contends that it cannot be reasonable for government to unilaterally rezone land for biodiversity conservation purposes - thus reducing the monetary value of the land and removing development ‘rights’ or expectations - without such a right to appeal and/or appropriate compensation.**

Planning controls designed to minimise impacts to the strategic conservation area

The UDIA again stresses that we have low confidence in the mapping that underpins the classification of these lands, and call for a meaningful appeal process to address any disputes.

Acquisition clauses

The UDIA acknowledges that “A land acquisition framework is being developed to ensure transparency and fairness for landholders, and to ultimately deliver the offsets required under the Plan (Commitment 8, Action 12).” This is important and the UDIA looks forward to reviewing the framework.

The initial funding commitment is to acquire certain lands for national parks. However, it is essential that landowners whose land has been identified as strategic conservation areas or whose land will be required to be rezoned and protected for conservation purposes (a “public purpose”) will have the ability to receive compensation in a timely manner.

In general, the UDIA is concerned that adequate funding may not be available for acquiring appropriate offset land, and that funding shortfalls could result in adaptive management procedures which constrain the necessary supply of housing in Western Sydney. See our additional comments under “Evaluation, Monitoring and Adaptive Management” below.

Guidelines for infrastructure development in the nominated areas

The draft Plan states (pages 47-48):

While the certified-urban capable land has been designated for urban development through the Plan, planning for essential infrastructure is in various stages for each of the four nominated areas. This means that additional, essential infrastructure development may be needed outside certified urban capable land to support growth...

Every effort should be made to ensure that infrastructure development is limited to the certified urban capable land. Any development outside of those areas will need to comply with the ‘Appendix A. Guidelines for essential infrastructure development’ and obtain all required NSW biodiversity approvals. This includes specific requirements to avoid, mitigate and offset impacts to MNES and other relevant EPBC Act matters.

The Explanation of Intended Effect states on page 6: “The department is proposing to introduce guidelines to manage the impacts of infrastructure development on matters protected under the BC Act and EPBC Act.”

UDIA urges the Department to consider a streamlined assessment process for necessary infrastructure specifically related to development. The draft Plan mentions Transport for NSW (i.e., State roads), water, wastewater, electricity and other infrastructure which appears related to major infrastructure, but does not specify development-related infrastructure such as local roads, retention basins, etc., associated with individual development sites. These necessary infrastructure items may also fall outside the boundaries of certified - urban capable land.

UDIA recommends that the Department develop a mechanism to accommodate local infrastructure required by future development in certified areas. Experience in other biocertified areas such as the

North West and South West Growth Centres and Warnervale on the Central Coast has shown that this issue arises regularly and can diminish the effectiveness of biodiversity certification. The benefit of biocertification in delivering housing supply is certainty in time and cost. When local development-related infrastructure is required to be assessed through the BAM and provide a BDAR, the effect of biodiversity certification on the project is drastically reduced and can be nullified, reducing supply.

The Plan should acknowledge this common reality and develop a process to streamline the assessment for required development-related infrastructure that falls just outside the boundary of certified-urban capable land.

UDIA would be pleased to work with the Department on this endeavour.

Evaluation, Monitoring and Adaptive Management

UDIA commends the Department for its commitment to ongoing monitoring, evaluation and review of the Plan.

We welcome the commitments under the evaluation program wherein a progress update will be publicly provided each year and an independent review of the Plan will be conducted every five years and be made publicly available over the life of the Plan.

We urge the Department to consult regularly with UDIA and other industry stakeholders as the Plan is regularly reviewed.

We acknowledge that adaptive management measures may be necessary to achieve the Plan's outcomes given that not all changes can be accurately forecast. We welcome the draft Plan's recognition that changes in economic and social variables may occur and these should be weighed against environmental changes. We fully support the principles of Ecologically Sustainable Development (ESD) which seeks to achieve balance between economic, social and environmental priorities.

However, UDIA is concerned that the principles of ESD could be lost in the implementation of the proposed adaptive management strategy. If the NSW Government is unable to secure offsets at the rate of 80% of the offset liability, the adaptive management steps will be initiated and could result in a freeze on rezoning and development assessments, as outlined in the draft Plan's Figure 22 (below).

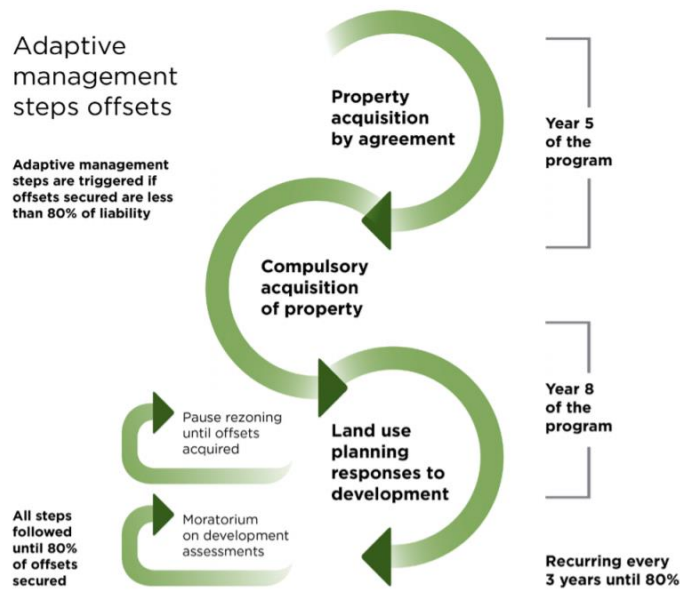


Figure 22: Adaptive management steps for offsets

While we appreciate that land use planning responses are the last step in the adaptive management strategy outlined in the draft Plan, and would not occur before year eight, there is a risk that the strategy could inadvertently constrain the supply of housing in Western Sydney, precisely when it is most required. Development occurs to meet market demand – in other words, when people need more housing. To ensure the appropriate supply of new dwellings and keep housing affordability in check, the NSW Government should commit to fund the procurement of offsets fully and adequately such that the 80% offset liability ratio is never triggered.

Funding

UDIA notes that the NSW government has committed \$84 million to support the implementation of the Plan in the first five years. The draft Plan proposes to fund the conservation program through developer contributions levied as a component of a Special Infrastructure Contribution (SIC) on development in the four Western Sydney nominated areas. This mechanism has been used in the North West and South West Growth Centres, where the SIC rate of \$4,500 is subsidised by roughly half, resulting in a developer payment of approximately \$2,250 per dwelling.

A SIC biodiversity component of \$4,500 was proposed for Wilton and Greater Macarthur Growth Areas. The draft Plan provides very little information on a final SIC cost for the area of the Plan, and does not speak to whether employment land will be subject to the SIC. We request more information in order to understand the full funding mechanisms for the Plan, particularly beyond the first five years. We also request clarification of the treatment of any excess E2 zoned land held by a developer. For example, can this land be utilised to offset the SIC? In principle, we believe there is a need for broader funding from beneficiaries across the State who benefit from biodiversity, not just new homebuyers.

Conclusion

UDIA is keen to see the Western Parkland City become Liveable, Affordable and Connected as it grows, and finalising the Cumberland Plain Conservation Plan is fundamental to that success.

We believe it is critical that our significant industry concerns be meaningfully addressed before the Plan is finalised. In particular, the significant flaws in the mapping which underpins the Plan must be resolved, and an appropriate appeals mechanism and compensation program for affected landowners must be incorporated into the Plan.

We will be pleased to continue to engage with the Department to ensure that necessary changes are made to create the essential certainty required to enable sustainable development in Western Sydney.

Please contact Mr Kit Hale on 02 9262 1214 or khale@udiansw.com.au to arrange a meeting to discuss any further matter related to the Cumberland Plain Conservation Plan.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Steve Mann', with a stylized, flowing script.

Steve Mann
Chief Executive Officer
UDIA NSW