

Sarah Ng

From: Anthony Tavella on behalf of DPE PS ePlanning Exhibitions Mailbox
Sent: Friday, 9 October 2020 11:29 AM
To: DPE PS Biodiversity Mailbox
Subject: FW: Webform submission from: Draft Cumberland Plain Conservation Plan
Attachments: penrith-councils-draft-submission-on-draft-██████████.pdf

From: noreply@feedback.planningportal.nsw.gov.au <noreply@feedback.planningportal.nsw.gov.au>
Sent: Friday, 9 October 2020 8:22 AM
To: DPE PS ePlanning Exhibitions Mailbox <eplanning.exhibitions@planning.nsw.gov.au>
Subject: Webform submission from: Draft Cumberland Plain Conservation Plan

Submitted on Fri, 09/10/2020 - 08:16
Submitted by: Anonymous
Submitted values are:
Submission Type: I am submitting on behalf of my organisation
First Name: Elizabeth
Last Name: Hanlon
Name Withheld: No
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Suburb/Town & Postcode: Penrith 2750
Submission file:
[penrith-councils-draft-submission-on-draft-██████████.pdf](#)

Submission: Thank you for the opportunity to provide feedback on the draft Cumberland Plain Conservation Plan (CPCP). Please find attached Penrith City Council's preliminary comments on the draft CPCP, which are provided as a draft submission to meet the Department's 9 October 2020 closing date. If you have any questions, please contact either Anthony Price, Environmental Health Coordinator on ██████████ or Elizabeth Hanlon, Senior Planner on ██████████

URL: <https://pp.planningportal.nsw.gov.au/draftplans/exhibition/draft-cumberland-plain-conservation-plan>



Our reference: InfoStore
Contact: Anthony Price / Elizabeth Hanlon
Telephone: 4732 7527 / 4732 7827

9 October 2020

Department of Planning, Industry and Environment
Green and Resilient Places Division
Locked Bag 5022
PARRAMATTA NSW 2124

Sent by online submission

Dear Sir/Madam

Draft Submission: Draft Cumberland Plain Conservation Plan

Thank you for the opportunity to provide feedback on the draft Cumberland Plain Conservation Plan (CPCP). We also thank Steve Hartley, Executive Director and Alexandra Bridle, Senior Policy Officer from the Department's Green and Resilient Places Division for briefing our Councillors on 21 September 2020.

Given the limited timeframe for submissions, the amount of information on public exhibition and the complexities of the CPCP, we have not had the opportunity to fully review or report the draft CPCP to Council. As previously advised, our Councillors require a further briefing prior to reporting the draft CPCP to a formal Council meeting. Due to other significant State matters that Council needs to respond to, the first available time for this briefing is 28 October 2020. Accordingly, please find attached Council's preliminary comments, which are provided as a draft submission to meet the Department's 9 October 2020 closing date. A full submission will be reported to the next available Council meeting on 30 November 2020, which once endorsed, will be submitted soon after this meeting as a final submission.

We appreciate the significant amount of work undertaken by the Department to develop the draft CPCP and acknowledge the benefits of strategic conservation planning given the large-scale development proposed within the Penrith local government area (LGA). However, we have a number of concerns with the draft CPCP, which are outlined in the attached document. We request the opportunity to work more closely with the Department on progressing the CPCP to achieve improved biodiversity conservation outcomes for our LGA and the Western Parkland City.

If you have any questions in relation to this draft submission, please contact either Anthony Price, Environmental Health Coordinator on [REDACTED] or Elizabeth Hanlon, Senior Planner on [REDACTED]

Yours sincerely

[REDACTED]

Wayne Mitchell
Director Development and Regulatory Services

Attach.

Attachment – Penrith City Council’s Draft Submission on Draft Cumberland Plain Conservation Plan

	Issue	Comments/Recommendations
1	The draft Cumberland Plain Conservation Plan (CPCP) should be referred to as a strategic biodiversity assessment and not a biodiversity conservation plan	<p>The draft CPCP is essentially a strategic biodiversity assessment providing biodiversity approvals under the <i>NSW Biodiversity Conservation (BC) Act 2016</i> and the <i>Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act 1999</i> for urban development in four nominated areas including the Greater Penrith to Eastern Creek (GPEC) Investigation Area and the Western Sydney Aerotropolis (the Aerotropolis), as well as for major transport corridors in the Western Parkland City. Therefore, it should be referred to as a strategic biodiversity assessment for these growth areas and corridors, which includes a targeted conservation plan for areas within the Cumberland Plain. It is considered the draft CPCP does not take a holistic approach to biodiversity on the Cumberland Plain given it does not build on the previous work undertaken by the State Government to identify and protect areas of high biodiversity value and excludes:</p> <ul style="list-style-type: none"> • Parts of the priority conservation lands identified in the 2011 Cumberland Plain Recovery Plan. These areas were described as “the highest priority for future action to conserve threatened biodiversity” and representing “the best remaining opportunities in the region to maximise long-term biodiversity benefits for the lowest possible cost, including the least likelihood of restricting land supply”; • Some of the priority investment areas identified on the 2015 Biodiversity Investment Opportunities (BIO) Map that are important at a state or regional level for investment in biodiversity outcomes; and • Some of the land with high biodiversity value identified on the current Biodiversity Values Map (BV Map), introduced in 2018, used as one of the triggers for determining whether the Biodiversity Offset Scheme applies to a clearing or development proposal. <p>Council would expect that this previous work would be more fully reflected in the 2020 draft CPCP if it were a holistic conservation plan for the Cumberland Plain.</p>
2	Implications for land with high biodiversity value not being included in the strategic conservation area	<p>Council is aware there are sites with high biodiversity value within the Penrith LGA that have not been identified by the draft CPCP as strategic conservation area, or otherwise available for conservation. These sites need to be considered for inclusion upfront, so they do not miss out on any investment opportunity for conservation.</p>

	Issue	Comments/Recommendations
		<p>Council is currently undertaking a Biodiversity Study to provide further details/evidence of sites with high biodiversity value, which will likely be completed in October. This Study already identifies areas of high biodiversity value that should be considered as strategic conservation area.</p> <p>Further, Council is concerned about the exclusion of some privately owned large land parcels (for example, large and significant land parcels in the north of the Penrith LGA) which contain remnant vegetation of high biodiversity value. Some of these land parcels form valuable east-west landscape biodiversity corridor connections.</p>
3	Limited opportunities for new conservation lands in the future given the extent of strategic conservation area in the Penrith LGA	The draft CPCP proposes that new conservation lands will be identified in the future, but these will be selected from strategic conservation area. Given the extent of strategic conservation area in the Penrith LGA is limited, the opportunities for new conservation lands will also be limited. Also refer to Issue No.1.
4	Missed opportunities to create corridors and conserve land on smaller land holdings	<p>The draft CPCP has missed a number of opportunities:</p> <ul style="list-style-type: none"> • To create corridors that link areas of important remnant vegetation as part of the strategic conservation area; e.g. a corridor that extends north and northeast of the Agnes Banks Nature Reserve to remnant vegetation to the north of The Driftway in the Hawkesbury LGA or a corridor from the Mulgoa Valley to the Orchard Hills Defence site; • To include land with high biodiversity values that could attract offsets and funds for ongoing management, e.g. some of the large land parcels in the north of the Penrith LGA; • To provide an incentive to landholders with smaller sites to conserve remnant vegetation given sites of less than 20ha will not be considered for offsets. Small landholders are effectively excluded from offering their land as offset sites, as they are generally <20ha and identified in the spatial viewer as “avoided” lands. There does not appear to be a mechanism or incentive for smaller landholders to consolidate high biodiversity land for conservation. Providing smaller landholders with opportunities to do this can help to prevent further fragmentation and degradation of high biodiversity value land;

	Issue	Comments/Recommendations
		<ul style="list-style-type: none"> To protect actual remnant Cumberland Plain Woodland community types as they appear to be under-represented in identified strategic conservation lands within the Penrith LGA.
5	Use of certain types of land as offset sites	Lands that have ongoing funding for conservation should be restricted for offset sites. Offset sites should be sourced as a priority from lands that have little or no protection to make the draft CPCP more 'valuable' to landholders and to achieve better biodiversity conservation outcomes.
6	Staging of works and offsets milestones	<p>There appears to be inadequate safeguards in the draft CPCP to ensure offsets are obtained in a logical and staged manner. Currently, it appears there are no stop points (milestones), which in effect means all the development can occur without any credits being retired to offset the impacts associated with the development. Given the CPCP is stated to run until 2056, it could be a long time for the biodiversity gains to be realised. The staging and implementation of biodiversity outcomes needs to be commensurate with the level of development permitted relying on offsets.</p> <p>Several procedural protections (e.g. as imposed in the Western Sydney Growth Centres SEPP) have not been adopted, leaving significant scope for adverse consequences. In particular:</p> <ul style="list-style-type: none"> The budget has not been locked in; There is no staging – which essentially approves all clearing up-front without needing to demonstrate the satisfaction of offset requirements prior to new stages commencing; and There is considerable discretion in general over what is delivered as offsets.
7	Resourcing	Further detail on resourcing the administration of the CPCP is needed. We acknowledge the intention to employ 2 part-time Aboriginal Officers, 3 full-time Biodiversity Education Officers and 3 Council-based Compliance Officers. However, given the scale of the CPCP and the work that will be involved, this is considered minimal.
8	Areas of land actually ground-truthed	Only a very small portion (perhaps less than 1%) of the Cumberland Plain has been ground-truthed as part of the CPCP's development. Without ground-truthing the areas that will be impacted or conserved, it is very difficult to know what the true impact of development will be (and therefore what the required offsets will be) or if there are enough sites/credits available to offset impacts.

	Issue	Comments/Recommendations
		Further, the impacts on endangered species (as opposed to endangered ecological communities) are very hard to predict without ground-truthing. This is because the presence or absence of a particular plant or animal in the Cumberland Plain is very hard to predict based on soils, geology and topographical information.
9	Procedural issues	Unlike previous bio-certification programs, the CPCP seeks to lock-in urban development in the nominated areas without full and concurrent assessment of other planning considerations. For example, without knowing the extent and form of urban development proposed in parts of the GPEC Investigation Area, it is difficult to know the true impacts of development and the offset requirements.
10	Confluence Investigation Area	<p>The proposed use of the Confluence Investigation Area as a conservation/offset area is confusing and concerning given it is largely a highly degraded area, with minimal existing biodiversity value.</p> <p>There is clear evidence planting of trees, no matter what the number/type of species mix used, will not result in the formation of Cumberland Plain Woodland (or other vegetation community types) in the future. Whilst the planting of trees may improve general amenity, the vegetation community created will not have the intrinsic ecological values of CPW. The preservation and restoration of even low-quality remnant CPW will give better biodiversity gains than seedlings planted in farm paddocks.</p> <p>If this area is to be used for offsetting, it should be for establishing landscape corridor links to other areas of remnant vegetation. However, in terms of hierarchy of conservation opportunities replanting vacant farmland should only be considered where more feasible conservation outcomes to protect and conserve higher biodiversity value lands has been first achieved.</p>
11	Hierarchy of land conservation	<p>A hierarchy of land and vegetation types to be used for conservation needs to be clearly enunciated in the CPCP.</p> <p>For example:</p> <ul style="list-style-type: none"> • Highest Priority – Large landholdings with high quality vegetation. • Medium Priority – Smaller landholdings with high quality vegetation OR larger land holdings with medium quality vegetation.

	Issue	Comments/Recommendations
		<ul style="list-style-type: none"> • Low Priority – Land with poor quality vegetation. • Lowest Priority – Heavily degraded farm paddocks or market gardens where new plantings will occur. <p>In addition, differentiation between Strategic Conservation Areas and Strategic Restoration Areas needs to be provided. A layer in the spatial viewer could be included to clearly show proposed restoration areas, as distinct from strategic conservation areas. Given the CPCP proposes 25% of the conservation target will come from restored lands, having access to accurate information is integral to make proper comments on this aspect.</p>
12	Interaction of CPCP with <i>Biodiversity Conservation Act</i>	<p>There is concern about how the <i>Biodiversity Conservation Act 2016</i> and its offsetting regime will be impacted by the way conservation investment will be targeted at the strategic conservation area identified in the CPCP (of which there appears to be very little identified in the Penrith LGA).</p> <p>In particular, there is concern about potential inequality in the offset market developing, with credits for land outside of the strategic conservation area being devalued by the market primarily seeking offsets within land identified by the CPCP as strategic conservation area.</p>
13	Implications of the proposed State Environmental Planning Policy (SEPP) on existing Local Environmental Plan (LEP) controls and the fragmented approach to protecting and managing biodiversity	<p>While it is noted that the SEPP will prevail over LEP controls where there is an inconsistency, there is a concern about the extent of inconsistencies. The planning controls in the SEPP and Penrith LEP 2010 do not always complement each other. This will result in a fragmented approach to the protection and management of biodiversity on the Cumberland Plain.</p> <p>For example, the SEPP's E2 zone boundaries generally do not align with the Penrith LEP's E2 zone boundaries where they apply in the same location. Consequently, some properties will have three zones; e.g. SEPP E2 zone, LEP E2 zone and LEP RU2 zone for certain properties in Orchard Hills. Given the objectives of the E2 zones are similar, it would be more appropriate and less confusing to either rely on existing E2 zone boundaries or propose a SEPP that replaces the existing E2 zone in the LEP to avoid circumstances where there are two E2 zones. Once the SEPP is made, Council will potentially need to spend additional time and resources on amending its LEP to align the two planning instruments.</p> <p>Another example of inconsistency is where the boundaries of the SEPP's strategic conservation area do not align with the boundaries of the LEP's E2 zones or natural resources sensitive land; e.g. for certain properties in the Mulgoa Valley and Agnes Banks/Londonderry. Consequently,</p>

	Issue	Comments/Recommendations
		<p>there will be various biodiversity/vegetation controls and considerations that apply to land in the Penrith LGA depending on whether the land is zoned E2 or identified as strategic conservation area or natural resources sensitive land. This highlights the fragmented approach to biodiversity protection and potential for confusion.</p> <p>As the SEPP has not built on existing E2 zones and areas identified as natural resources sensitive land in Penrith LEP 2010, there is a concern the SEPP will potentially weaken these existing LEP controls.</p> <p>It is noted that environmental protection works and flood mitigation works will be the only land uses permitted with consent in the SEPP's E2 zones. Will the Infrastructure SEPP, which permits roads and other infrastructure, prevail over the proposed SEPP?</p>
14	Implications for properties proposed to be entirely zoned E2 Environmental Conservation	<p>While it is noted that existing use rights will apply to avoided lands proposed to be zoned E2, we also note that there are a number of properties proposed to be entirely zoned E2 under the SEPP. How many properties in the Penrith LGA will be entirely zoned E2?</p> <p>We do not support properties being entirely zoned E2. If properties are to be zoned as such, appropriate compensation must be provided or the properties acquired. What measures are proposed in this regard?</p> <p>We note the Department's LEP Practice Note PN 09-002, which states in relation to E2 zones, that: "Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> and the need for the Minister to designate a relevant acquiring authority". Given the SEPP proposes to only permit with consent, environmental protection works and flood mitigation works in the E2 zone, it is considered that zoning properties entirely E2 is not appropriate and would likely trigger the need for acquisition. This issue was enforced by the Department when Council prepared the first stage of Penrith LEP 2010; hence the approach to split zonings where E2 zones apply in the LGA.</p>
15	Proposed E2 zones on Council nominated urban investigation areas	<p>Currently, there are two Planning Proposals to permit urban development, known as Glenmore Park Stage 3 (http://leptracking.planning.nsw.gov.au/proposal/details.php?rid=6744) and Orchard Hills North (http://leptracking.planning.nsw.gov.au/proposal/details.php?rid=5624), under consideration. These Planning Proposals identify E2 zones based on site specific biodiversity assessments, including ground-truthing. While there are similarities between the E2 zones</p>

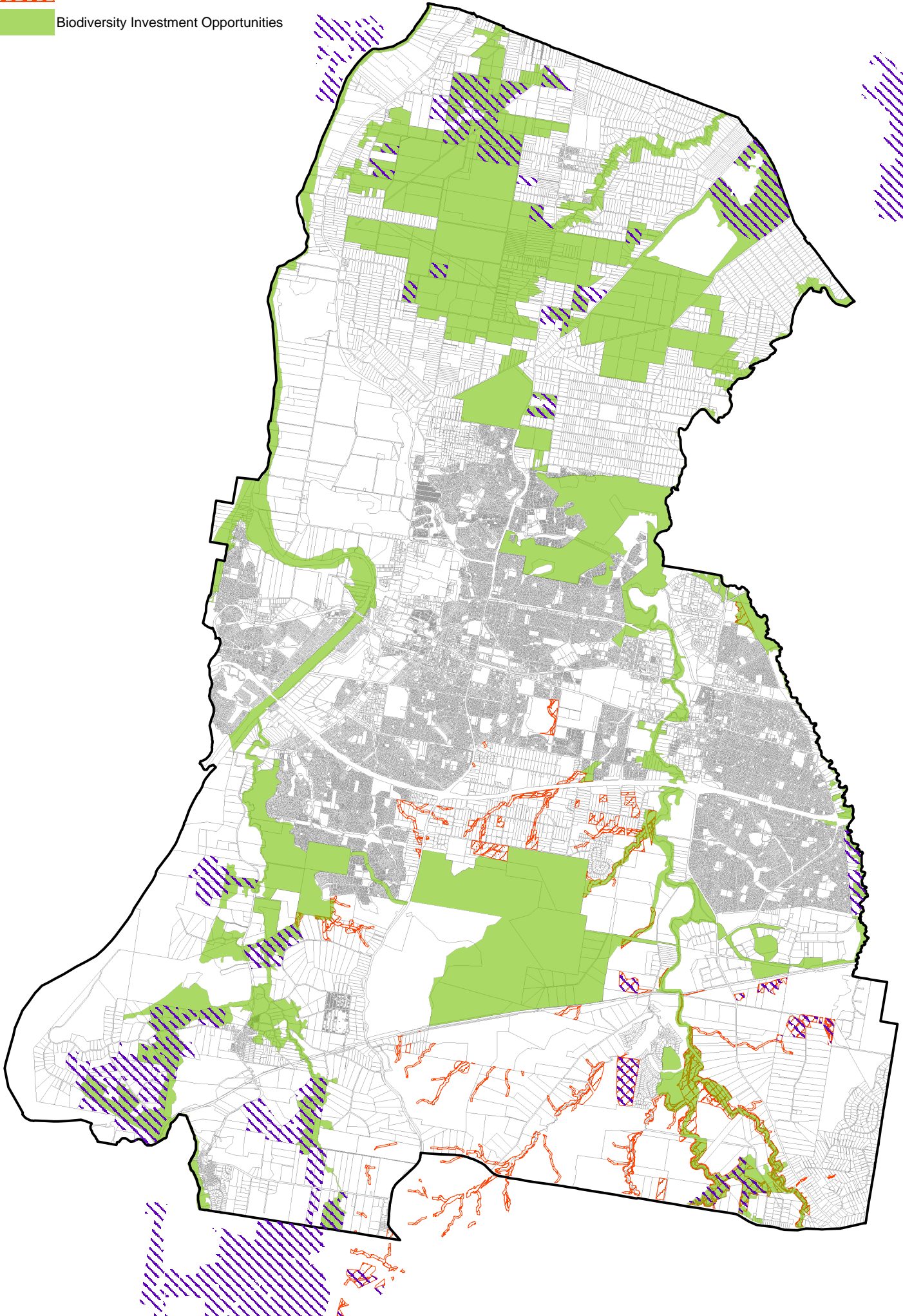
	Issue	Comments/Recommendations
		proposed in the Planning Proposals and those proposed under the SEPP, they do not align. Therefore, it is recommended that the SEPP's E2 zones be amended to be consistent with the E2 zones in the Planning Proposal, given the site specific biodiversity assessments.
16	Proposed Development Control Plans (DCPs)	<p>It is stated that specific DCPs will be prepared for each nominated area or controls may be integrated into existing DCPs where precincts require the use of existing DCPs. It is also stated that the Department will work with the relevant consent authorities to introduce development controls in DCPs to protect biodiversity, specific species and other key environmental features in urban development areas.</p> <p>It is requested that further information on these controls, e.g. any proposed model development controls, be made available prior to finalising the CPCP.</p>
17	Community Education and Engagement	<p>We agree that it is important to build community knowledge and awareness of the value of the Cumberland Plain. What resourcing assessment has been carried out to determine the delivery of this aspect of the CPCP?</p> <p>In addition, the CPCP seems to focus on the general public in terms of engagement, education, and building capacity and knowledge. There is no mention of the need to educate and build capacity within the development industry. It is recommended that the CPCP incorporate building knowledge and capacity of industry and developers in relation to ecologically sensitive design and biodiversity sensitive urban design.</p>
18	Compliance and Enforcement	What will be the compliance and enforcement framework to ensure the objectives of the CPCP are delivered? The compliance framework needs to be clearly documented and available prior to finalising the CPCP.
19	Monitoring, Evaluation and Review	<p>Will the CPCP be a dynamic plan that will be updated to add new areas identified for strategic conservation? There needs to be a process of regular monitoring, evaluation and review to ensure that offsets are obtained when necessary, and to take account of further submissions, ground-truthing and other assessments, and illegal clearing.</p> <p>The monitoring, evaluation and review framework needs to be clearly documented and available prior to finalising the CPCP.</p>

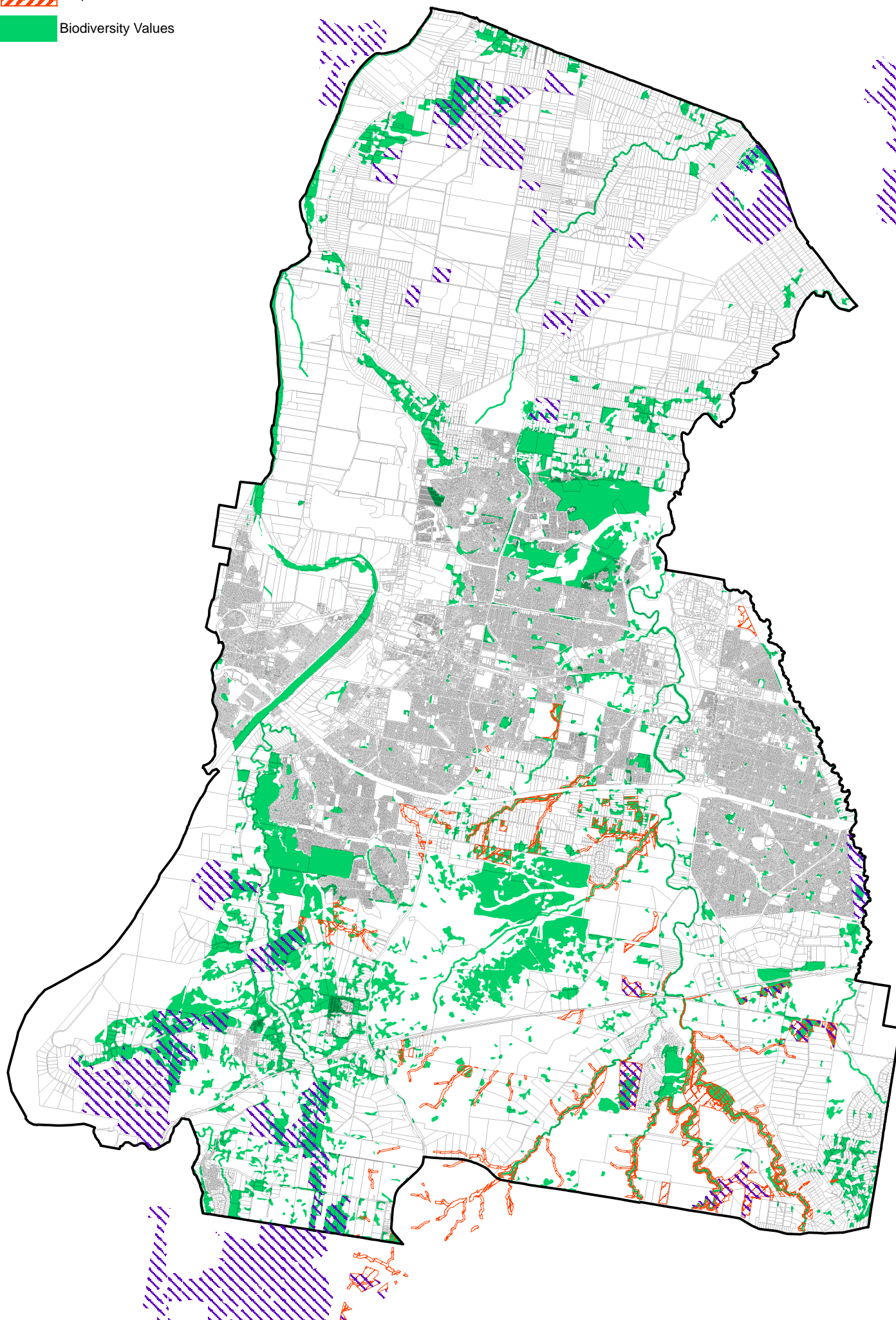
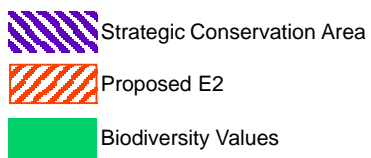
	Issue	Comments/Recommendations
20	CPCP Governance Body and Accountability	<p>Further details on the governance framework, constitution, terms of reference and representation need to be provided. It is essential there is adequate local government representation from each of the affected local government areas on this body.</p> <p>Clear lines of responsibility and accountability need to be outlined in the CPCP. Currently, there is only a broad statement that the “...<i>department is the responsible agency</i>...”. More detail is required in this regard.</p>
21	Buffer Zones	<p>There needs to be clear buffers established between conservation lands (e.g. strategic conservation area and E2 zones) and development to prevent degradation impacts on any adjoining conservation land. Incorporation of buffer requirements within the SEPP and proposed DCPs is recommended.</p>



Glenmore Park Stage 3. Top image – CPCP compared to bottom image which is proposed zones under Gateway Determination for exhibition. This area has been mapped based on detailed biodiversity analysis.

- Strategic Conservation Area
- Proposed E2
- Biodiversity Investment Opportunities



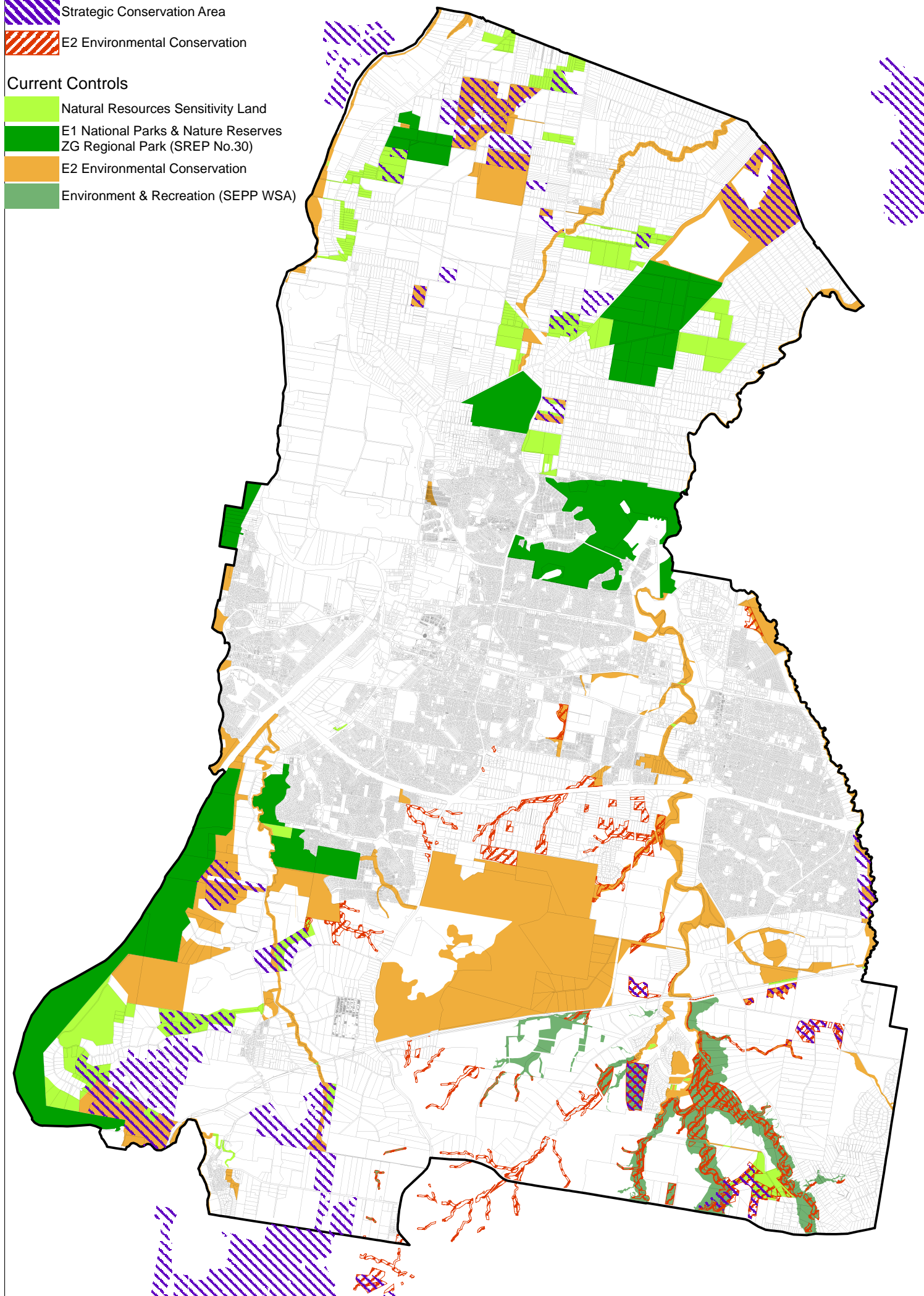


Proposed SEPP

- Strategic Conservation Area
- E2 Environmental Conservation

Current Controls

- Natural Resources Sensitivity Land
- E1 National Parks & Nature Reserves
ZG Regional Park (SREP No.30)
- E2 Environmental Conservation
- Environment & Recreation (SEPP WSA)





Our reference: InfoStore
Contact: Nicole Dukinfield
Telephone: 4732 8511

1 December 2020

Ms Santina Camroux
Director Resilient Places
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Sent by email: [REDACTED]
cc: biodiversity@planning.nsw.gov.au

Dear Ms Camroux

Final Submission: Draft Cumberland Plain Conservation Plan

I refer to Council's letter of 9 October 2020 which provided preliminary comments on the draft Cumberland Plain Conservation Plan (CPCP) in the form of a draft submission to meet the Department's then closing date for comments. As indicated in that letter, the draft CPCP had not been fully reviewed and reported to Council for its consideration because of the limited timeframe for submissions, the amount of exhibition material to review and the complexities of the CPCP. Council has now had an opportunity to formally consider the draft CPCP and, at its Ordinary meeting of 30 November 2020, resolved to provide the following comments to the Department as a final submission on the draft CPCP.

I would like to take this opportunity to thank you and Steve Hartley for providing a further briefing on the draft CPCP to our Councillors on 28 October 2020 to assist in making this submission.

As indicated in our draft submission, Council appreciates the significant amount of work undertaken by the Department to develop the draft CPCP and acknowledges the benefits of strategic conservation planning given the large-scale development proposed within the Penrith local government area (LGA) over the next 36 years. However, Council continues to have a number of concerns with the draft CPCP and believes that further work is needed to respond to these concerns. Our most significant concerns are the impacts of the proposed E2 zones on property owners (including their application to entire properties without compensation or acquisition and the potential impacts on existing land uses); the lack of ground-truthing; the process for monitoring the delivery of the CPCP (including ensuring offsets are provided commensurate with development); and the relationship between biodiversity controls in the proposed State Environmental Planning Policy (SEPP) and Penrith Local Environmental Plan (LEP) 2010. Until this further work is undertaken, Council does not support these aspects of the CPCP.

Council also has several other concerns and comments in relation to the draft CPCP, which are outlined in the attached document.

Given the importance of the CPCP in managing and offsetting urban development impacts on biodiversity, impacts that cannot be reversed, Council requests the

opportunity to work more closely with the Department on progressing the CPCP to ensure the most significant and high value biodiversity areas within our City and region are protected, enhanced and appropriately managed into the future.

If you have any questions in relation to this submission, please contact Nicole Dukinfield, Principal Planner on [REDACTED] or [REDACTED]

Yours sincerely



Natasha Borgia
City Planning Manager

Attach.

Attachment – Penrith City Council’s Final Submission on Draft Cumberland Plain Conservation Plan

	Issue	Comments/Recommendations
	Draft Cumberland Plain Conservation Plan (CPCP)	
1	The draft CPCP is a strategic biodiversity assessment and not a holistic biodiversity conservation plan for the Cumberland Plain	<p>The draft CPCP is essentially a strategic biodiversity assessment providing biodiversity approvals under the <i>NSW Biodiversity Conservation (BC) Act 2016</i> and the <i>Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act 1999</i> for urban development in four nominated areas including the Greater Penrith to Eastern Creek (GPEC) Investigation Area and the Western Sydney Aerotropolis (the Aerotropolis), as well as for major transport corridors in the Western Parkland City. Therefore, it should be referred to as a strategic biodiversity assessment for these growth areas and corridors, which includes a targeted conservation plan for areas within the Cumberland Plain. It is considered the draft CPCP does not take a holistic approach to biodiversity on the Cumberland Plain given it does not build on the previous work undertaken by the State Government to identify and protect areas of high biodiversity value and excludes:</p> <ul style="list-style-type: none"> • Parts of the priority conservation lands identified in the 2011 Cumberland Plain Recovery Plan. These areas were described as “the highest priority for future action to conserve threatened biodiversity” and representing “the best remaining opportunities in the region to maximise long-term biodiversity benefits for the lowest possible cost, including the least likelihood of restricting land supply”; • Some of the priority investment areas identified on the 2015 Biodiversity Investment Opportunities (BIO) Map that are important at a state or regional level for investment in biodiversity outcomes; and • Some of the land with high biodiversity value identified on the current Biodiversity Values Map (BV Map), introduced in 2018, used as one of the triggers for determining whether the Biodiversity Offset Scheme applies to a clearing or development proposal. <p>Council would expect that this previous work would be more fully reflected in the 2020 draft CPCP if it were a holistic conservation plan for the Cumberland Plain.</p>
2	Land with high biodiversity value not being included as strategic conservation area	Council is aware there are sites with high biodiversity value within the Penrith LGA that have not been identified by the draft CPCP as strategic conservation area, or otherwise available for conservation.

	Issue	Comments/Recommendations
		<p>These sites need to be considered for inclusion upfront, so they do not miss out on any investment opportunity for conservation.</p> <p>Council is currently undertaking a Biodiversity Study to provide further details/evidence of sites with high biodiversity value, which will likely be completed by the end of this year. This Study already identifies areas of high biodiversity value that should be considered as strategic conservation area.</p> <p>Further, Council is concerned about the exclusion of some privately owned large land parcels (e.g. large and significant land parcels in the north of the Penrith LGA) which contain remnant vegetation of high biodiversity value. Some of these land parcels form valuable east-west landscape biodiversity corridor connections.</p>
3	Limited opportunities for new conservation lands in the future given the limited extent of strategic conservation area in the Penrith LGA	The draft CPCP proposes that new conservation lands will be identified in the future, but these will be selected from strategic conservation area. Given the extent of strategic conservation area in the Penrith LGA is limited (i.e. 1,375ha of the total 28,300ha proposed), the opportunities for new conservation lands will also be limited. Also refer to Issue No.1.
4	Missed opportunities to create corridors and conserve land on smaller land holdings	<p>The draft CPCP has missed a number of opportunities:</p> <ul style="list-style-type: none"> • To create corridors that link areas of important remnant vegetation as part of the strategic conservation area; e.g. a corridor that extends north and northeast of the Agnes Banks Nature Reserve to remnant vegetation to the north of The Driftway in the Hawkesbury LGA or a corridor from the Mulgoa Valley to the Orchard Hills Defence site; • To include land with high biodiversity values that could attract offsets and funds for ongoing management, e.g. some of the large land parcels in the north of the Penrith LGA; • To provide an incentive to landholders with smaller sites to conserve remnant vegetation given sites of less than 20ha will not be considered for offsets. Small landholders are effectively excluded from offering their land as offset sites, as they are generally less than 20ha and identified in the spatial viewer as “avoided” lands. There does not appear to be a mechanism or incentive for smaller landholders to consolidate high biodiversity land for conservation. Providing smaller landholders with opportunities to do this can help to prevent further fragmentation and degradation of high biodiversity value land;

	Issue	Comments/Recommendations
		<ul style="list-style-type: none"> To protect actual remnant Cumberland Plain Woodland (CPW) community types as they appear to be under-represented in identified strategic conservation lands within the Penrith LGA.
5	Use of certain types of land as offset sites	Priority should not be given to lands that have ongoing conservation funding for offset sites. Offset sites should be sourced as a priority from lands that have little or no protection to make the draft CPCP more 'valuable' to landholders and to achieve better biodiversity conservation outcomes.
6	Staging of works and offsets milestones	<p>There appears to be inadequate safeguards in the draft CPCP to ensure offsets are obtained in a logical and staged manner. Currently, it appears there are no stop points (milestones), which in effect means all the development can occur without any credits being retired to offset the impacts associated with the development. Given the CPCP is stated to run until 2056, it could be a long time for the biodiversity gains to be realised. The staging and implementation of biodiversity outcomes needs to be commensurate with the level of development permitted relying on offsets.</p> <p>Several procedural protections (e.g. as imposed in the Western Sydney Growth Centres SEPP) have not been adopted, leaving significant scope for adverse consequences. In particular:</p> <ul style="list-style-type: none"> The budget has not been locked in; There is no staging – which essentially approves all clearing up-front without needing to demonstrate the satisfaction of offset requirements prior to new stages commencing; and There is considerable discretion in general over what is delivered as offsets.
7	Areas of land actually ground-truthed	<p>Only a very small portion (perhaps less than 1%) of the Cumberland Plain has been ground-truthed as part of the CPCP's development. Without ground-truthing the areas that will be impacted or conserved, it is very difficult to know what the true impact of development will be (and therefore what the required offsets will be) or if there are enough sites/credits available to offset impacts.</p> <p>Further, the impacts on endangered species (as opposed to endangered ecological communities) are very hard to predict without ground-truthing. This is because the presence or absence of a particular plant or animal in the Cumberland Plain is very hard to predict based on soils, geology and topographical information.</p>
8	Procedural issues	Unlike previous bio-certification programs, the CPCP seeks to lock-in urban development in the nominated areas without full and concurrent assessment of other planning considerations. For

	Issue	Comments/Recommendations
		example, without knowing the extent and form of urban development proposed in parts of the GPEC Investigation Area, it is difficult to know the true impacts of development and the offset requirements.
9	Confluence Reserve Investigation Area	<p>The proposed use of the Confluence Reserve Investigation Area as a conservation/offset area is confusing and concerning given it is largely a highly degraded area, with minimal existing biodiversity value.</p> <p>There is clear evidence planting of trees, no matter what the number/type of species mix used, will not result in the formation of CPW (or other vegetation community types) in the future. Whilst the planting of trees may improve general amenity, the vegetation community created will not have the intrinsic ecological values of CPW. The preservation and restoration of even low-quality remnant CPW will give better biodiversity gains than seedlings planted in farm paddocks.</p> <p>If this area is to be used for offsetting, it should be for establishing landscape corridor links to other areas of remnant vegetation. However, in terms of hierarchy of conservation opportunities replanting vacant farmland should only be considered where more feasible conservation outcomes to protect and conserve higher biodiversity value lands has been first achieved.</p>
10	Hierarchy of land conservation	<p>The draft CPCP outlines the steps that will be used to identify, select and secure offsets for new conservation lands. While the steps reflect spatial and ecological priorities, it is recommended that the CPCP also enunciate priorities in relation to the type of landholdings and vegetation quality.</p> <p>For example:</p> <ul style="list-style-type: none"> • Highest Priority – Large landholdings with high quality vegetation. • Medium Priority – Smaller landholdings with high quality vegetation OR larger land holdings with medium quality vegetation. • Low Priority – Land with poor quality vegetation. • Lowest Priority – Heavily degraded farm paddocks or market gardens where new plantings will occur. <p>In addition, differentiation between Strategic Conservation Areas and Strategic Restoration Areas would be desirable. It is suggested that a layer in the spatial viewer could be included to clearly show proposed restoration areas, as distinct from strategic conservation areas, given the CPCP proposes 25% of the conservation target will come from restored lands.</p>

	Issue	Comments/Recommendations
11	Interaction of CPCP with <i>Biodiversity Conservation Act</i>	<p>There is concern about how the <i>BC Act</i> and its offsetting regime will be impacted by the way conservation investment will be targeted at the strategic conservation area identified in the CPCP (of which there is very little identified in the Penrith LGA).</p> <p>In particular, there is concern about potential inequality in the offset market developing, with credits for land outside of the strategic conservation area being devalued by the market primarily seeking offsets within land identified by the CPCP as strategic conservation area.</p>
12	Resourcing	Further detail on resourcing the administration of the CPCP is needed prior to finalising the CPCP. We acknowledge the intention to employ 2 part-time Aboriginal Officers, 3 full-time Biodiversity Education Officers and 3 Council-based Compliance Officers. However, given the scale of the CPCP and the work that will be involved, this is considered minimal.
13	Community Education and Engagement	<p>The need to build community knowledge and awareness of the biodiversity value of the Cumberland Plain is strongly supported. However, there is little information on what resourcing assessment has been carried out to determine the delivery of this aspect of the CPCP.</p> <p>In addition, the CPCP seems to focus on the broader community in terms of engagement, education, and building capacity and knowledge. There is no mention of the need to educate and build capacity within the development industry. It is recommended that the CPCP incorporate building knowledge and capacity of industry and developers in relation to ecologically sensitive design and biodiversity sensitive urban design.</p>
14	Compliance and Enforcement	What will be the compliance and enforcement framework to ensure the objectives of the CPCP are delivered? The compliance framework needs to be clearly documented and available prior to finalising the CPCP.
15	Monitoring, Evaluation and Review	<p>There needs to be a process of regular monitoring, evaluation and review to ensure that offsets are obtained when necessary, and to take account of further submissions, ground-truthing and other assessments, and illegal clearing.</p> <p>The monitoring, evaluation and review framework needs to be clearly documented and available prior to finalising the CPCP.</p>

	Issue	Comments/Recommendations
16	CPCP Governance Body and Accountability	<p>Further details on the governance framework, constitution, terms of reference and representation need to be provided. It is essential there is adequate local government representation from each of the affected local government areas on this body.</p> <p>Clear lines of responsibility and accountability need to be outlined in the CPCP. Currently, there is only a broad statement that the “...department is the responsible agency...”. More detail is required in this regard.</p>
	Proposed Legislation and Guidelines to Support the CPCP	
17	Implications of proposed State Environmental Planning Policy (SEPP) on existing Local Environmental Plan (LEP) controls and the fragmented approach to protecting and managing biodiversity	<p>While the SEPP will prevail over LEP controls where there is an inconsistency, there is a concern about the extent of inconsistencies and the SEPP and LEP controls not complementing each other. For example, the SEPP's E2 zone boundaries generally do not align with the LEP's E2 zone boundaries where they apply in the same location. Consequently, some properties will have three zones once the SEPP is made; e.g. SEPP E2 zone, LEP E2 zone and LEP RU2 zone for certain properties in Orchard Hills. Given the objectives of the E2 zones are similar, it would be more appropriate and less confusing to either rely on existing E2 zone boundaries or propose a SEPP that completely replaces the existing E2 zone in the LEP to avoid circumstances where there are two E2 zones. Once the SEPP is made, Council will potentially need to spend additional time and resources on amending its LEP to align the two planning instruments.</p> <p>Another example of inconsistency is where the boundaries of the SEPP's strategic conservation area do not align with the boundaries of the LEP's E2 zones or natural resources sensitive land; e.g. for certain properties in the Mulgoa Valley and Agnes Banks/Londonderry. Consequently, there will be various biodiversity/vegetation controls and considerations applying to land in the Penrith LGA depending on whether the land is zoned E2 or identified as strategic conservation area or natural resources sensitive land.</p> <p>This situation will result in a fragmented approach to the protection and management of biodiversity within the LGA and potential for confusion. Further, as the SEPP does not build on existing E2 zones and areas identified as natural resources sensitive land in Penrith LEP 2010, there is a concern the SEPP will potentially weaken these existing LEP controls.</p>

	Issue	Comments/Recommendations
		A further area for potential confusion is the relationship of the proposed SEPP with existing SEPPs. With environmental protection works and flood mitigation works being the only land uses permitted in the SEPP's E2 zones, clarification is needed on whether the SEPP (Infrastructure) 2007 prevails over the proposed SEPP. Clarification is also needed on the relationship between the proposed SEPP and the SEPP (Western Sydney Aerotropolis) 2020, including whether the SEPP's E2 zones will replace parts of the existing Environment and Recreation zone under the Aerotropolis SEPP.
18	Properties proposed to be entirely zoned E2 Environmental Conservation	<p>While existing use rights will apply to land zoned E2 once the SEPP is made, there are 16 properties in the LGA that are proposed to be entirely zoned E2 under the SEPP. This is not supported. If properties are to be entirely zoned E2, appropriate compensation must be provided, or the properties acquired. This is particularly the case for properties that are yet to be developed.</p> <p>Zoning entire properties E2 is also considered to be inconsistent with the Department's own LEP Practice Note PN 09-002 which states, in relation to E2 zones, that: "Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> and the need for the Minister to designate a relevant acquiring authority". As the SEPP proposes to only permit environmental protection works and flood mitigation works in the E2 zone, it is considered that zoning properties entirely E2 would be too restrictive and trigger the need for acquisition. The Department raised this issue with Council during the preparation of Penrith LEP 2010 when spilt zonings, involving E2 zones, were proposed over properties in the LGA.</p> <p>In response to concerns raised about the financial implications of the proposed E2 zones, the Department has indicated that biodiversity stewardship agreements may provide an opportunity for landholders to make a financial return from their biodiversity. However, the ability to do this is not clear given these agreements are generally not encouraged on properties less than 20ha by the Biodiversity Conservation Trust.</p>
19	Proposed E2 zones in Council nominated urban investigation areas	Currently, there are two Planning Proposals to permit urban development, known as Glenmore Park Stage 3 (http://leptracking.planning.nsw.gov.au/proposal/details.php?rid=6744) and Orchard Hills North (http://leptracking.planning.nsw.gov.au/proposal/details.php?rid=5624), under consideration. These Planning Proposals identify E2 zones based on site-specific biodiversity assessments, including ground-truthing. While there are similarities between the E2 zones proposed in the Planning Proposals and those proposed under the SEPP, they do not align. It is therefore recommended that

	Issue	Comments/Recommendations
		the SEPP's E2 zones be amended to be consistent with the E2 zones in the Planning Proposals, given the site-specific biodiversity assessments undertaken.
20	Buffer Zones	It is important that buffers are established between conservation lands and development to prevent degradation impacts on adjoining conservation land. Therefore, the inclusion of a clause in the SEPP for land that adjoins secured conservation land is supported. The incorporation of buffer requirements within proposed Development Control Plans (DCPs) is also recommended (see Council's separate submission on the DCP Template dated 4 November 2020).