



# ***Western Sydney Strategic Assessment – Draft Terms of Reference***

*Report on public  
submissions*

*March 2019*

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# *Executive summary*

The Terms of Reference set out what is required for undertaking the Western Sydney Strategic Assessment and will guide the development of the Cumberland Plain Conservation Plan.

Thirty-two submissions were received from local residents, community groups, Deerubbin Local Aboriginal Land Council (LALC), Wollondilly Shire Council and Liverpool City Council. The submissions raised several issues. The four main issues identified were:

- the need for greater public consultation
- concern over mechanisms that offset impacts of development by protecting or enhancing biodiversity at other locations
- the need for ground-truthing sites of impact and for conservation
- overall impacts from development in Western Sydney

The Department of Planning and Environment (the Department) analysed submissions against the statutory Strategic Assessment Agreement and propose no amendment to the draft Terms of Reference. Regardless, all comments received are relevant to strategic planning in Western Sydney and are being considered as the Plan is developed and implemented.

Public exhibition of draft Terms of Reference has provided the first opportunity for the community to have their say in the development of the Cumberland Plain Conservation Plan.

Copies of all submissions received will be published on the Department's website along with the Final Terms of Reference, once endorsed by the Commonwealth Minister for Environment.

# Context

The New South Wales (NSW) Government's vision for Western Sydney is to deliver the infrastructure, housing and jobs needed for future population growth and to create a vibrant, liveable and connected city with green spaces and protected biodiversity. As part of delivering on this vision, the government is undertaking strategic conservation planning in Western Sydney.

Strategic conservation planning involves a strategic assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and strategic biodiversity certification under the NSW *Biodiversity Conservation Act 2016* (BC Act).

The strategic assessment of Western Sydney covers an area of around 200,000 hectares and includes an assessment of impacts from four new urban Growth Areas and associated major transport corridors matters protected under the EPBC Act. The four new Growth Areas are: Greater Macarthur, Wilton, Aerotropolis and Penrith to Eastern Creek Urban Investigation Area.

Considering biodiversity needs upfront through an integrated planning process is an important part of balancing future development and biodiversity outcomes. Through this work, the NSW Government will deliver a landscape-wide conservation plan for Western Sydney, the Cumberland Plain Conservation Plan (the Plan).

The strategic assessment will inform the Plan's development and will set specific commitments to protect and manage impacts to matters protected under the EPBC Act.

## Purpose

Under the Strategic Assessment Agreement (Attachment C) between the Commonwealth Minister for the Environment and the State of NSW, the parties agreed to the preparation of Terms of Reference (ToR) for a Strategic Assessment Report (Attachment D). The ToR set out the information requirements for the Strategic Impact Assessment Report, including how the report should:

- describe the Plan
- describe the protected matters impacted by the Plan
- assess the impacts of the Plan on protected matters
- evaluate the overall outcomes of the Plan
- address how uncertainty and adaptive management are considered in the Plan
- describe the monitoring, reporting and auditing that will be implemented under the Plan
- identify the information sources used to inform the impact assessment report.

Draft ToR must be made available by NSW for public comment as per the s.146 Agreement.

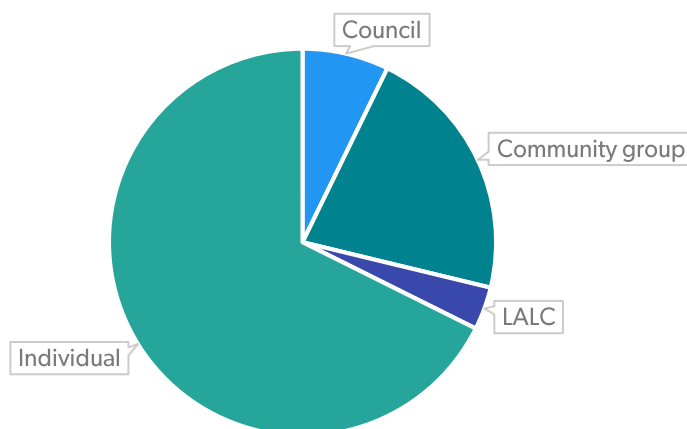
This report meets the requirements of the Agreement and includes an overview of the issues raised during public exhibition of the draft ToR; Attachments A and B include a detailed analysis of public comments and the NSW Government response.

## Overview

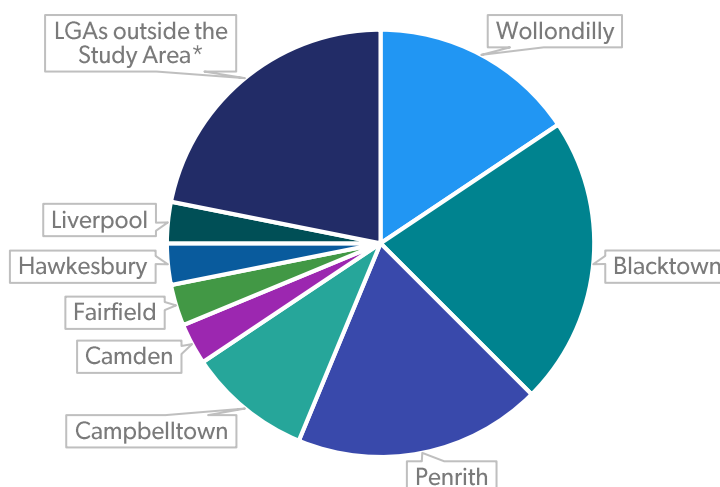
The NSW Government released the draft Terms of Reference for public comment on 28 November 2018. An invitation to submit comments on the draft ToR was advertised on the websites of the Department of Planning and Environment (the Department) and the Department of Environment and Energy. Public exhibition of the draft ToR was also advertised in both a state and national newspaper. Key stakeholders including local councils and members of a Community Reference Group were directly informed and asked to disseminate that information. The comment period on the draft ToR closed on 25 January 2019.

The Department received a total of 32 submissions from local residents, community groups, Deerubbin Local Aboriginal Land Council, Wollondilly Shire Council and Liverpool City Council. The submissions raised several issues. Comments within the draft ToR scope were considered in recommending the final ToR to the Commonwealth Minister for Environment. Several submissions also raised matters outside the draft ToR scope but directly relevant to the Plan's development. The Department will use these comments to develop the Plan.

**Figure 1 - summary of submissions by stakeholder type**



**Figure 2 - summary of submissions by Local Government Area (LGA)**



# Submissions summary

## What we heard

Western Sydney community members have an invested interest in the region and want to be involved in shaping the future of Western Sydney. Submitters would like regular opportunities for public consultation and there is a desire for local conservation priorities to inform the Plan. Offsetting the impacts of development by protecting or enhancing biodiversity at other locations in Western Sydney is a contentious issue. The community feels that existing public bushland reserves should not be used to offset development impacts elsewhere (for example through establishing biodiversity stewardship agreements over existing council reserves). The impacts to biodiversity from development in Western Sydney is a concern for many submitters.

## Main themes in submissions

The four main themes identified during the public exhibition of the draft ToR were (in order of frequency):

- public consultation
- biobanking/offsetting
- ground truthing sites of impact and for conservation
- impacts from development in Western Sydney.

### Public consultation

Submitters expressed a strong desire for conservation priorities at the local level to be embedded into the Plan. For this to occur, they would like to have multiple opportunities for consultation through avenues such as public forums and face-to-face workshops. Submitters would also like to see formal reporting on this consultation, including on the conservation priorities as identified by local residents. A few submissions also expressed dissatisfaction with the draft ToR public exhibition process.

### Biobanking/offsetting

Submitters felt that biobanking/offsetting has not delivered positive environmental outcomes in the past. There was a perception that the practical application of offsets does not result in a net benefit for threatened species or ecological communities; or can result in offsets being acquired at a distance to where the impact occurs. There is also strong sentiment that offsets need to be additional to what is already protected. Many submitters were concerned that existing public bushland reserves are being used to offset development impacts elsewhere (e.g. through the transition to a biodiversity stewardship agreement).

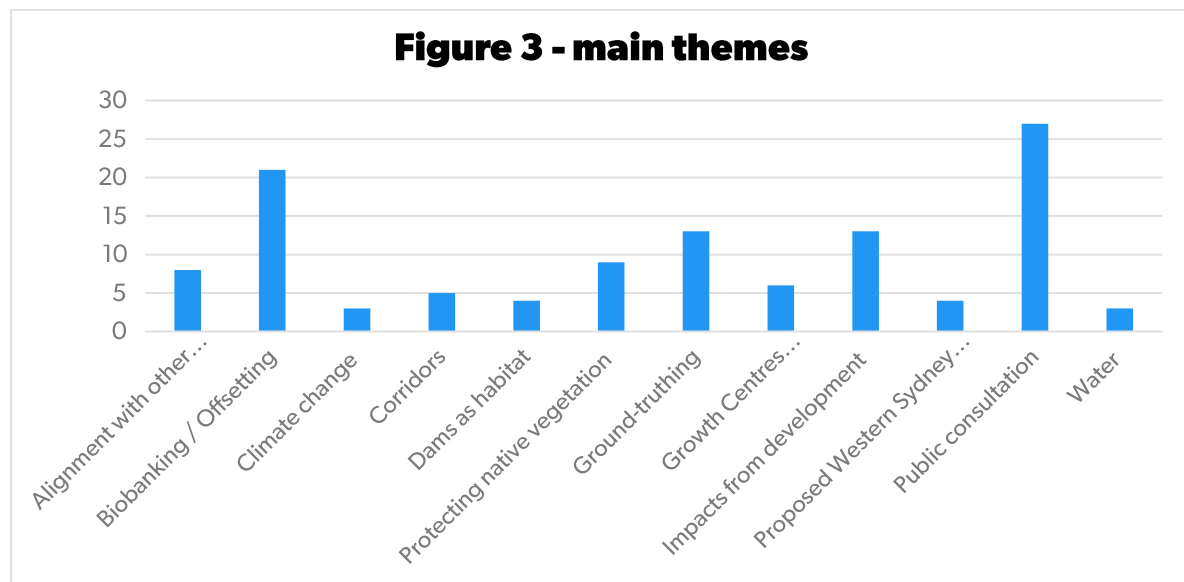
### Ground-truthing

Submitters want the Plan to be underpinned by the best available scientific data that is supported by ground-truthing. Submissions raised concern with the outcomes of the Sydney Growth Centres Strategic Assessment where it was reported in the submissions that important wetland habitat was not identified or protected. A few submissions sought the inclusion of data quality guidelines to ensure the existing environmental conditions are mapped and considered.

## Impacts from development

Submitters were concerned by the impact development is having on the remaining biodiversity of the Cumberland Plain and that decisions to approve development are not adequately considering the cumulative impacts. Submitters were also concerned that the pace and scale of development in Western Sydney will result in reduced amenity and increased heat and health problems, exacerbated by the impacts from climate change. Submitters expressed a desire for the Plan to implement principles of ecologically sustainable development and deliver conservation benefits to the area's threatened ecological communities and species.

Numerous submissions used similar language and raised concerns about specific issues in very similar ways. This implies that there are community awareness campaigns currently active in Western Sydney. The Department understands this as demonstrative of the involvement and engagement of the Western Sydney community with the environment where they live, work and play.



## Main themes raised on the draft Terms of Reference

Comments on the draft ToR referred to specific provisions, referred to the ToR generally, or identified what submitters considered as gaps in the scope of the ToR. Comments that identified perceived gaps in the ToR have been grouped together in Figure 4.

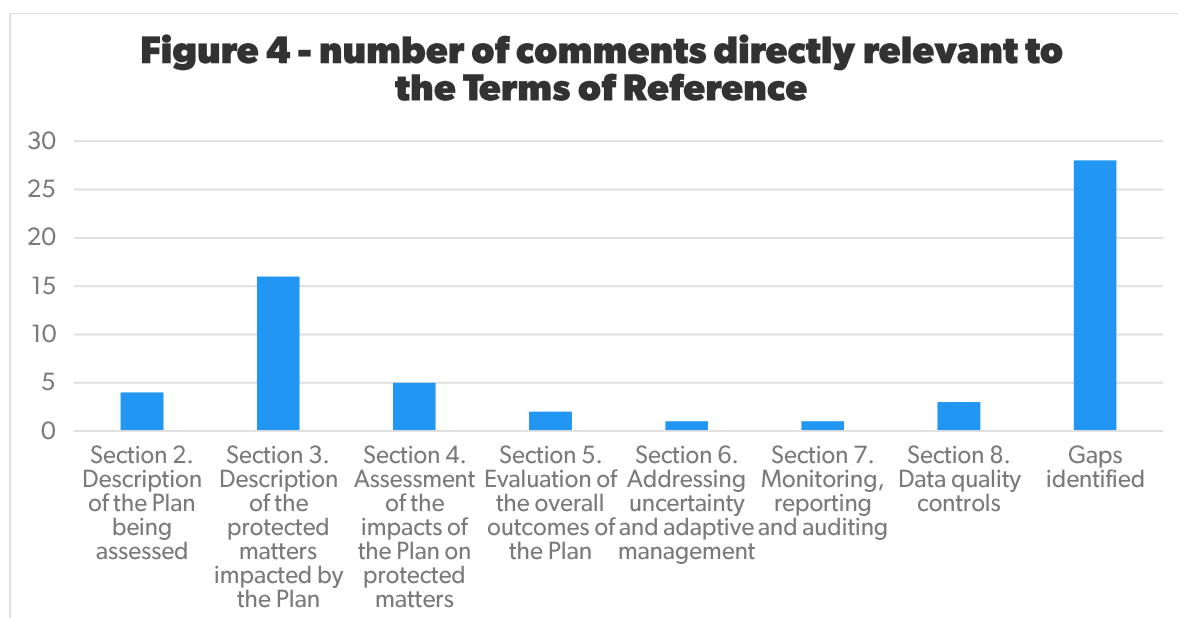
### Comments on Section 2 – description of the Plan being assessed

There were five comments on this section, mostly from a local council or Local Aboriginal Land Council. Submitters wanted to see explicit reference to their governing legislation or frameworks in this section.

### Comments on Section 3 – description of the protected matters impacted by the Plan

Most comments on this section focused on the use of existing public bushland reserves being used as offsets for impacts elsewhere. Submissions called for section 3.1.5 to be amended to include public bushland reserves in the definition of already-protected bushland.





#### Comments on Section 4 – assessment of impacts from the Plan on protected matters

There were a range of comments on section 4. Comments referred to the adequacy of impact assessment, the need for clear provisions on offsetting and a requirement for ground truthing above a desktop analysis. Other varied comments referred to identifying Aboriginal Cultural Heritage and further clarity on the definition of “indirect impacts.”

#### Comments on Section 5 – evaluation of the Plan’s overall outcomes

There were three comments on this section. Comments referred to: the need to include an analysis of the impacts and benefits of the Plan, the need for consideration of future water needs, and the need to consider climate change, in relation to rainfall and temperature volatility.

#### Comments on Section 6 – addressing uncertainty and adaptive management

One submission raised concern with the practical application of section 6.1 (effectiveness or capacity for the Plan to be implemented). The submission noted that illegal clearing of land that is non-certified has generally been left to local Councils to enforce, which requires further consideration.

#### Comments on Section 7 – monitoring and reporting and auditing

There were two differing comments on this section. One referred to regulation around biobanking, the other suggested no abandonment of the Plan under any circumstance.

#### Comments on Section 8 – data quality controls

There were three comments on the needs for data quality controls to ensure the best scientific data is used.

#### Submitters’ suggestions for additional inclusions in the draft Terms of Reference

- *Principles of ecologically sustainable development* – there were two submissions that felt the draft ToR were unbalanced toward facilitation of development over protection of the environment.

- *Mandatory protection of old growth trees* – there were two submissions which called for mandatory mapping of old growth trees as part of the strategic assessment and strong preference given to their protection.
- *Reporting on public participation and local conservation priorities* – there were 11 submissions explicitly wanting a requirement for mandatory reporting of public consultation on the Plan, including the exhibition of community-identified conservation priorities.
- *Community engagement* – one submission thought that the ToR lacked provisions for genuine community engagement. Five submissions wanted consultation with the Cumberland Bird Observers Group to be a requirement of the strategic assessment.
- *Rural dams as a protected matter* – two submissions wanted the protection of rural dams, given their prominence in the strategic assessment.
- *Identifying and protecting wildlife corridors* – three submissions identified parameters for corridor identification and protection in the strategic assessment.
- *Measurable targets* – one submission called for firm and measurable targets to be included to address cumulative impacts on the declining biodiversity in the Cumberland Plain.

## Detailed analysis and the Department's response

Detailed analysis of submissions and the Department's responses can be found at Appendix 1 (comments relating to the main themes) and Appendix 2 (comments specific to the ToR). Comments have been taken directly from the submissions received and have been grouped accordingly. There is some overlap between comments, however only those comments that are relevant to the ToR have been considered by the State in recommending the final ToR to the Commonwealth Minister for Environment. All comments received are relevant to strategic planning in Western Sydney and will be considered as the Plan is developed and implemented.

# Attachments

## Attachment A – Summary of main themes in submissions

**Table 1 – Alignment with existing regulations and programs**

Comment
"Recognise land holdings of Deerubin Local Aboriginal Land Council in the study area."
"How will the Cumberland Plain Conservation Plan be integrated with the existing South West District Plan and Cumberland Plain Recovery Plan."
"Council would like to see references made to local government planning documents in addition to Commonwealth and State documents. The effectiveness of the Plan's actions will be closely linked to the implementation of successful collaborations with local councils."
"The protection of remnant natural bushland contributes significantly to the urban tree canopy and its benefits for western Sydney residents, but the CPCP – ToR seem to be development-driven and demonstrate a lack of integration with sensible strategic environmental planning processes."
"Clearer guidelines for clearing or disturbing non-certified lands."
"The Plan should identify areas in which existing land uses do, or could be better managed to, align with conservation outcomes, rather than only identifying instances where planning controls need to change."
"A perfect example of a conservation program that is already happening in the Cumberland Conservation Corridor (Federal Government partner)."
"Whilst we appreciate that the agreement reached with the Commonwealth Government is most likely outside the scope of community comment for the CPCP – ToR, we express serious concerns as to why the process of Commonwealth delegation to the State government was not open for community comment. The Commonwealth legislation provides a significant layer of environmental protection for critically endangered ecological communities such as on the Cumberland Plain, which should not be delegated to the weaker State layer of protection. We are disturbed by statements in the agreement that the as yet untested State driven "landscape approach to planning may benefit the environment". "
<b>Department Response:</b> The Department will align with existing programs and planning processes as appropriate throughout the Plan's development and implementation. This will be informed through consultation with the Plan's stakeholders including local councils, Local Aboriginal Land Councils, the Greater Sydney Commission and local environment groups.

**Table 2 – biobanking/offsetting**

Comment
"We do not believe offsets are a conservation tool."
"No more loss of our precious trees as offsets for developers. They are carbon sinks and oxygen producers. They also make rain and prevent drought. Instead of using our precious remaining woodland as offsets for developers, make them pay for the devolution and ecocide they have achieved during the last terms of NSW Government."
"The draft terms do not emphasise the need for 'like-for-like' offsetting. Generally, the good, easy-to-develop country is being cleared and the marginal country is being used as offsets. This must change. Many of the most fertile ecosystems are particularly vital to endangered fauna such as the Regent Honeyeater and Swift Parrot. Old growth trees providing the bulk of nesting hollows to a region, such as those at Mt Gilead for example, are critical for all parrots in that area. Koalas too are very reliant on certain types of country, with High Sandstone Influence for example, adversely affecting fertility. The Terms of Reference should prioritise delivery of 'like for like' offsetting and this should be stated in the terms."
"Developers cannot be easily given the right to cut down established trees and offset far off in the distance especially if this is more than 5km. I do not believe that you can simply plant more trees in places like the western Sydney parkland to mitigate all the new development in the area. Likewise, public reserves and vacant land needs to be protected more not less from the removal of native trees. Developers should not be allowed to offset using existing public land."
"I am greatly concerned at the decline in Cumberland Plain habitat. It seems that the current offset policy is unable to result in an overall net benefit and in fact is enabling habitat destruction. It is vitally important that offsets only occur as a last resort, that they are local (within 5km) and that they also do not allow offsets in spaces already preserved under other legislation (like council reserves)."
"There is an increase in BioCertification credits being used by government and council to fund areas already reserved such as reserves, parks etc. often the area used is not even anywhere near where bushland or threatened species will be destroyed. This has no value in regard to the saving of bushland and an area ends up with a complete loss of habitat. Please do not use reserves or parkland but use genuine often private land that has not been already reserved to ensure that a population of plants or animals does not die out."
"The Cumberland Plain must be preserved in its current format to safeguard the wildlife that is increasingly under threat from development. Nominating public parks as an alternative does nothing to protect wildlife or allow them to flourish."
"There needs to be a clear statement that public bushland reserves are fully protected within the CPCP - ToR and not open to private developers as future offset opportunities. Often the protection of such reserves has been due to community efforts to protect their natural areas from destruction and private developers should not "reap" the rewards of these protected areas to facilitate further destruction of natural areas."
"There must be genuine 'additionality' achieved in determining offsets. As such, areas already conserved such as all public reserves, past development offsets containing protected matters irrespective of whether zoning processes have caught up with Environmental Conservation zoning must not be used as an offset for anticipated losses in the Cumberland Plain Conservation Plan. All local government parks are either long term or more recent offsets for development which has occurred in the surrounding area. That they are a park/reserve has come at cost to the reduction of areas of present day protected matters in the surrounding suburb or region. A serious exercise must be

## Comment

undertaken to identify past offsets for exclusion from another consideration as offset, biobanking or development. From that starting point, the determination of areas for future conservation as offset under the Cumberland Plain Conservation Plan and the Commonwealth Government Strategic Assessment must be an immediate initiative."

"Another critical element for the Terms of Reference is that it must address how any proposal to use biobanking as an offset mechanism will be done to ensure genuine 'additionality'. Areas already conserved, such as public reserves, past development offsets, etc, must not be used as an offset. This rubbish has gone on for too long – offsets need to be a genuine like-for-like offset!"

"Point 3.1.5 should be amended as follows: "A spatial map of areas that are already protected for environmental purposes, including public bushland reserves and Biobanking and Biodiversity Stewardship sites." Omitting the existing public bushland reserves from this dot point creates the risk that they will be omitted from the map and therefore slide out of consciousness. The existing public bushland reserves must be clearly identified as already protected and therefore not available for developers to claim as environmental offsets."

"Existing Parks and Reserves must NOT be reused for offsets. Many of these reserves have already been fought for protection by the local community and need to remain protected and cannot be used as equity for further construction/destruction. This should also include reserves egresses under major power lines and for underground services (e.g. Gas lines) which are already achieving offset for the existing development in the region."

"Public reserves must not be offsets for developers: The Terms of Reference (Section 3.1.5) do not include public bushland reserves in their definition of already-protected bushland. This will allow developers to use the public reserves as their environmental offsets and deny local farmers vital conservation funding to protect bushland on farms."

"Public reserves must not be offsets for developers: The Terms of Reference (Section 3.1.5) do not include public bushland reserves in their definition of already-protected bushland. This will allow developers to use the public reserves we fought and paid for as their environmental offsets. Section 3.1.5 must be amended to include 'public bushland reserves' in the definition of lands already protected."

"I object very strongly to using public reserves as offsets for developers: The Terms of Reference (s3.1.5) do not include public bushland reserves in their definition of already-protected bushland. This is completely unacceptable. This will allow developers to use the public reserves that were fought and paid for by the public, as their environmental offsets. Also local farmers must not be denied vital conservation funding to protect bushland on farms."

"Public reserves must not be used as offsets for developers: The Terms of Reference (Section 3.1.5) do not include public bushland reserves in their definition of already-protected bushland. I do not believe it is in the best interest of this ecological community for developers to use the public reserves we fought and paid for as their environmental offsets and deny local farmers vital conservation funding to protect bushland on farms."

"The draft Terms of Reference (s3.1.5) do not include public bushland reserves in their definition of already protected bushland, allowing public reserves to be used as offsets for developers. In other words, developers will be able to use the public reserves that we (the rate payers) have already paid for as environmental offsets, so no additional land is being protected. Furthermore, it will deny local farmers vital conservation funding to protect bushland on farms. This would be a lost opportunity as undoubtedly most farmers are excellent protectors of bushland and wildlife, and especially if there are financial incentives helping to keep their land viable."

#### Comment

"Public reserves shouldn't be used as offsets for developers - this is public land that is already in community hands for community and wildlife - not to justify environmental destruction elsewhere. Local farmers have a tough enough time with the weather and should be able to get conservation funding to protect bushland on their farms! Especially on the fringes of Sydney where the urban sprawl is endangering wildlife and increasing the summer temps due to the urban heat sink."

"The draft Terms of Reference for the strategic assessment under the Commonwealth (EPBC Act). have their limitations. For example, they allow developers to use public reserves that are already under conservation management plans, as environmental offsets for their developments. This practice means no new bushland is being protected to compensate for the destruction being caused by the developments. Public bush reserves should be included in a definition of "already protected lands" in the Draft Terms of Reference."

"The existing public bushland reserves must be clearly identified as already protected and therefore not available for developers to claim as environmental offsets."

"This submission is motivated by our lived experience of the significant failures in the Sydney Growth Centres Conservation Plan and the associated Commonwealth Government Strategic Assessment. It was a disaster, mostly because of a lack of ground-truthing and genuine community consultation, and totally dodgy biobanking. These Terms of Reference for the Cumberland Plain Conservation Plan must avoid the failures of the past."

**Department Response:** Under relevant legislation, strategic conservation planning allows for: the establishment or extension of conservation reserves; rehabilitation of degraded lands; acquisition of lands and creation of new threatened species corridors; measures to enhance climate change adaptation pathways; and strategic targeting of in-perpetuity conservation. Proposed offset measures under the Plan will permit the Plan to meet requirements for certification under the BC Act and endorsement under the EPBC Act. This process will be guided by a set of criteria and principles that prioritise 'additionality' and 'direct offsets'. The Department acknowledges the concerns raised in relation to bushland reserves. The existing biodiversity value of reserves will not be counted as an offset. If a stewardship activity improves the biodiversity values on that land through significant ecological planting and eradication of pests and weeds (by more than is required in the Biosecurity legislation), the additional biodiversity value generated will be counted as an offset, particularly where conservation outcomes generated through a biodiversity stewardship agreement provide in-perpetuity protection with an ongoing funding source, often not guaranteed within Council budgets.

### Table 3 – climate change

#### Comment

"Will climate change be addressed in this plan? How is this plan going to cool western Sydney?"

"With respect to climate change, the report must consider both rainfall and temperature volatility, particularly with respect to the exacerbation caused by the urban heat island effect and temperature inversions that are common to western Sydney."

"In this age of climate change and overdevelopment, the government would be reckless to go ahead with this plan."

#### Comment

**Department Response:** The Plan will actively support the *Greater Sydney Region Plan* to increase urban tree cover, mitigate the urban heat island effect and reduce Western Sydney's vulnerability to extreme heat. Actions identified in the Plan will consider and implement conservation and restoration of biodiversity to secure key natural habitat and influence water sensitive urban design. This is expected to result in a cooler and greener urban environment. Actions will also be designed to improve habitat connectivity and threatened species climate change adaptation pathways.

**Table 4 – wildlife corridors**

#### Comment

"Corridor protection should not be based on the existing flora footprint alone but should take into consideration what is needed to sustain ecological function and processes particularly across transitional ecosystems and soil types."

"Corridors must be wide enough to enable terrestrial fauna to safely move through the landscape avoiding pinch points and enabling north, south, east and west habitat connections."

"Corridors evaluated on appropriate widths that effectively provide habitat and include soil types that support threatened species."

"Start massive planting of corridors to link the remnant pieces. We need to stop building roads and rail that block these linkages."

"The environment is an ecosystem of multiple flora and fauna and to achieve genetic diversity as resilience against human development, corridors need to be deliberately developed, ensured they are active and maintained."

**Department Response:** Protection of wildlife corridors is an important component of the strategic assessment and will be considered in several stages. The design of urban development footprints is being informed by the legislative requirement to prioritise avoidance of impact. The Plan is helping inform avoidance by identifying areas important for connectivity, such as local habitat corridors for key species and land identified as Bio Map regional corridors. Corridor protection and the potential to enable connectivity will also be a factor in identifying areas for conservation or areas suitable for restoration.

**Table 5 – dams as habitat**

#### Comment

"The Urban Bushland Biodiversity Survey, 1997, identified the worth of rural dams for preserving biodiversity on the Cumberland Plain. Rural dams are not identified as a protected matter but, without question, they are integral to preserving aquatic fauna and vegetation known to have inhabited the Cumberland Plain. Additionally, rural dams store water for fauna drinking, foraging and breeding (according to species) and they play a role in sustaining protected matters."

## Comment

"The one thing humans have demonstrated to be of benefit to human, animal and aquatic flora and fauna life in the construction and maintaining of rural dams over the past 100 years."

"Currently ad hoc rural dams in western Sydney are providing the stop gap water source for much habitat. The poor natural water retention is due to the removed of wetlands and water stagnation in riparian corridors from previous development. Action to include how water will be available to fauna and flora during significant dry spells needs to be considered and documented."

"Most urban development, with only limited exceptions, has had an agenda of draining and removing rural dams for development space. It is my contention that the recognition of rural dams as occurred in the Urban Bushland Biodiversity Survey, 1997, should be applied in the Terms of Reference for the Cumberland Plain Conservation Plan because that recognition has been largely lost since 1997. It should be given prominence in this landscape planning strategy. Rural dams serve the biodiversity of the Cumberland Plain and every given area within that landscape."

**Department Response:** While not a protected matter, if rural dams serve as habitat for important wildlife they are a consideration of the strategic assessment. Avoidance criteria is informing the design of the urban development footprint to limit impacts on second and higher order streams, which includes any dams in those areas and any wetlands the dams may have created. The impact assessment and prioritisation of conservation areas will consider where threatened species, such as the Green and Golden Bell Frog, may be using dams as habitat and will use planning controls, such as the protection of riparian areas. The Department is also working to integrate connectivity needs identified in the Plan with the Blue Grid vision for Western Sydney.

**Table 6 – ground-truthing**

## Comment

"Ground-truthing must be the basis of all decisions to include or exclude areas considered for conservation. The seriously flawed desktop review which was the foundation of the Sydney Growth Centres Conservation Plan must not be repeated." **(2 submissions)**

"With respect to bird activity and survival, direct consultation must take place with the Cumberland Bird Observers Club to ascertain known areas of high and discreet bird activity. Deference should also be made to past studies by that organisation and other bird organisations and scientists on the impact of nearby development on bird activity." **(2 submissions)**

"It is noted that the extent of certified and non-certified lands within the Austral and Leppington North precincts contains several inaccuracies. It is Council's opinion that the Strategic Assessment needs to include parameters around data quality control. This should include detailing the accuracy of GIS and mapping, and identifying instances where ground-truthing is required, to avoid areas which do not provide any ecological benefits being considered as an ecological off-set." **(2 submissions)**

"Insufficient ground-truthing and community consultation results in examples like the Riverstone Wetlands being sacrificed for development, threatening the endangered and supposedly protected Green and Golden Bell Frog in the process." **(3 submissions)**



## Comment

"Insufficient ground-truthing and community consultation has resulted in some known instances such as the Riverstone Wetlands foraging space for ROKAMBA, JAMBA, CAMBA listed shore birds and habitat for the Green and Golden Bell Frog; Westminster Street Schofields bird habitat including seasonal Swift Parrot; Burial Ground of the Blacks Schofields each being the subject of frustrating for community remedial attempts."

"Much reference material in earlier studies have been done by paid consultants with limited understanding of the local conditions and often only book audits. It needs to be mandatory for ground-truthing to occur with respect to auditing the existing environmental conditions of western Sydney. The Cumberland Conservation Network have developed a significant study showing the Cumberland Plain is already below 8% of its pre-colonisation state and that more natural lands need preservation all rewilding."

"Ground-truthing of existing native vegetation – the ToR should not preclude the inclusion of data quality guidelines to be included within the strategic assessment. Data quality guidelines are needed to ensure that mapping truly reflects the current environment utilising the best technology available at the time. The mapping exercise should also identify any utility lines, transmission easements, existing roads, and other managed lands which should not be identified as non-certified lands."

"This submission is motivated by our lived experience of the significant failures in the Sydney Growth Centres Conservation Plan and the associated Commonwealth Government Strategic Assessment. It was a disaster, mostly because of a lack of ground-truthing and genuine community consultation, and totally dodgy biobanking. These Terms of Reference for the Cumberland Plain Conservation Plan must avoid the failures of the past."

**Department Response:** The strategic assessment will apply on-site assessment that is compliant with the NSW Biodiversity Assessment Method (BAM). This includes plot work and targeted species search, as well as expert reviews and knowledge-based methods to determine potential adverse impacts on resident and migratory species. The on-site assessment work will also be supported by desk-top analysis. The strategic assessment will include outcomes of an independent peer review into key methods used to assess impacts and identify potential conservation areas prioritised for further investigation. The outcomes of the review will be made publicly available along with the draft Plan and draft Impact Assessment Report. The public exhibition process will provide an opportunity for the community to have their say on locally identified conservation priorities. In addition to the public consultation process, the Department will undertake further investigations, including aerial verification, drive-by verification and on ground confirmation to continue to refine priority areas for conservation.

## Table 7 – Sydney Growth Centres

### Comment

"Ground-truthing must be the basis of all decisions to include or exclude areas considered for conservation. The seriously flawed desktop review which was the foundation of the Sydney Growth Centres Conservation Plan must not be repeated." **(2 submissions)**

"There should be no more deceitful concealment of the processes of any committee/trust established to manage a conservation fund as occurred with the Sydney Growth Centres Biodiversity Offset Program."

"Those areas determined for conservation and their conservation being the basis upon other areas being developed must be protected in perpetuity from any future assault such as for infrastructure programs. An example of failure again is the Sydney Growth Centres wherein the former International Radio Transmitting Station, Shane's Park was

## Comment

calculated to be a 560ha conservation gain, was announced as such yet no attempt was made to remove a road reservation from the site - a road reservation which would take out 10% of the woodland."

"Those areas determined for conservation must be protected in perpetuity from any future development. For example, the former International Radio Transmitting Station, Shanes Park was meant to be completely conserved, and yet now we have a road reservation continuing to threaten the site. Saved means saved!"

"It is my expectation that land acquisition will be required to redevelop these corridors in Western Sydney and the previous impact assessment reports and developments for other growth areas have not achieved this in any way."

"This submission is motivated by our lived experience of the significant failures in the Sydney Growth Centres Conservation Plan and the associated Commonwealth Government Strategic Assessment. It was a disaster, mostly because of a lack of ground-truthing and genuine community consultation, and totally dodgy biobanking. These Terms of Reference for the Cumberland Plain Conservation Plan must avoid the failures of the past."

**Department Response:** In developing the Plan, the Department is considering lessons learned from past strategic assessments, including from the implementation of the Sydney Growth Centres.

## Table 8 – impacts from development

## Comment

"Overall, we express disappointment in the unbalanced intent of the CPCP - ToR. It has clear statements of intent to facilitate development over the next 38 years but provides no clear statement of intent to protect or enhance biodiversity recognised as critically endangered nationally. This is inconsistent with the principles of ecologically sustainable development which should be underpinning growth and development in Western Sydney."

"I certainly hope that a fair balance will be found in delivering positive environmental outcomes by avoiding over development during the 37 years' life of the plan and applying the well-founded principles of Ecologically Sustainable Development."

"As with most Government plans these days, the title does not reflect the true nature or intent of the Plan. It is quite clear this plan has got little to do with conserving the Cumberland Plain - in fact just the opposite!"

"I'm opposed to more urban sprawl and loss of biodiversity in Western Sydney. The public has had enough of growth at any cost."

"Developers have sold our topsoil and our trees as woodchip. They have polluted our catchments with their storm water basins. Ecosystems are drowning in water turbidity and pollinators that are essential to our food production have no clean water to drink."

"We all already know what needs to be done to save the Critically Endangered Cumberland Plain Woodland - stop clearing it. Leave what is left alone and restore connectivity to all the remnants."

"It is important that the Environment and the Community start taking a front row seat. At the moment individual developments are being approved with no check of the overall cumulative impact, or the amount of habitat

#### Comment

remaining. It is essential for this trend to be reversed to enable progress in protecting habitat types to be made. Stronger wording, firm, measurable targets and active oversight of the big picture are required.”

“The recent piecemeal rezoning of land in the designated precincts of Wilton South East and North have demonstrated a failure to consider cumulative impacts of development on this sensitive environment.”

“Currently the individual developments for Wilton South East and Wilton North have been rezoned by the Minister in 2018 for urban development with no real consideration being given to their cumulative impact on biodiversity, or the amount of critical habitat remaining.”

“The plan for further development of the area displays, either an abandonment of responsibility, or a poor understanding of the adverse impacts that will occur if the plan goes ahead.”

“In this age of climate change and overdevelopment, the govt would be reckless to go ahead with this plan. If this kind of overdevelopment goes ahead it will increase the heat in Sydney’s western suburbs. Increase mental health problems (especially if the 24/7 airport goes ahead sleep deprivation). The air pollution that gets trapped already in the inversion layer and against the mountains will sit over people. Causing increases in hospital admissions through asthma, heart disease and domestic violence.”

“Out here on the fringes of Sydney where the urban sprawl is endangering wildlife and increasing the summer temps due to the urban heat sink.”

“Please address the important need to protect Mt Gilead for future generations and the impact over developing this area has on air pollution and wildlife.”

**Department Response:** The Plan will support the delivery of State priorities for Greater Sydney, including the delivery of housing and infrastructure and the conservation of biodiversity and diverse, high-quality ecosystems within the Cumberland Subregion. The Plan will provide a mechanism to integrate biodiversity considerations with the State’s development priorities to ensure strategic conservation outcomes are delivered.

**Table 9 – Proposed Western Sydney Airport**

#### Comment

“The airport will destroy CPW, it is in the wrong place. There will be pollution and will not create more jobs due to automation.”

“Stop the destruction being caused by the new airport.”

“Western Sydney already has poor air quality, and this will be made worse by a 24hr airport. Problem will be exacerbated by bringing more people, housing, traffic and pollution to Western Sydney. This will have an adverse impact to health. There will be more 'heat sink'.”

“Both government and the public need to understand the difference between what the best possible conservation plan could achieve were the aerotropolis project to go ahead, and what could be achieved if it were abandoned and

#### Comment

replaced with a less destructive and ultimately life-threatening way of solving the perceived transportation problem.”

“Western Sydney Airport will be a nightmare for biodiversity in Western Sydney and will destroy many years of bushland preservation we have worked so hard for. The community is watching.”

**Department Response:** The Department acknowledges the concerns raised. The Western Sydney Airport has been agreed between Federal, State and local governments and the development is outside the scope of this Plan.

#### Table 10 – protecting native vegetation

#### Comment

“The government and community need to do more in protecting the Cumberland Plain Woodlands and native areas. The Western Suburbs of Sydney are generally hotter than the coastal suburbs. Due to this and many other reasons we need to protect the established bushland. ”

“The Cumberland Plain must be preserved in its current format to safeguard the wildlife that is increasingly under threat from development.”

“We have already lost over 90% of the Cumberland Plain Woodland. No more loss of our precious trees as offsets for developers. They are carbon sinks and oxygen producers. They also make rain and prevent drought.”

“Many of the most fertile ecosystems are particularly vital to endangered fauna such as the Regent Honeyeater and Swift Parrot. Old growth trees providing the bulk of nesting hollows to a region, such as those at Mt Gilead for example, are critical for all parrots in that area. Koalas too are very reliant on certain types of country, with High Sandstone Influence adversely affecting fertility.”

“The conservation of Cumberland Plain vegetation communities is vital to the ecological integrity of the Georges River and Nepean River catchments in western Sydney.”

“I believe stronger individual tree preservation rules should also be implemented, as there is so little of the Cumberland plain left, even these few isolated trees at least keep the diversity of the individual species alive and provide a seed bank which can be collected for further habitat restoration. There is a lot of development going on in the Macarthur and Wilton areas that are needlessly removing trees, when a more forgiving design could preserve them. Developers even seem to actively route roads over existing trees as a justification for then cutting them down.”

“We want noted in the Terms of Reference that trees aged 100 years or more should be protected, as this is the age that trees start producing hollows for fauna habitat. Not enough regard is given to preserving these trees and ensuring that other trees make that age. Replanting is easy to say: but it doesn't really help for another 100 years (that's IF they get watered).”

“Old growth trees need to be mapped and maintained. Trees of age greater than 100 years provide a developed ecosystem including the hollows that develop in older trees and the need for space around them to ensure human safety. They have deep roots and are generally clustered as development has not occurred around them. These

#### Comment

trees provide significant support for avian and terrestrial fauna as well as the flora that lives below the leaf canopy. Their local climate also provides significant shelter and shade against harsh weather conditions. The terms of reference need to make mapping of these trees mandatory and any effects of development to the trees' local ecosystem quantified and justified."

"We understood that the Greater Sydney Commission strategic planning processes were to include the protection of biodiversity and ensure an effective urban tree canopy to mitigate the heat island effect and improve air quality. The protection of remnant natural bushland contributes significantly to this urban tree canopy and its benefits for western Sydney residents but the CPCP - ToR seem solely development driven and demonstrate a lack of integration within any sensible strategic environmental planning process."

**Department Response:** Protecting native vegetation is a requirement of the strategic assessment. The outcomes of the strategic assessment will meet the biodiversity requirements of Part 10 of the EPBC Act and Part 8 of the BC Act. Where there are unavoidable residual impacts to biodiversity, the statutes require those impacts to be offset according to set criteria. The criteria will result in a conservation outcome that will improve or maintain impacted biodiversity values. Under the Plan, direct and 'like for like' offsets will be prioritised. Taking a landscape approach to delivering conservation outcomes ensures the best remaining areas of biodiversity are protected and measures to enhance habitat connectivity and condition can be implemented – this includes consideration of the value of old growth trees and retaining those that provide important habitat for dependent species.

**Table 11 – public consultation**

#### Comment

"With respect to bird activity and survival, direct consultation must take place with the Cumberland Bird Observers Club to ascertain known areas of high and discreet bird activity. Deference should also be made to past studies by that organisation and other bird organisations and scientists on the impact of nearby development on bird activity."  
**(4 submissions)**

"Insufficient ground-truthing and community consultation results in examples like the Riverstone Wetlands being sacrificed for development, threatening the endangered and supposedly protected Green and Golden Bell Frog in the process."  
**(2 submissions)**

"The Terms of Reference should ensure that consultation take place with the Cumberland Bird Observers Club to ascertain known areas of high and discreet bird activity, including reviewing past studies made by that organisation."  
**(2 submissions)**

"The Cumberland Bird Observers have significant avian history of the area. Along with this on ground auditing, community consultation MUST occur and deliberate, specific engagement with the environment groups who know the area intimately. As part of the terms of reference, the final assessment must include a summary of conservation priorities defined by the local communities from these face to face consultations."

"Insufficient ground-truthing and community consultation has resulted in some known instances such as the Riverstone Wetlands foraging space for ROKAMBA, JAMBA, CAMBA listed shore birds and habitat for the Green and Golden Bell Frog; Westminster Street Schofields bird habitat including seasonal Swift Parrot; Burial Ground of the Blacks Schofields each being the subject of frustrating for community remedial attempts."

## Comment

"There is a trend at the moment for community to have no real say in what development is happening in their local region, discussion is normally one sided with open days where the local community are shown what will happen comments are taken but then normally ignored."

"In terms of the environment, it is important to ensure that Community values and feedback is also taken into account, and actively included in plans. Local people have invaluable knowledge, their feedback needs to be sought, taken into account and responded to, including full public explanations if decisions are made against the identified community conservation priorities."

"For the public to have a respect for their region they must be allowed to have a real say in the decisions being made otherwise there is no reason for them to look after the city they live in."

"The terms do not require the State Government to report on any public participation. The public must have the final say in planning our communities."

"Terms of Reference should require a summary of conservation priorities as stated by local communities from (at a minimum) local, face-to-face community meetings and be on display for at least 3 months."

"The Terms of Reference do not require the State Government to report or deliver on any authentic public participation. The public must have the final say in planning our communities. The ToR's should consider conservation priorities as stated by local communities and require (at a minimum) local, face-to-face community workshops."

"The terms of reference should require the committee to report on the results of its consultations with the public as to conservation priorities, both through well-publicized and open-ended community workshops and through well-publicized opportunities for informed online submissions on the part of individuals and organisations."

"The public must be given the final say in planning our communities. The Terms of Reference must require a summary of conservation priorities as stated by local communities from local, face-to-face community workshops."

"Real public input: The terms do not require the State Government to report on any public participation. The public must have the final say in planning our communities. I ask that the Terms of Reference require a summary of conservation priorities as stated by local communities from (at a minimum) local, face-to-face community workshops."

"The draft Terms do not require the State Government to report on any public participation. It is important that the public has the final say in planning our communities and the Terms of Reference must require a summary of conservation priorities as stated by local communities from face to face community workshops."

"The public should be having a real say in planning our communities. There should be workshops for local communities to express themselves on conservation priorities and these priorities should be tabled for everyone to see. This requirement should be written into the Terms of reference."

"There should also be real public input - the terms don't seem to require state government to report on any public participation, when the public should have the final say in planning our communities. The terms of reference need to

#### Comment

include a summary of conservation priorities that are requested by local communities at, for example, community workshops.”

“This submission is motivated by our lived experience of the significant failures in the Sydney Growth Centres Conservation Plan and the associated Commonwealth Government Strategic Assessment. It was a disaster, mostly because of a lack of ground-truthing and genuine community consultation, and totally dodgy biobanking. These Terms of Reference for the Cumberland Plain Conservation Plan must avoid the failures of the past.”

“It is very disappointing to learn about this public exhibition several days after it has closed. As the Cumberland Plain Conservation Plan is the major conservation plan being developed for Western Sydney it is vital that it also reflects the aspirations for its survival across the entire Sydney Basin community. We should all be concerned that what remains of this important native vegetation and the wildlife it supports is given the maximum protection possible.”

“We are appalled that the Department would advertise such a significant document over the festive season. We became aware of the exhibition in the latest Planning newsletter which we received 28 January. The newsletter informed us that the CPCP - ToR was open for comment until 25 January 2019.”

“This is disgusting that we only received the email today at 4.44pm 25/1/2019 from The Department of Planning and Environment, to respond to something we know nothing about...”

“Further, whilst we appreciate that the agreement reached with the Commonwealth Government is most likely outside the scope of community comment for the CPCP - ToR we express serious concerns as to why the process of Commonwealth delegation to the State government was not open for community comment. The Commonwealth legislation provides a significant layer of environmental protection for critically endangered ecological communities such as on the Cumberland Plain which should not be delegated to the weaker State layer of protection. We are disturbed by statements in the agreement that the as yet untested State driven “landscape approach to planning may benefit the environment.””

**Department Response:** The Department is committed to providing multiple pathways and opportunities for people to engage and have their say on the Plan’s development and delivery. Community feedback will inform the final Plan and its implementation. The Department is committed to undertaking engagement activities including: consultation and workshops with a Community Reference Group – bringing together local community and environmental groups to understand what’s happening in local areas and what needs to be done; a People’s Panel to obtain regular feedback from a representative sample of the Western Sydney community; targeted meetings with key stakeholders (including environmental and community groups); public information sessions and a variety of advertising channels.

#### Table 12 – water

#### Comment

“The last 100 years has seen an attitude arise toward avoidance of flood events by making for quick escape of rain inundation along drainage lines (creeks). While detention basins have been introduced in more recent years, few of these serve any long-term biodiversity benefit and the overall aim is for creeks to be emptied of any substantial quantity of water. This causes creeks in areas surrounded by development to be dry shortly after rain events and dry in times of insufficient rain. As such, creeks have been stripped of past biodiversity value.”



## Comment

"When new precinct plans are prepared, there is often a broad range of infrastructure for which Councils, government agencies, and government corporations are required to deliver to service a precinct. The most notable of these is a stormwater and drainage network. Often the stormwater and drainage network will utilise existing creeks and attempt to keep creeks in their naturalised state. However, it is often necessary to perform some works in, or near creeks to allow for infrastructure such as bio-retention basins, detention basins or bank stabilisation. Such creeks are often non-certified lands, making the process of delivering stormwater infrastructure difficult."

"Real failure of government process to give consideration to detailed scientific advice from experts and its own departments the EPA and Office of Environment and Heritage about the need for very careful and ecologically sustainable development in Wilton given its sensitive environmental constraints. These include current and future impacts of groundwater loss and destruction of swamps and creeks from long wall mining in the catchment area which will be soon called upon to supply water to another 50-60,000 residents in Wilton alone."

**Department Response:** Waterway health and management, including for biodiversity, is an important aspect of the Plan. Information being used to develop the Plan will be integrated into other Department processes, local government planning and other government agencies' programs.



## Attachment B – Specific comments on the draft Terms of Reference

**Table 1 – Section 2. Description of the Plan being assessed**

Comment
<b>Section 2.1 (c)</b> – “The DLALC is an Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983 (NSW) (ALRA). The ToR and the CPCP must ensure consistency with the rights and duties created by the ALRA.”
<b>Section 2.1 (c)</b> – “Legal and Administrative frameworks in Clause 2.1 cii should include reference to local government strategic planning instruments and documents, in particular the CSP, LEP and DCP.”
<b>Section 2.1 (c)</b> – “Council would like to see references made to local government planning documents in addition to Commonwealth and State documents. The effectiveness of the Plan’s actions will be closely linked to the implementation of successful collaborations with local councils.”
<b>Section 2.1.3</b> – “We understood that the Greater Sydney Commission strategic planning processes were to include the protection of biodiversity and ensure an effective urban tree canopy to mitigate the heat island effect and improve air quality. The protection of remnant natural bushland contributes significantly to this urban tree canopy and its benefits for western Sydney residents but the CPCP - ToR seem solely development driven and demonstrates a lack of integration within any sensible strategic environmental planning process.”
<b>Department Response:</b> The Department is investigating opportunities to align with existing programs and planning processes as the Plan is developed. This will be informed through consultation with the Plan’s stakeholders including local councils, Local Aboriginal Land Councils, the Greater Sydney Commission and local environment groups. No amendment to the ToR is proposed.

**Table 2 – Section 3. Description of the protected matters impacted by the Plan**

Comment
<b>Section 3.1.1</b> – “The description of the historic and current land use should detail how some of the existing land-uses could benefit the conservation objectives and be used to leverage better outcomes. For example, opportunities to identify and preserve flood prone market gardens and promote native vegetation regeneration and sustainable land management techniques.”
<b>Section 3.1.5</b> – “Existing Parks and Reserves must NOT be reused for offsets. Section 3.1.5 does not include existing public bushland reserves in the definition of already protected bushland. Many of these reserves have already been fought for protection by the local community and need to remain protected and cannot be used as equity for further construction/destruction. This should also include reserves egresses under major power lines and for underground services (e.g. Gas lines) which are already achieving offset for the existing development in the region.”
<b>Section 3.1.5</b> – “Public reserves must not to be offsets for developers: The Terms of Reference (Section 3.1.5) do not include public bushland reserves in their definition of already-protected bushland. This will allow developers to use the public reserves as their environmental offsets and deny local farmers vital conservation funding to protect

## Comment

bushland on farms. Section 3.1.5 should be amended to include 'public bushland reserves' in the definition of lands already protected." **(3 submissions)**

**Section 3.1.5** – "I object very strongly to using public reserves as offsets for developers: The Terms of Reference (Section 3.1.5) do not include public bushland reserves in their definition of already-protected bushland. This is completely unacceptable. This will allow developers to use the public reserves that were fought and paid for by the public, as their environmental offsets. Also, local farmers must not be denied vital conservation funding to protect bushland on farms. Section 3.1.5 must be amended to include 'public bushland reserves' in the definition of lands already protected."

**Section 3.1.5** – "The draft Terms of Reference (Section 3.1.5) do not include public bushland reserves in their definition of already protected bushland, allowing public reserves to be used as offsets for developers. In other words, developers will be able to use the public reserves that we (the rate payers) have already paid for as environmental offsets, so no additional land is being protected. Furthermore, it will deny local farmers vital conservation funding to protect bushland on farms. This would be a lost opportunity as undoubtedly most farmers are excellent protectors of bushland and wildlife, and especially if there are financial incentives helping to keep their land viable. Section 3.1.5 must be amended to include "public bushland reserves " in the definition of lands already."

**Section 3.1.5** – "Public reserves shouldn't be used as offsets for developers - this is public land that is already in community hands for community and wildlife - not to justify environmental destruction elsewhere. Local farmers have a tough enough time with the weather and should be able to get conservation funding to protect bushland on their farms! Especially out here on the fringes of Sydney where the urban sprawl is endangering wildlife and increasing the summer temps due to the urban heat sink. Therefore, section 3.1.5 in the terms of reference should be amended to include 'public bushland reserves' in the definition of lands already protected."

**Section 3.1.5** – "The draft Terms of Reference for the strategic assessment under the Commonwealth (EPBC Act) have their limitations. For example, they allow developers to use public reserves that are already under conservation management plans, as environmental offsets for their developments. This practice means no new bushland is being protected to compensate for the destruction being caused by the developments. Public bush reserves should be included in a definition of "already protected lands" in the Draft Terms of Reference."

**Section 3.1.5** – "There needs to be a clear statement that public bushland reserves are fully protected within the CPCP - ToR and not open to private developers as future offset opportunities. Often the protection of such reserves has been due to community efforts to protect their natural areas from destruction and private developers should not "reap" the rewards of these protected areas to facilitate further destruction of natural areas."

**Section 3.1.5** – "There must be genuine 'additionality' achieved in determining offsets. As such, areas already conserved such as all public reserves, past development offsets containing protected matters irrespective of whether zoning processes have caught up with Environmental Conservation zoning must not be used as an offset for anticipated losses in the Cumberland Plain Conservation Plan. All local government parks are either long term or more recent offsets for development which has occurred in the surrounding area. That they are a park/reserve has come at cost to the reduction of areas of present day protected matters in the surrounding suburb or region. A serious exercise must be undertaken to identify past offsets for exclusion from another consideration as offset, biobanking or development. From that starting point, the determination of areas for future conservation as offset under the Cumberland Plain Conservation Plan and the Commonwealth Government Strategic Assessment must be an immediate initiative. Clause 3 of the Draft Terms of Reference must reflect this."

#### Comment

**Section 3.1.5** – “Point 3.1.5 should be amended as follows: “A spatial map of areas that are already protected for environmental purposes, including public bushland reserves and Biobanking and Biodiversity Stewardship sites.” Omitting the existing public bushland reserves from this dot point creates the risk that they will be omitted from the map and therefore slide out of consciousness. The existing public bushland reserves must be clearly identified as already protected and therefore not available for developers to claim as environmental offsets.”

**Section 3.2** – “In reference to clause 3.2 there is a need to better specify the meaning of 'indirect' action impacts.”

**Department Response:** While the Department acknowledges the views raised, this provision refers to mapping of existing conservation areas protected in perpetuity only. The conservation measures proposed as offsets under the Plan will meet requirements for certification under the BC Act and endorsement under the EPBC Act and will follow a set of criteria and principles prioritising ‘additionality’ and direct offsets. Under the Plan, the existing biodiversity value of reserves will not be counted as offsets. If a stewardship activity improves the biodiversity values on that land through ecological planting and eradication of pests and weeds (by more than is required by the biosecurity legislation), the additional biodiversity value generated will be counted as an offset. No amendment to the ToR is proposed.

**Table 3 – Section 4. Assessment of the impacts of the Plan on protected matters**

#### Comment

**Section 4** – “should set a far higher standard in its analysis and action for delivery of the conservation benefits of the Plan than we have seen demonstrated to date by NSW government planning decisions in Wilton.”

**Section 4.5** – “There is a need to better specify the meaning of 'indirect' action impacts.”

**Section 4.5.1(e)** – “refers to heritage but does not specifically call out documenting aboriginal heritage. The terms of reference should specifically refer to the documenting of aboriginal heritage, as well as ensuring multiple groups are consulted. As a specific example, recently the Aboriginal Burial grounds were inappropriately located in the original Marsden Park North plan and such occurrences represent poor research and consultation.”

**Section 4.5 (2)** – “In relation to clause 4.5(2) ‘how impacts on protected matters will be avoided through land use planning and other measures...’ needs to include reference to local government strategic documents.”

**Section 4.6** – “Terrestrial and avian fauna migratory paths need to be mapped. Sections 3.2.3 and 4.6.4 make comment to this but does not make it a requirement and the wording of this requirement should include documenting all effects, both beneficial and detrimental, that the plan and development will have on these paths. It is my expectation that land acquisition will be required to redevelop these corridors in western Sydney and the previous impact assessment reports and developments for other growth areas have not achieved this in anyway. The environment is an ecosystem of multiple flora and fauna and to achieve genetic diversity as resilience against human development, corridors need to be deliberately developed, ensured they are active and maintained.”

**Section 4.6.3** – “The draft Terms do not emphasise the need for 'like-for-like' offsetting. Generally the good, easy to develop country is being cleared and the marginal country is being used as offsets. This must change. Many of the most fertile ecosystems are particularly vital to endangered fauna such as the Regent Honeyeater and Swift Parrot. Old growth trees providing the bulk of nesting hollows to a region, such as those at Mt Gilead for example, are

#### Comment

critical for all parrots in that area. Koalas too are very reliant on certain types of country, with High Sandstone Influence for example, adversely affecting fertility. The Terms of Reference should prioritise delivery of 'like for like' offsetting and this should be stated in the Terms."

**Section 4.6.3 –** "Another critical element for the Terms of Reference is that it must address how any proposal to use biobanking as an offset mechanism will be done to ensure genuine 'additionality'. Areas already conserved, such as all public reserves, past development offsets, etc, must not be used as an offset. This rubbish has gone on for too long: from now, and offset needs to be a genuine like-for-like offset!"

**Section 4.8 –** "Much reference material in earlier studies have been done by paid consultants with limited understanding of the local conditions and often only book audits. It needs to be mandatory for ground-truthing to occur with respect to auditing the existing environmental conditions of western Sydney. The Cumberland Conservation Network have developed a significant study showing the Cumberland Plain is already below 8% of its pre-colonisation state and that more natural lands need preservation all rewilding."

**Section 4.8 –** "It (desktop analysis) must not be the premise upon which the Commonwealth Government makes any Strategic Assessment under the EPBC Act for the Cumberland Plain Conservation Plan."

**Department Response:** The Department notes the comments in relation to section 4 of the draft ToR. The following responses should be noted:

- indirect impacts are being assessed as per EPBC Act policy directions (such as, *Significant Impact Guidelines 1.1*).
- in relation to heritage, the EPBC Act and the strategic assessment can only consider impacts to World and National Heritage Listed items. The Department will undertake targeted engagement with Aboriginal stakeholders in the Plan's area in developing the Plan.
- draft Terms of Reference include specific provisions for impact assessment, data requirements, evaluation of conservation outcomes, and the need for independent peer review of key methods.

No amendment to the ToR is proposed.

#### Table 4 – Section 5. Evaluation of the overall outcomes of the Plan

#### Comment

**Section 5.1 –** "The assessment must quantify and report on both the detrimental and beneficial effects of the plan."

**Section 5.1 –** "Currently ad hoc rural dams in western Sydney are providing the stop gap water source for much habitat. The poor natural water retention is due to removed wetlands and water stagnation riparian corridors from previous development. Action to include how water will be available to fauna and flora during significant dry spells needs to be considered and documented."

**Section 5.3.1 –** "With respect to climate change, the report must consider both rainfall and temperature volatility, with respect to the exacerbation caused by the urban heat island effect and temperature inversions that are common to western Sydney."

**Department Response:** The Department notes the comments in relation to section 5 of the draft ToR. The strategic assessment will require an evaluation of the proposed commitments and outcomes of the Plan, taking into

#### Comment

consideration the likely impacts to protected matters under the Plan (s.5). The Department will undertake this evaluation and will include an evaluation of climate change impacts on biodiversity and the adequacy of the Plan in facilitating adaptation of biodiversity to climate change. No amendment to the ToR is proposed.

**Table 5 – Section 6. Addressing uncertainty and adaptive management**

#### Comment

**Section 6.1** – “Information regarding penalties and repercussions of unauthorised clearing Item 6.1 requires that the report “must identify key uncertainties and risks associated with implementing the Plan, responses to these and proposed adaptations to changing circumstances” including “Effectiveness or capacity to ensure the Plan is implemented”. It is noted that the illegal clearing of land that is non-certified has generally been left to local Councils to enforce. Relying on the resources of local government to prosecute offenders in breach of State and Commonwealth commitments to the environment needs to be further considered.”

**Department Response:** The Department notes the concern raised in relation to adequate funding for compliance with biodiversity controls. Strengthening compliance measures will be a key consideration in the Plan and the Department will be consulting with stakeholders on how this may be achieved and incorporated into the Plan’s monitoring evaluation and reporting framework. As drafted, the ToR require an evaluation of the proposed outcomes of the Plan, which will include proposed compliance measures. No amendment to the ToR is proposed.

**Table 6 – Section 7. Monitoring and reporting and auditing**

#### Comment

**Section 7.1** – “The Terms of Reference must address how any proposal to use biobanking (the much scorned process in other States of Australia) as an offset mechanism will prevent the roting of the system by biobanking accreditation agencies holding back properties from the register for gain; biobank sites transferring to owners with little or no interest in conservation; owners clearing native vegetation, weed clearing with bobcats, creating trail bike access in native vegetation, using unqualified contractors for regeneration works; killing native fauna; running grazing stock in supposed conserved areas.”

**Section 7.2** – “There should be no circumstances that trigger the abandonment of the Plan.”

**Department Response:** Draft Terms of Reference require an assessment of the adequacy of the Plan’s monitoring, evaluation and reporting (MER) framework (s7.1). The Plan will include a comprehensive MER framework that will provide for the development of a MER Program. The MER Program will monitor projects and programs to ensure they are delivering the Plan’s conservation measures. The MER Framework will be published for comment along with the draft Plan and will be subject to periodic review processes. No amendment to the ToR is proposed.

**Table 7 – Section 8. Data quality controls**

Comment
<p><b>Section 8.1</b> – “It is noted that the extent of certified and non-certified lands within the Austral and Leppington North precincts contains several inaccuracies. It is Council’s opinion that the Strategic Assessment needs to include parameters around data quality control. This should include detailing the accuracy of GIS and mapping, and identifying instances where ground-truthing is required, to avoid areas which do not provide any ecological benefits being considered as an ecological off-set.” <b>(2 submissions)</b></p>
<p><b>Section 8.1</b> – “The ToR should not preclude the inclusion of data quality guidelines to be included within the strategic assessment. Data quality guidelines are needed to ensure that mapping truly reflects the current environment utilising the best technology available at the time. The mapping exercise should also identify any utility lines, transmission easements, existing roads, and other managed lands which should not be identified as non-certified lands.”</p>
<p><b>Department Response:</b> The draft ToR require the identification of data used in the assessment and any relevant limitations (s4.2). They also require a justification for key methods used in the assessment, including summaries of independent peer review processes and where the reviews are publicly available (s4.8). No amendment to the ToR is proposed.</p>

**Table 8 – Identified gaps**

Gap	Comment
Principles of ecologically sustainable development	<p>“Overall, we express disappointment in the unbalanced intent of the CPCP - ToR. It has clear statements of intent to facilitate development over the next 38 years but provides no clear statement of intent to protect or enhance biodiversity recognised as critically endangered nationally. This is inconsistent with the principles of ecologically sustainable development which should be underpinning growth and development in Western Sydney.” <b>(2 submissions)</b></p>
<b>Department Response</b>	<p>The draft ToR require the assessment report to analyse the conservation benefits of the Plan, including how protected matters will be conserved, protected and managed. No amendment to the ToR is proposed.</p>
Mandatory protection of old growth trees	<p>“We want noted in the Terms of Reference that trees aged 100 years or more should be protected, as this is the age that trees start producing hollows for fauna habitat. Not enough regard is given to preserving these trees and ensuring that other trees make that age. Replanting is easy to say: but it doesn't really help for another 100 years (that's IF they get watered).”</p>
Mandatory protection of old growth trees	<p>“Old growth trees need to be mapped and maintained. Trees of age greater than 100 years provide a developed ecosystem including the hollows that develop in older trees. They have deep roots and are generally clustered as development has not occurred around them. These trees provide significant support for avian and terrestrial fauna as well as the flora that lives below the leaf canopy. Their local climate also provides significant shelter and shade against harsh weather conditions. The terms of reference need to make mapping of these trees mandatory and any effects of development to the trees’ local ecosystem quantified and justified.”</p>

Gap	Comment
<b>Department Response</b>	The strategic assessment must consider impacts to matters of national environmental significance and other matters protected under Part 3 of the EPBC Act. While old growth trees are not a protected matter, if they provide important habitat for threatened or migratory species they must be considered in the strategic assessment. No amendment to the ToR is proposed.
Reporting on public participation	"The terms do not require the State Government to report on any public participation. The public must have the final say in planning our communities." <b>(2 submissions)</b>
Local community priorities	"The ToR should require a summary of conservation priorities as stated by local communities from (at a minimum) local, face-to-face community meetings and be on display for at least 3 months."
Local community priorities	"The public must be given the final say in planning our communities. The Terms of Reference must require a summary of conservation priorities as stated by local communities from local, face-to-face community workshops."
Reporting on public participation	"The Terms of Reference do not require the State Government to report or deliver on any authentic public participation. The public must have the final say in planning our communities. The ToR's should consider conservation priorities as stated by local communities and require (at a minimum) local, face-to-face community workshops."
Reporting on public participation	"The terms of reference should require the committee to report on the results of its consultations with the public as to conservation priorities, both through well-publicised and open-ended community workshops and through well-publicized opportunities for informed online submissions on the part of individuals and organisations."
Reporting on public participation	"Real public input: The terms do not require the State Government to report on any public participation. The public must have the final say in planning our communities. I ask that the Terms of Reference require a summary of conservation priorities as stated by local communities from (at a minimum) local, face-to-face community workshops."
Reporting on public participation	"The draft Terms do not require the State Government to report on any public participation. It is important that the public has the final say in planning our communities and the Terms of Reference must require a summary of conservation priorities as stated by local communities from face to face community workshops."
Reporting on public participation	"In terms of the environment, it is important to ensure that Community values and feedback is also taken into account, and actively included in plans. Local people have invaluable knowledge, their feedback needs to be sought, taken into account and responded to, including full public explanations if decisions are made against the identified community conservation priorities."
Local community priorities	"The public should be having a real say in planning our communities. There should be workshops for local communities to express themselves on conservation priorities and these priorities should be tabled for everyone to see. This requirement should be written into the Terms of reference."



Gap	Comment
Local community priorities	"There should also be real public input - the terms don't seem to require state government to report on any public participation, when the public should have the final say in planning our communities. The terms of reference need to include a summary of conservation priorities that are requested by local communities at, for example, community workshops."
<b>Department Response</b>	Public consultation requirements are included in the Strategic Assessment Agreement. The Department is committed to providing multiple pathways and opportunities for people to engage in and have their say on the Plan's development and delivery, including through consultation and workshops with a Community Reference Group; a People's Panel to obtain regular feedback from a representative sample of the Western Sydney community; targeted meetings with key stakeholders (including environmental and community groups); public information sessions in Western Sydney and a variety of advertising channels. Feedback received during this consultation process will inform the final Plan. No amendment to the ToR is proposed.
Community engagement	"The final adoption of the Cumberland Plain Conservation Plan will remove opportunity for future community input into the protection of natural areas valued by local residents. The adoption of the CPCP over such a large area removes this historic process of community engagement in the protection of highly valued local natural areas. There is a major failure within the CPCP - ToR to ensure genuine community engagement at the level of the local community."
Engagement with the Cumberland Bird Observers Group	"The Cumberland Bird Observers have significant avian history of the area. Along with this on ground auditing, community consultation MUST occur and deliberate, specific engagement with the environment groups who know the area intimately. As part of the terms of reference, the final assessment must include a summary of conservation priorities defined by the local communities from these face to face consultations."
Engagement with the Cumberland Bird Observers Group	"The Terms of Reference should ensure that consultation take place with the Cumberland Bird Observers Club to ascertain known areas of high and discreet bird activity, including reviewing past studies made by that organisation."
Engagement with the Cumberland Bird Observers Group	"With respect to bird activity and survival, direct consultation must take place with the Cumberland Bird Observers Club to ascertain known areas of high and discreet bird activity. Deference should also be made to past studies by that organisation and other bird organisations and scientists on the impact of nearby development on bird activity." <b>(2 submissions)</b>
Engagement with the Cumberland Bird Observers Group	"The Terms of Reference should ensure that consultation take place with the Cumberland Bird Observers Club to ascertain known areas of high and discreet bird activity, including reviewing past studies made by that organisation."
<b>Department Response</b>	Public consultation requirements are included in the Strategic Assessment Agreement. Public consultation is being delivered through the Department's Community Engagement Strategy that has identified a comprehensive range of engagement activities. Feedback received during this consultation process will inform the final Plan. No amendment to the ToR is proposed.



Gap	Comment
Rural dams as a protected matter	"Most urban development, with only limited exceptions, has had an agenda of draining and removing rural dams for development space. It is my contention that the recognition of rural dams as occurred in the Urban Bushland Biodiversity Survey, 1997, should be applied in the Terms of Reference for the Cumberland Plain Conservation Plan because that recognition has been largely lost since 1997. It should be given prominence in this latter landscape planning strategy. Rural dams serve biodiversity across the landscape of the Cumberland Plain and every given area within that landscape."
Rural dams as a protected matter	"The Urban Bushland Biodiversity Survey, 1997, identified the worth of rural dams for preserving biodiversity on the Cumberland Plain. Rural dams are not identified as a protected matter but, without question, they are integral to preserving aquatic fauna and vegetation known to have inhabited the Cumberland Plain. Additionally, rural dams store water for fauna drinking, foraging and breeding (according to species) and they play a role in sustaining protected matters."
<b>Department Response</b>	The strategic assessment is required to consider impacts to matters of national environmental significance and other matters protected under Part 3 of the EPBC Act. While not a protected matter, the protection of rural dams, where they serve as habitat for important wildlife, is a consideration of the strategic assessment. The impact assessment and prioritisation of conservation areas will consider where threatened species, such as the Green and Golden Bell Frog, may be using dams as habitat and will use planning controls, such as the protection of riparian areas. No amendment to the ToR is proposed.
Identifying and protecting wildlife corridors	"Corridor protection should not be based on the existing flora footprint alone but should take into consideration what is needed to sustain ecological function and processes particularly across transitional ecosystems and soil types."
Identifying and protecting wildlife corridors	"Corridors must be wide enough to enable terrestrial fauna to safely move through the landscape avoiding pinch points and enabling north, south, east and west habitat connections."
Identifying and protecting wildlife corridors	"Corridors evaluated on appropriate widths that effectively provide habitat and include soil types that support threatened species."
<b>Department Response</b>	Protection of wildlife corridors is an important component of the strategic assessment and will be considered in several stages, guided by existing provisions of the EPBC Act and the draft ToR. No amendment to the ToR is proposed.
Measurable targets	"It is important that the Environment and the Community start taking a front row seat. At the moment individual developments are being approved with no check of the overall cumulative impact, or the amount of habitat remaining. It is essential for this trend to be reversed to enable progress in protecting habitat types to be made. Stronger wording, firm, measurable targets and active oversight of the big picture are required."

Gap	Comment
<b>Department Response</b>	The Department has undertaken strategic conservation planning at the landscape scale to identify where commitments and actions to protect biodiversity and contribute to the restoration of ecological function in the Cumberland Subregion are necessary. Firm commitments to do this will be included in the Plan. No amendment to the ToR is proposed.

## Attachment C – Strategic Assessment Agreement

## **Attachment D – Draft Terms of Reference – Western Sydney Strategic Assessment**



**THE HON MELISSA PRICE MP  
MINISTER FOR THE ENVIRONMENT**

MS18-001422

The Hon Anthony Roberts MP  
NSW Minister for Planning  
52 Martin Place  
SYDNEY NSW 2000

12 NOV 2018

Dear Minister Roberts

Thank you for your letter of 18 October 2018, providing the statutory Agreement to undertake a strategic assessment under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* for Western Sydney, signed by yourself and Minister Upton.

I am writing to inform you that I have counter-signed the Agreement and have enclosed a copy for your records. I understand that you and Minister Upton will now invite public comments on the draft Terms of Reference for the assessment.

I look forward to the assessment proceeding, and to working with you to ensure good environmental outcomes from this important commitment under the Western Sydney City Deal.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Melissa Price'.

MELISSA PRICE

CC: Minister for Cities, Urban Infrastructure and Population, the Hon Alan Tudge MP



***ENVIRONMENT PROTECTION AND  
BIODIVERSITY CONSERVATION ACT 1999 (Cth)***

**Part 10 Strategic Assessment**

**Section 146 agreement**

Strategic Assessment of the impacts of actions taken under  
the *Cumberland Plain Conservation Plan*  
on matters protected by Part 3 of the EPBC Act

between

**THE COMMONWEALTH MINISTER FOR THE ENVIRONMENT**

and

**THE STATE OF NEW SOUTH WALES**

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## 1. Parties

### 1.1 The parties to this agreement are:

the Commonwealth Minister for the Environment

and

The State of New South Wales, represented by the Minister for Planning and the Minister for the Environment.

## 2. Definitions

### 2.1 Unless the context indicates otherwise in this agreement, the definitions, meanings and terms in the EPBC Act apply to this agreement including its attachments.

### 2.2 In this agreement:

**agreement** means this strategic assessment agreement entered into between the **parties** on the date the last party executes this agreement, and includes any attachments.

**attachment** means an attachment to this agreement.

**Commonwealth Environment Department** means the Commonwealth Department with responsibility for administering the EPBC Act from time to time.

**Commonwealth Minister** means the Commonwealth Minister with responsibility for administering the EPBC Act, and includes a delegate of the Minister.

**DPE** means the New South Wales Department of Planning and Environment.

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Impact** means an impact as defined under section 527E of the EPBC Act and includes impacts from an event or circumstance as a result of implementation of the Plan on areas outside the strategic assessment area.

**Impacts to which this agreement relates** means the impacts of actions under the Plan on any matter protected by a provision of Part 3 of the EPBC Act.

**OEH** means the New South Wales Office of Environment and Heritage.

**Parties** means the parties to this agreement as set out at clause 1.

**Plan** means the *Cumberland Plain Conservation Plan* which will be prepared pursuant to clauses 4 and 6 of this agreement and which constitutes a 'policy, plan or program' pursuant to section 146 of the EPBC Act. The actual name of the Plan may change prior to submission for endorsement under the EPBC Act.



**Protected matter** means a matter protected under Part 3 of the EPBC Act.

**State** means the State of New South Wales.

**Strategic assessment area** means the indicative area of the Cumberland Plain as shown in the map at **Attachment 1**. The final strategic assessment area will be agreed between the State and Commonwealth.

**Strategic Assessment Report** means the report describing and assessing the impacts of actions under the Plan on protected matters, as contemplated by section 146(2)(a) of the EPBC Act, and prepared under clauses 5 and 6 of this agreement.

**Supplementary Report** means a report which includes:

- a) a summary of all the public comments received; and
- b) sets out how comments have been addressed through modification/s to the Plan or Strategic Assessment Report, if any, following public exhibition of the draft Strategic Assessment Report and draft Plan.

**Terms of Reference** means the terms of reference for the Strategic Assessment Report prepared under clause 5 of this agreement.

In this agreement references to the singular include the plural.

### **3. Context and scope**

- 3.1 Under the Western Sydney City Deal, the Commonwealth, the State of NSW and a number of local councils have committed to working together to improve the lives of the people of Western Sydney through better transport, improved housing supply and affordability, better access to jobs and improved environmental outcomes.
- 3.2 The Parties acknowledge that the Cumberland Plain of Western Sydney has important environmental values that must be considered alongside the economic and social benefits of development of the region, and that a landscape approach to planning may benefit the environment.
- 3.3 The Parties agree to reduce duplication and streamline regulatory processes through alignment of a strategic assessment under Part 10 of the EPBC Act with an application for biodiversity certification under the NSW *Biodiversity Conservation Act 2016*. This may include conducting parallel public consultation periods and producing consolidated assessment documentation that satisfies regulatory processes of both jurisdictions.
- 3.4 The Parties agree to undertake a strategic assessment of the impacts of actions under the *Cumberland Plain Conservation Plan* (the Plan), currently being

prepared by the State of NSW, on all matters protected under Part 3 of the EPBC Act.

- 3.5 The Plan will aim to provide for development over approximately 38 years within the boundary of the strategic assessment area. The Plan may include consideration of residential, commercial and industrial developments, and supporting infrastructure including major transport corridors for future roads.
- 3.6 The Parties agree to share information and work collaboratively throughout the strategic assessment.

#### **4. Development of the Plan**

- 4.1 The Parties agree that the State will develop a Plan that will seek to maximise conservation of protected matters that occur within, or adjacent to, the agreed strategic assessment area through a landscape approach to environmental conservation.
- 4.2 The Plan will include, but is not limited to, the identification of areas for development and commitments and outcomes for conservation of protected matters in the agreed strategic assessment area.
- 4.3 The Plan will include an implementation framework that describes how the commitments for conservation of protected matters set out in the Plan will be achieved. This implementation framework will address the following:
  - a) how outcomes and commitments for protected matters will be documented, delivered and adequately resourced throughout the life of the Plan; and
  - b) a framework for adaptive management, review of the effectiveness of the implementation in meeting the objectives for protected matters over time, and provision of a 5 yearly assurance report.
- 4.4 The Plan may include additional content relating to other responsibilities of the State.
- 4.5 The Plan will clearly identify and address protected matters separately from other State matters and ensure that, to the extent consistent with applicable NSW laws, the 'avoid, mitigate and offset' hierarchy of principles has been applied.
- 4.6 The State agrees to consult with interested stakeholders on the development of the draft Plan.

#### **5. Terms of Reference for the Strategic Assessment Report**

- 5.1 Pursuant to section 146(1B)(b) of the EPBC Act, the Parties agree to the preparation of Terms of Reference for a Strategic Assessment Report on the impacts of actions under the Plan on protected matters.

- 5.2 The State must make available for public comment, by notice, the draft Terms of Reference for the Strategic Assessment Report. The State must ensure that, at a minimum, the notice:
- a) is posted on the DPE or OEH website;
  - b) is published in a national newspaper and a state daily newspaper circulating in NSW;
  - c) mentions:
    - i. that the draft Terms of Reference are available for public comment;
    - ii. the provision of the EPBC Act that requires the draft Terms of Reference for the Strategic Assessment Report to be published (i.e. section 146(1B)(b)(ii));
    - iii. where and how copies may be obtained in an electronic and hard copy form without charge or at a reasonable cost;
    - iv. contact details for obtaining further information, including reasonable access for persons with special needs; and
  - d) invites public comment on the draft Terms of Reference for the Strategic Assessment Report for a period of at least 28 calendar days that is specified by the Commonwealth Minister and set out in the notice.
- 5.3 The Commonwealth Environment Department will make the notice and draft Terms of Reference available electronically on the Commonwealth Environment Department's website.
- 5.4 The Parties may directly notify any party they think may have an interest in the draft Terms of Reference of the notice in clause 5.2.
- 5.5 Following consideration by the State of the public comments on the draft Terms of Reference and the making of any revisions by the State, the State will submit to the Commonwealth Minister:
- a) any revised draft Terms of Reference; and
  - b) a copy of all public comments relating to the draft Terms of Reference; and
  - c) a document summarising whether and how the public comments have been taken into account in the revised draft Terms of Reference.
- 5.6 If the Commonwealth Minister is satisfied that the revised draft Terms of Reference will provide for a strategic assessment report that adequately addresses the impacts to which this agreement relates, the Commonwealth Minister will notify the Parties that the Terms of Reference can be finalised.

- 5.7 On receipt from the Commonwealth Minister of a notification under clause 5.6, the Parties must finalise the Terms of Reference.

## **6. Publication of the Plan and Strategic Assessment Report**

- 6.1 Once the Terms of Reference for the Strategic Assessment Report have been finalised in accordance with clause 5.7, the State must prepare a draft Strategic Assessment Report in accordance with this agreement and the finalised Terms of Reference.
- 6.2 The State will provide the draft Plan and draft Strategic Assessment Report to the Commonwealth Environment Department for comment prior to both documents being released for public comment under clauses 6.4 - 6.6.
- 6.3 The Commonwealth Environment Department will assist the State toward ensuring that the draft Strategic Assessment Report adequately addresses the impacts to which this agreement relates by providing comments on the draft Plan in a timely manner.
- 6.4 Following the completion of the process set out in clauses 6.2 - 6.3 of this agreement, the State must, by notice, make the draft Strategic Assessment Report and draft Plan available for public comment. The State must ensure that, at a minimum, a notice:
- a) is posted on the DPE or OEH website;
  - b) is published in a national newspaper and a state daily newspaper circulating in NSW
  - c) mentions:
    - i. that the draft Plan and draft Strategic Assessment Report are available for public comment;
    - ii. where and how copies may be obtained in an electronic and hard copy form without charge or at a reasonable cost;
    - iii. contact details for obtaining further information, including reasonable access for persons with special needs;
    - iv. the address to which public comments should be provided; and
  - d) invites public comment for a period of at least 28 calendar days that is specified by the Minister in the notice.
- 6.5 The Parties may separately notify any person, of the notice under clause 6.4 and of the availability of the draft Plan and draft Strategic Assessment Report.
- 6.6 The Commonwealth Environment Department will make the draft Plan and draft Strategic Assessment Report available electronically on its website.

6.7 Following consideration of any public comments received, the State will prepare, and then submit to the Commonwealth Environment Department for further comment:

- a) a copy of all public comments;
- b) a revised draft Strategic Assessment Report that takes account of the public comments received (if any);
- c) a revised draft Plan that takes account of the public comments received (if any); and
- d) a Supplementary Report.

6.8 The Minister is to direct the Commonwealth Environment Department to assist the State in ensuring that the revised draft Strategic Assessment Report adequately addresses the impacts to which this agreement relates by providing comments in a timely manner. The comments provided by the Commonwealth Environment Department may include recommended modifications to the draft Strategic Assessment Report, the draft Plan or both.

6.9 Following consideration of the Commonwealth Environment Department's comments, the State must finalise the revised draft Strategic Assessment Report and the revised draft Plan.

6.10 The State must then submit the following documents to the Commonwealth Minister:

- a) the Strategic Assessment Report; and
- b) the Plan; and
- c) the Supplementary report.

## **7. Consideration of the Strategic Assessment Report and the Plan**

7.1 Following receipt of the Strategic Assessment Report and the Plan in accordance with clause 6 of this agreement, the Commonwealth Minister may make recommendations to the State about the Plan (including recommendations for modification of the Plan).

7.2 The Commonwealth Minister may request any additional information he or she considers necessary in order to consider whether the Strategic Assessment Report adequately addresses the impacts to which this agreement relates.

7.3 If the Commonwealth Minister makes recommendations about the Plan, the State may:

- a) seek clarification from the Commonwealth Minister on the recommendations;

- b) modify the Plan to give effect to the Commonwealth Minister's recommendations; or
- c) modify the Plan in a manner that has the same effect as the modifications recommended by the Commonwealth Minister.

7.4 If the State modifies the Plan in response to the Commonwealth Minister's recommendations, the State must submit to the Commonwealth Minister for consideration:

- a) the modified Plan; and
- b) a summary of how the Minister's recommendations were given effect.

7.5 Following receipt of the modified Plan, the Commonwealth Minister may request any additional information he or she considers necessary in order to consider whether the impacts of actions under the Plan on protected matters have been adequately addressed.

## **8. Endorsement of the Plan**

8.1 The Commonwealth Minister may endorse the Plan if satisfied that:

- a) the Strategic Assessment Report adequately addresses the impacts to which this agreement relates (that is, impacts of actions under the Plan on protected matters); and
- b) either the recommended modifications to the Plan, or modifications having the same effect, have been made.

8.2 In determining whether or not to endorse the Plan, the Commonwealth Minister may consider the extent to which the commitments for the protection and management of protected matters are enforceable and achievable over the life of the Plan.

8.3 In determining whether he or she is satisfied that the Strategic Assessment Report adequately addresses the impacts to which the agreement relates, the Commonwealth Minister must have regard to the extent to which the Plan meets the objectives of the EPBC Act, including how the Plan:

- i. protects the environment, especially those aspects of the environment that are protected matters under Part 3 of the EPBC Act;
- ii. promotes ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- iii. promotes the conservation of biodiversity;
- iv. provides for the protection and conservation of heritage;

- v. promotes a cooperative approach to the protection and management of the environment; and
- vi. assists in the co-operative implementation of Australia's international environmental responsibilities.

- 8.4 If the Plan is endorsed by the Commonwealth Minister, the State must make the Strategic Assessment Report, Plan and (if relevant) Supplementary Report, publicly available electronically through an official website for the life of the Plan.
- 8.5 The Parties acknowledge that the endorsement of the Plan itself does not constitute any approval for the taking of actions under Part 10 of the EPBC Act.

## **9. Approval of actions**

- 9.1 If the Commonwealth Minister endorses the Plan, the Commonwealth Minister may then approve the taking of an action, or class of actions, in accordance with the Plan. The effect of this approval decision is that any actions or class of actions approved under section 146B would not need further approval by the Minister under the EPBC Act if taken in accordance with approval and any conditions attached to the approval decision.
- 9.2 The Parties agree that an approval holder (or holders) will be named for any approval of actions, or classes of actions, granted under section 146B of the EPBC Act.

## **10. Environmental information management**

- 10.1 The Parties agree to work cooperatively and share information, to the fullest extent practical, so as to avoid duplication of work in undertaking the strategic assessment pursuant to this agreement, subject to meeting requirements under the EPBC Act. To deliver upon this objective the Parties commit to the following open access requirements:
- a) Information is accessible and reusable by the community, business, government and other stakeholders.
  - b) Information is published under an Open Licence (preferably Creative Commons Attribution licence), and available in the public domain.
  - c) Information is published and described in a way that maximises discovery and reuse, preferably online, and in open formats.
  - d) Information is published at the highest resolution and accuracy available.
  - e) Information is released electronically at no cost to users or, if other formats are required, at minimal cost.

- f) The Parties agree to restrict information access only where necessary to adequately manage sensitive or confidential information.

10.2 The Parties agree to develop and maintain a Data Management Plan to record the key pieces of data and information generated to support the decision for this strategic assessment.

10.3 Parties will endeavour to jointly explore new approaches and internationally recognised standards to inform the strategic assessment to achieve best practice environment impact assessment and effective and transparent monitoring and reporting.

## **11. Governance arrangements and dispute resolution**

11.1 The Parties agree to use best endeavours to establish agreed timelines within one month of the signature of this agreement for deliverables and arrangements to ensure adequate communications to progress the strategic assessment. This may include preparation of joint or individual project plans. The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them in the course of carrying out this agreement (dispute).

11.2 A party will not terminate this agreement as a result of a dispute until the following process has been exhausted:

- a) If there is a dispute between the Parties concerning this agreement, either party may give written notice of the Dispute to the other party which will state that it is a notice under this clause and will specify the details of the dispute concerned.
- b) Management representatives of each of the Parties will endeavour in good faith to agree upon a resolution of the dispute.
- c) Should management representatives fail to reach a resolution within 14 business days of receipt of a notice of dispute (or another timeframe agreed in writing between the Parties), the dispute will be taken to senior executive service (SES) or equivalent representatives of each of the Parties.
- d) SES representatives will endeavour in good faith to agree upon a resolution of the dispute.
- e) Should the SES representatives fail to resolve the dispute within 10 business days (or other time frame agreed in writing between the Parties), the dispute will be taken to the:
  - i. relevant Deputy Secretary of the Commonwealth Environment Department, and
  - ii. relevant Deputy Secretary, DPE; and



- iii. Chief Executive, OEH,  
who will endeavour to reach agreement regarding the dispute.

## **12. Variation**

- 12.1 The Parties may vary this agreement by written agreement only to the extent that the varied agreement is consistent with the provisions of the EPBC Act.
- 12.2 Any variation to this agreement shall be published on the DPE or OEH website.

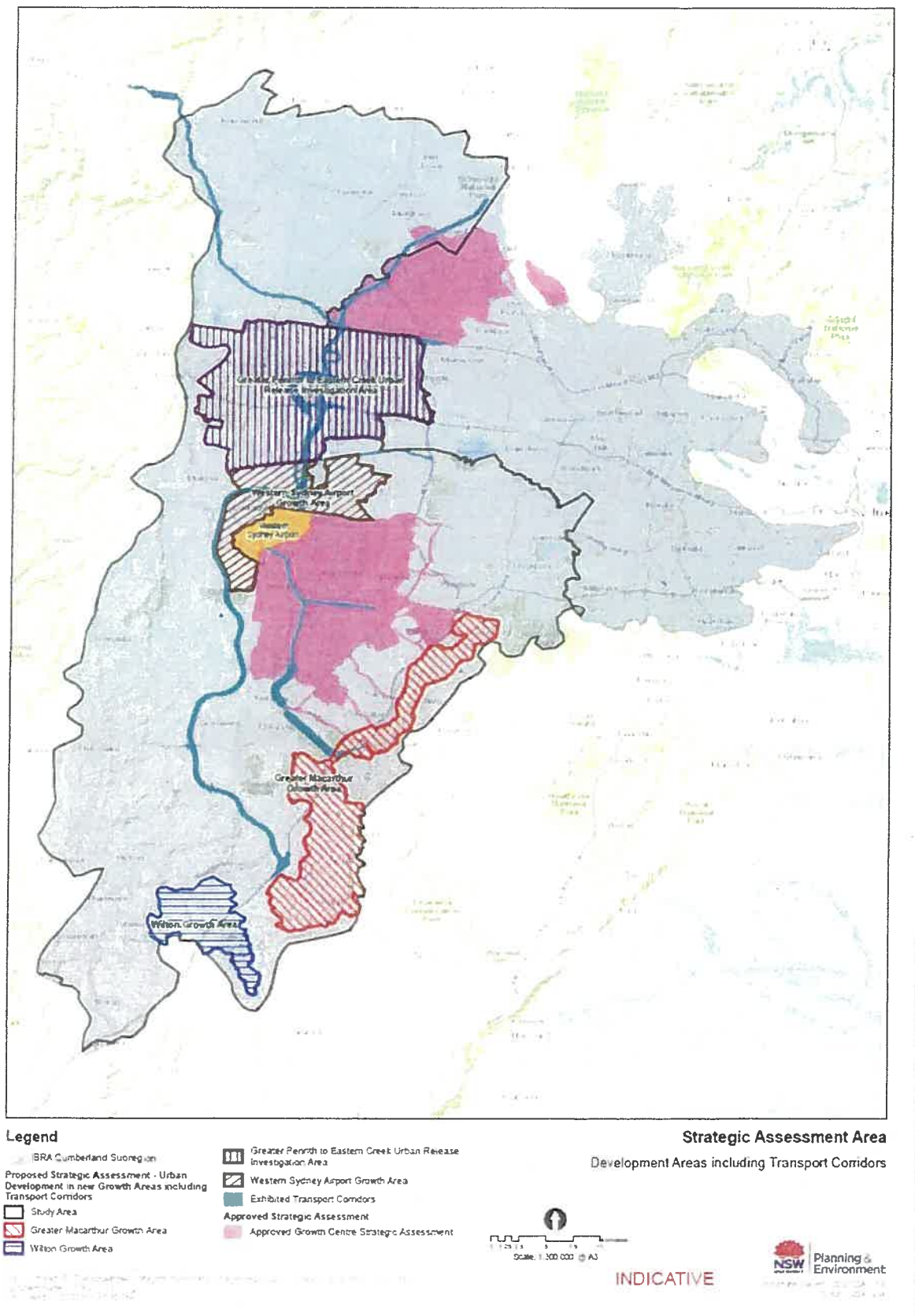
## **13. Termination**

- 13.1 This agreement may be terminated at any time by written notice from either Party, except where the termination relates to a Dispute and the procedure at clause 11 has not been followed.

## **14. General**

- 14.1 Any notice given by a party under this agreement must be in writing and hand delivered or sent by pre-paid post or email to the appropriate representative at the specified address. The appropriate representative for each Party is:
  - i. relevant Deputy Secretary, DPE (Deputy Secretary, Policy and Communications, GPO Box 39, Sydney NSW 2001) and Chief Executive, OEH (PO Box A290, Sydney South 2000), and
  - ii. Assistant Secretary of the Branch managing the strategic assessment within the Australian Government Department of the Environment and Energy (Assistant Secretary, Assessments and Waste, Environment Standards Division, GPO Box 787 Canberra ACT 2601).
- 14.2 Notwithstanding any other provision of this agreement, the Parties may disclose information about this agreement, including personal information, where required or permitted to be disclosed by law.

## ATTACHMENT 1: INDICATIVE MAP OF STRATEGIC ASSESSMENT AREA



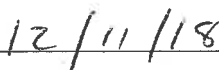
**SIGNED** for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
represented by

The Hon Melissa Price MP  
Minister for the Environment

---



Signature



Date

**SIGNED** for and on behalf of the  
**STATE OF NEW SOUTH WALES**  
represented by

The Hon. Anthony John Roberts MP  
Minister for Planning

---



Signature



Date

The Hon. Gabrielle Cecelia Upton MP  
Minister for the Environment

---



Signature



Date

# Draft Terms of Reference for the Strategic Impact Assessment Report for the Cumberland Plain Conservation Plan

## 1. PURPOSE OF THE STRATEGIC IMPACT ASSESSMENT REPORT

- 1.1. The purpose of the Report is to assess the impacts of actions taken under the Cumberland Plain Conservation Plan (Plan) on all matters protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) ('protected matters').

## 2. DESCRIPTION OF THE PLAN BEING ASSESSED

### 2.1. The Report must describe the Plan:

1. The Report must provide a summary outlining its overall purpose, key elements, spatial extent, and timeframes, including how long the Plan will be in effect.
2. The Report must provide details about the key elements, including:
  - a. The conservation commitments and outcomes to be delivered for protected matters.
  - b. The actions likely to be taken under the Plan over the short, medium and long term.
  - c. The legal and administrative frameworks to implement the Plan and the persons and authorities responsible for implementation, including:
    - i. How the Plan has been developed and its legal standing under New South Wales law.
    - ii. The relationship of the Plan to other relevant policies, plans, guidelines, commitments, regulations and legislation including existing approvals under Commonwealth legislation for the Western Sydney Airport and the Western Sydney Growth Centres.
    - iii. Management, approval and funding arrangements for implementing the Plan.
3. The Report must describe the need and justification for the Plan including the environmental, social and economic drivers for its development.
4. The Report must describe the decision-making framework used in considering alternatives and developing conservation outcomes of the Plan. It should identify where alternative options that have been evaluated to reach the final Plan have been published.
5. The Report must describe how the principles of ecologically sustainable development (ESD) (as set out in section 3A of the EPBC Act) are considered and promoted in the development of the Plan.

## 3. DESCRIPTION OF THE PROTECTED MATTERS IMPACTED BY THE PLAN

- 3.1. The Report must describe the nature of the environment within the strategic assessment area, and other areas outside the strategic assessment area that may be impacted by actions taken under the Plan. This must include (at a minimum):
1. A description of historical and current land use.
  2. The extent and quality of native vegetation present including detailed mapping of ecological communities and habitat for threatened species listed under the EPBC Act.
  3. The nature of the environment, including ecosystem processes and threatening processes.
  4. A description of the landscape context for key environmental matters, including connectivity, habitat fragmentation and ecological processes.
  5. A spatial map of areas that are already protected for environmental purposes, including Bio-banking and Biodiversity Stewardship sites.

- 3.2. The Report must identify and describe each protected matter that may be impacted directly, indirectly and cumulatively by actions taken under the Plan, including (at a minimum):
  1. Key sites, and where relevant, key habitats for protected matters.
  2. Important populations of protected matters, including the consideration of the importance of both small and large areas of habitat, and their position within the landscape.
  3. Areas likely to be important for maintaining ecological processes (for example, habitat connectivity) for protected matters.
  4. Condition of protected matters, including where relevant, seasonal and annual variability, and their likelihood to alter over time.
  5. Key threatening processes.

#### 4. ASSESSMENT OF THE IMPACTS OF THE PLAN ON PROTECTED MATTERS

- 4.1. The Report must describe and assess the likely impacts of actions taken under the Plan on all protected matters.
- 4.2. The Report must describe the method used to understand likely impacts on all protected matters of actions taken under the Plan. The level of the assessment will be proportionate to the level of likely risk to each protected matter. The method must:
  1. Be appropriate for assessment at a strategic scale.
  2. Rely on the best available information.
  3. Discuss uncertainty, including reference to the technical data and information relied upon.

The Report must identify the data used in the assessment, any limitations it may have, where (or if) the data is available and where it can be accessed, including publicly accessed.

- 4.3. Describe and assess separately the likely impacts (if any) of actions taken under the Plan on the environment on Commonwealth land (as defined in section 528 of the EPBC Act).
- 4.4. The Report may also consider protected matters that are potentially eligible for listing as a result of inclusion in a final priority assessment listing held by the Commonwealth, or a recommendation to the Commonwealth Minister for listing by the Threatened Species Scientific Committee prior to the Report being submitted.
- 4.5. The Report must include an analysis of the likely adverse impacts of actions of the Plan on protected matters. This must include (at a minimum) consideration of:
  1. Information on the following :
    - a. Number and size of populations/important populations.
    - b. Extent (in hectares) of suitable habitat.
    - c. Extent (in hectares) and condition of protected matters.
    - d. Landscape connectivity and ecological processes.
    - e. Heritage listing and values.
  2. How impacts on protected matters will be avoided through land use planning and other measures, and what mitigation measures will be implemented to reduce impacts, including a description of the mitigation measures and how unavoidable impacts will be offset.
  3. Potential indirect and cumulative impacts.
- 4.6. The Report must include an analysis of the conservation benefits (beneficial impacts) of the Plan, including:
  1. How protected matters will be conserved, protected and managed within the Strategic Assessment Area and other areas related to the Plan.
  2. The adequacy of the conservation measures under the Plan in protecting and managing protected matters, including the effectiveness of implementation and funding arrangements and who will be responsible for delivering on commitments.
  3. How proposed conservation measures involving environmental offsets meet the principles of the *Environment Protection and Biodiversity Conservation Act, Environmental Offsets Policy, 2012*.

4. How landscape connectivity has been maintained and improved, which may include opportunities for strategic restoration of key corridors and areas adjacent to sites with high biodiversity values.
5. How adaptation to reasonable climate change scenarios has been considered.
- 4.7. The Report must consider the extent to which the impacts on protected matters of actions taken under the Plan meet legislative obligations under the EPBC Act, including but not limited to:
  1. Consistency with Australia's international obligations, including the Ramsar Convention.
  2. Consistency with recovery plans (section 146K of the EPBC Act).
  3. Regard to objectives, conservation actions and other relevant information in conservation advices (section 146K of the EPBC Act).
  4. Consistency with World Heritage management plans (sections 316 and 321 of the EPBC Act) and National Heritage place management plans (sections 324S and 324X of the EPBC Act).

The Report may also consider other Commonwealth policy guidelines on protected matters.

- 4.8. The Report must include justification for key methods used in the assessment, including summaries of independent peer review processes and where the review/s are available to the public.

## 5. EVALUATION OF THE OVERALL OUTCOMES OF THE PLAN

- 5.1. The Report must evaluate the overall commitments and outcomes for protected matters taking into account likely impacts on protected matters from actions taken under the Plan.
- 5.2. The evaluation must include:
  1. The extent to which protected matters are represented in areas to be protected or managed under the Plan or in existing protected areas in the IBRA bioregion/subregion.
  2. The extent to which the areas to be protected or managed under the Plan or existing protected areas in the IBRA bioregion/subregion will ensure the long-term viability of each protected matter.
  3. Whether there will be serious and irreversible impacts on any protected matter.
  4. An assessment of how the Plan meets the endorsement criteria set out in the Agreement at clause 8.
- 5.3. The evaluation may also include consideration of:
  1. The extent to which the conservation measures under the Plan facilitate adaptation of biodiversity to climate change and address any significant vulnerabilities of protected matters under reasonable climate change scenarios.
  2. The likely effectiveness of the conservation measures under the Plan in protecting and managing protected matters and any risks and uncertainties.

## 6. ADDRESSING UNCERTAINTY AND ADAPTIVE MANAGEMENT

- 6.1. The Report must identify key uncertainties and risks associated with implementing the Plan, responses to these and proposed adaptations to changing circumstances. Key uncertainties may include:
  1. Knowledge gaps in scientific understanding and responding to new knowledge.
  2. Assumptions made in assessing potential impacts and benefits.
  3. How changes to State and Commonwealth legislation, policies, plans and advice is to be accounted for in the management of the areas impacted by the Plan.
  4. Effectiveness or capacity to ensure the Plan is implemented.
- 6.2. The Report must describe and assess the adequacy of the procedures proposed in the Plan to ensure an adaptive approach to implementation of the Plan. This must include:
  1. How the results of monitoring will be used to understand the effectiveness of conservation outcomes for protected matters and improve implementation.
  2. How new information relating to protected matters and biodiversity, including legislative changes, may be assessed and accounted for in implementation of the Plan.

## **7. MONITORING AND REPORTING AND AUDITING**

- 7.1. The Report must describe and assess the adequacy of the monitoring programs, regular review, public reporting and independent auditing processes proposed in the Plan to:
1. Ensure conservation commitments and outcomes for protected matters contained in the Plan are delivered.
  2. Enable implementation of the Plan to adapt where monitoring demonstrates delivery of the conservation actions are not leading to the predicted conservation outcomes.
  3. Enable implementation of the Plan to adapt to changed circumstances, where there are risks to protected matters.
- 7.2. The Report must identify and analyse the likely circumstances and procedures that may result in the review or modification of implementation plans proposed to deliver on commitments and outcomes for each protected matter as described in the Plan, or abandonment of the Plan.

## **8. INFORMATION SOURCES**

- 8.1. The Report must identify the sources of information and data relied upon including the reliability and currency of the data.

# **Draft Terms of Reference for the Strategic Impact Assessment Report for the Cumberland Plain Conservation Plan**

## **1. PURPOSE OF THE STRATEGIC IMPACT ASSESSMENT REPORT**

- 1.1. The purpose of the Report is to assess the impacts of actions taken under the Cumberland Plain Conservation Plan (Plan) on all matters protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) ('protected matters').

## **2. DESCRIPTION OF THE PLAN BEING ASSESSED**

- 2.1. The Report must describe the Plan:

1. The Report must provide a summary outlining its overall purpose, key elements, spatial extent, and timeframes, including how long the Plan will be in effect.
2. The Report must provide details about the key elements, including:
  - a. The conservation commitments and outcomes to be delivered for protected matters.
  - b. The actions likely to be taken under the Plan over the short, medium and long term.
  - c. The legal and administrative frameworks to implement the Plan and the persons and authorities responsible for implementation, including:
    - i. How the Plan has been developed and its legal standing under New South Wales law.
    - ii. The relationship of the Plan to other relevant policies, plans, guidelines, commitments, regulations and legislation including existing approvals under Commonwealth legislation for the Western Sydney Airport and the Western Sydney Growth Centres.
    - iii. Management, approval and funding arrangements for implementing the Plan.
3. The Report must describe the need and justification for the Plan including the environmental, social and economic drivers for its development.
4. The Report must describe the decision-making framework used in considering alternatives and developing conservation outcomes of the Plan. It should identify where alternative options that have been evaluated to reach the final Plan have been published.
5. The Report must describe how the principles of ecologically sustainable development (ESD) (as set out in section 3A of the EPBC Act) are considered and promoted in the development of the Plan.

## **3. DESCRIPTION OF THE PROTECTED MATTERS IMPACTED BY THE PLAN**

- 3.1. The Report must describe the nature of the environment within the strategic assessment area, and other areas outside the strategic assessment area that may be impacted by actions taken under the Plan. This must include (at a minimum):
1. A description of historical and current land use.
  2. The extent and quality of native vegetation present including detailed mapping of ecological communities and habitat for threatened species listed under the EPBC Act.
  3. The nature of the environment, including ecosystem processes and threatening processes.
  4. A description of the landscape context for key environmental matters, including connectivity, habitat fragmentation and ecological processes.
  5. A spatial map of areas that are already protected for environmental purposes, including Bio-banking and Biodiversity Stewardship sites.



- 3.2. The Report must identify and describe each protected matter that may be impacted directly, indirectly and cumulatively by actions taken under the Plan, including (at a minimum):
  1. Key sites, and where relevant, key habitats for protected matters.
  2. Important populations of protected matters, including the consideration of the importance of both small and large areas of habitat, and their position within the landscape.
  3. Areas likely to be important for maintaining ecological processes (for example, habitat connectivity) for protected matters.
  4. Condition of protected matters, including where relevant, seasonal and annual variability, and their likelihood to alter over time.
  5. Key threatening processes.

#### **4. ASSESSMENT OF THE IMPACTS OF THE PLAN ON PROTECTED MATTERS**

- 4.1. The Report must describe and assess the likely impacts of actions taken under the Plan on all protected matters.
- 4.2. The Report must describe the method used to understand likely impacts on all protected matters of actions taken under the Plan. The level of the assessment will be proportionate to the level of likely risk to each protected matter. The method must:
  1. Be appropriate for assessment at a strategic scale.
  2. Rely on the best available information.
  3. Discuss uncertainty, including reference to the technical data and information relied upon.

The Report must identify the data used in the assessment, any limitations it may have, where (or if) the data is available and where it can be accessed, including publicly accessed.

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