

9 October 2020

Contact: *Stuart Little*  
Telephone: [REDACTED]  
Our ref: *D2020/109414*

Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Sir/Madam

**RE: Cumberland Plain Conservation Plan**

I refer to the recent exhibition of Cumberland Plain Conservation Plan (the Plan) which forms one of the key initiatives for Sydney's Western Parkland City. We understand that the Plan will contribute to the protection of biodiversity while supporting the delivery of housing, jobs and infrastructure and general urban growth in Western Sydney. The Plan will also serve as the first strategic biodiversity certification to be undertaken under the *NSW Biodiversity Conservation Act 2016*.

WaterNSW has an interest in the Plan as the Draft Cumberland Plain Conservation Area (Study Area), as depicted on Figure 3, includes land owned and operated by WaterNSW. This includes the Warragamba Pipelines Corridor and Upper Canal Corridor which transfer water to Prospect Water Filtration Plant and Prospect Reservoir from Warragamba Dam and Pheasants Nest Weir, respectively. It also includes a minor portion of the Upper Nepean State Conservation Area which forms part of the Metropolitan Special Area and the Sydney Drinking Water Catchment in vicinity of the Wilton Growth Area. The Study Area also borders Prospect Reservoir and Special Area in the east and the Sydney Drinking Water Catchment in the west.

While our main interest is in the Plan and the proposed supporting legislative framework, critically, the Draft Cumberland Plain Conservation Plan Viewer suggests that part of the Upper Canal is proposed to be rezoned to E2 Environmental Conservation. It is critical for us that the current SP2 zoning be retained along the length of the Upper Canal and Warragamba Pipelines.

There also appear to be minor anomalies with the mapping of the Upper Canal and Warragamba Pipeline Corridors. It is very important that this mapping is accurate prior to finalising relevant maps including the Strategic Conservation Area mapping. We seek to meet with the Department to discuss these and other matters raised in this submission prior to the Plan and associated legal instruments being finalised.

Our detailed comments on the Plan are provided in Attachment 1. Comments on the proposed Strategic Conservation Planning State Environmental Planning Policy (SEPP) and related statutes are provided in Attachment 2.

If you have any questions regarding the issues raised in this letter, please contact Stuart Little at [REDACTED]

Yours sincerely  
[REDACTED]

**CLAY PRESHAW**  
**Manager Catchment Protection**

## **ATTACHMENT 1 – Draft Cumberland Plain Conservation Plan**

### **Background**

The Plan has been developed to meet requirements for strategic biodiversity certification under the *Biodiversity Conservation Act 2016* (NSW) (BC Act) and strategic assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). It is intended to facilitate biodiversity approvals for urban development in nominated areas and a select number of major infrastructure corridors as included in the Plan (page 8). It includes 28 commitments and 141 actions to help ensure the delivery of residential, commercial and industrial areas, and transport infrastructure, while also avoiding, minimising and offsetting potential biodiversity impacts.

### **Plan area boundaries**

The Plan Area covers approximately 200,000 hectares from north of Windsor to south of Picton, and from the Hawkesbury—Nepean River in the west to the Georges River near Liverpool in the east. The area includes parts of eight local government areas—Wollondilly, Camden, Campbelltown, Liverpool, Fairfield, Penrith, Blacktown and Hawkesbury.

It is unclear from Figure 9 whether the Nominated Area Boundary extends beyond the Plan Area boundary or that they share a common border. The insert Plan Area Map suggests that the Plan Area Boundary does not align with the Nominated Area Boundary. WaterNSW believes that the Study Area boundary and Nominated Area boundary should align if the Plan is to operate across the entire Wilton Growth Area.

The Study Area boundary (Figures 3 and 9), in the vicinity of the Wilton Growth Area, includes land within the Upper Nepean Conservation Area. This land also forms part of the Metropolitan Special Area and the Sydney Drinking Water Catchment. There seems little reason to include this land within the Study Area boundary as it is National Park Estate and effectively operates as 'excluded land'. We ask that consideration be given to modifying the Area of the Plan so that it coincides with the southern boundary of the South-East Precinct of the Wilton Growth Area. This will help ensure that the Upper Nepean Conservation Area is not counted as an opportunity to offset the impacts of development at Wilton, or diminish the need for potential biodiversity offsets required on private land elsewhere.

### **Growth Areas**

The Plan proposes to facilitate biodiversity approvals in 'nominated' urban areas: the Greater Macarthur Growth Area, Greater Penrith to Eastern Creek Investigation Area, Western Sydney Aerotropolis and the Wilton Growth Area. However, the Plan excludes parts of Western Sydney Aerotropolis that overlap with the South West Growth Area, the Western Sydney International Airport and the eastern part of Mamre Road Precinct. The Upper Canal Corridor traverses the Wilton and Greater Macarthur Growth Areas. The Plan identifies the Upper Canal Corridor as 'excluded' land (see Figures 9 and 10). This means that the land is 'excluded from NSW strategic biodiversity certification and strategic assessment under the EPBC Act' and that excluded areas 'will not receive any biodiversity approvals under the Plan'. We are generally supportive of this approach.

In contrast to the above, the Draft Cumberland Plain Conservation Plan Viewer depicts the Upper Canal as 'Excluded land' as well as being blank in other locations. The Warragamba Pipeline Corridor is blank in places and identified as 'Excluded land' in other locations. We generally agree with the classification of 'Excluded land' for the Corridors.

### **Proposed Transport Corridors**

We understand that the Plan will facilitate the implementation of some of the key major infrastructure corridors as identified in Future Transport Strategy 2056, including the potential future extension of Sydney Metro Greater West (south from Western Sydney), Western Sydney Freight Line, Outer Sydney Orbital, between Box Hill and the Hume Motorway near Menangle and the M7/Ropes Crossing Link Road. These proposals have implications for the Warragamba

Pipelines and Upper Canal Corridors. We seek clarification on how the Plan and intended biodiversity approvals will operate with respect to these transport corridors and the areas where biodiversity offsets may be obtained. We also seek clarification how 'excluded' land will be considered in these circumstances. To this end, we would ask that consideration be given to ensuring that the Warragamba Pipelines and the full length of the Upper Canal Corridor as considered as 'excluded land' for the purposes of the Plan.

### **Strategic Conservation Areas**

The Plan includes a 'Strategic Conservation Area' map (Figure 12). The map presents areas of important biodiversity value to the Cumberland subregion, being either large remnants of native vegetation, having important connectivity across the landscape, or having ecological restoration potential. The Plan indicates that the map will be used to identify suitable conservation lands to offset biodiversity impacts, protected as a future reserve or biodiversity stewardship site, or enhanced through ecological restoration (page 37) project.

The mapping shown on Figure 12 is very vague and broad scale for planning purposes. As new statutes are proposed to give consideration to the 'Strategic Conservation Areas' (discussed later), it is important that these areas are more clearly identified on higher resolution scale maps. We note that more highly defined maps are provided in the [Draft Cumberland Plain Conservation Plan Viewer](#) for public exhibition. This shows that the Strategic Conservation Areas have been designed to lie outside the Upper Canal and Warragamba Pipelines Corridors. We strongly support this intent. However, the western end of the Warragamba Pipelines is missing from the map and the Pipelines are not clearly designated. We also need to ensure that the Upper Canal in the vicinity of the Wilton Growth Area and Pheasants Nest Weir is more clearly identified so we can be assured that this land is also excluded from 'Strategic Conservation Area' mapping.

We need to clarify that Draft SEPP and related statutes giving effect to the Strategic Conservation Area mapping will be based on the refined mapping of the viewer rather than the maps presented in the Draft Plan. WaterNSW does not agree to its land being included in the Strategic Conservation Area mapping or as any potential offsetting arrangement. This is due to the need to manage the Upper Canal Corridor and Warragamba Pipelines for water supply purposes. We also seek clarification as to whether 'excluded' land, for the purposes of biodiversity approvals under the Plan, can still be considered for 'offsetting' arrangements under the Plan?

Before finalising the Plan and related Planning instruments, we ask that the Department liaise with us to ensure the mapping of the Upper Canal and Warragamba Pipeline Corridors is accurate and excluded from the Strategic Conservation Areas. We can also elaborate on the management of the Upper Canal and Warragamba Pipelines Corridors.

### **Proposed Environmental Conservation E2 land**

The Plan does not include a map of the proposed E2 zoning areas. This is a significant matter as it changes the planning controls on affected land. From the Draft Cumberland Plain Conservation Viewer, we note that land within the South-East Precinct of the Wilton Growth Area is proposed to be zoned E2. This land adjoins the Upper Nepean State Conservation Area and the Metropolitan Special Area. This zoning may have implications for fire management and how fire risk is managed at both the bushland-urban interface and between the Upper Nepean State Conservation Area and the adjoining landholdings. We would appreciate information on how this E2 zoning and any conservation agreement on this private land might affect fire management at the boundary of the Special Area.

It also appears from the Draft Cumberland Plain Conservation Viewer that parts of the Upper Canal are proposed to be zoned E2. We object to this change zoning. For WaterNSW to be able to undertake its water supply responsibilities on these lands, it is essential for us that the Upper Canal and Warragamba Pipelines retain their current SP2 zoning across their length.

## **New Reserves**

The Plan identifies three proposed new reserves. One of these, the Gulguer Reserve Investigation Area (page 43), lies near Warragamba and includes establishment of NPWS reserve connecting Gulguer Nature Reserve and Bents Basin State Conservation Area with Burragorang State Conservation Area. Burragorang State Conservation Area lies within the Sydney Drinking Water catchment and forms part of the Warragamba Special Area. The proposed reserve extension also lies in close proximity to Lake Burragorang near Warragamba Dam. The location of the new reserve may have implications for wildfire, pests and weeds as well as for protecting biodiversity. It may also have implications for management of the nearby Special Area lands. While actions to establish a new reserve in this area will commence in the first five years of the Plan, the Plan indicates that the establishment of the Reserve may take up to 15 years. WaterNSW would like to be closely consulted on the progress of the Gulguer Reserve Investigation Area and the proposed reserve creation.

## **Guidelines for Essential Infrastructure Development**

Appendix A of the Plan provides *Guidelines for essential infrastructure development* to ensure that such development continues to avoid, minimise, mitigate and offset impacts on matters of national environmental significance and other relevant EPBC Act matters, as required, consistent with the conservation outcomes of the Plan. The Guidelines apply to essential infrastructure development that may be needed outside the 'certified land'. Essential infrastructure includes water supply systems, sewerage systems and stormwater management systems amongst others. However, the development must be proposed by a public authority. It must also be essential infrastructure to service and support urban and industrial development within the nominated areas and be wholly or mostly within the nominated areas. Such developments must also not be State significant development or State significant infrastructure. Several points are relevant here:

- WaterNSW assumes that upgrades to the Upper Canal or Warragamba Pipelines are unlikely to meet this definition and thereby fall outside the requirements of these Guidelines.
- The Criteria for essential infrastructure development appears to be tied to urban and industrial development (page 84). Environmental and flood mitigation works may also be required in the to service the nominated areas. Consideration should be given to adding these items to the list on Page 83, and the 'urban and industrial development constraint' (dot point 2, page 84) expanded to embrace these types of works.
- It is unclear how the vegetation target commitments for specific ecological communities (Commitments 2, 2.1. 2.3, page 85) will be able to be met given that Guidelines are being designed to address individual, 'ad hoc' works undertaken by a potential host of different agencies, with the scale and extent of works varying significantly yet being below State Significant Development and State Significant Infrastructure thresholds. Also, just because one agency avoids one threatened ecological community or area, doesn't mean the same area will be avoided by another agency. The approach may give rise to incremental but cumulative biodiversity losses over time. Consideration needs to be given as to how these targets will be achieved on the ground and in practice.
- The Guidelines also require government agencies to notify the Department when an essential infrastructure project, relevant to the guidelines, is proposed, demonstrating how compliance with the Guidelines has been achieved. What will be the mechanism for this and at what stage in the planning process will this occur?
- The Commitments (page 85-86) focus on avoiding and mitigating the impacts as far as practicable. We note that offsets are not proposed.
- The third 'tick' on page 87 states that all essential infrastructure projects must 'fulfil biodiversity offset requirements under the Biodiversity Conservation Act 2016 or any subsequent legislative scheme in place at the time'. Our understanding is that public

agencies still have the option of opting into the NSW biodiversity offsets scheme or not for Part 5 Environmental Planning and Assessment Act (EP&A Act) activities. It is unclear whether the Guideline is imposing a responsibility on agencies beyond the flexibility allowed by existing legislation.

## Plan Commitments

Appendix C of the Plan provides 28 Plan Commitments. We make the following comments:

- Commitment 1.1 obliges essential infrastructure to comply with the Plan's Essential Infrastructure Guidelines. The above comments apply in relation to this Commitment.
- Commitment 2.1 – 2.4 in Appendix C include the same vegetation targets for avoidance as stated for Commitments 2, 2.1 and 2.3 in the Guidelines for essential infrastructure development except that the Conservation program (Appendix C) includes additional targets for BC Act listed threatened ecological communities (Commitment 2.2). The comments made above for ensuring how these targets are consistently met apply.
- Commitment 3 states that the Outer Sydney Orbital waterways crossings minimises structures within riparian areas, waterways realignments, and bulk earthworks on adjacent floodplain areas. WaterNSW is supportive of this principle and believes that this should extend to other key major infrastructure corridors included under the Plan.

## Other

- Figure 3 would benefit by clearly naming the respective proposed transport corridors on the Map.
- The Plan would benefit by greater explanation regarding how it relates to the DECCW (2010) Cumberland Plain Recovery Plan and the biocertification and offsets associated with the biocertification of the North-west and South-west Growth Areas.
- The 5,545 ha of land will be proposed as offsets while the body of the Plan suggests that 5,475 ha of native vegetation will be secured to offset new development.
- The Plan often relies on land clearing and private/ public land ownership statistics drawn from DECCW (2010) Cumberland Plain Recovery Plan and positioned as relevant to the Cumberland subregion. The Cumberland subregion incorporates a much wider area than the 'Plan Area' of the Draft Cumberland Conservation Plan.
- The Plan would benefit by including various tables showing the area (ha) and proportion of land in public and private ownership as well as the area of vegetation as based on the actual Plan Area (Figure 3, Page 9). It would also benefit by supporting tables including the total (ha) area of each of the four Growth Areas, and the area (ha) and proportion of native vegetation in each of the Growth Areas, and the area (ha) and proportion proposed to be allocated as 'certified – urban capable land') for development.
- There would appear to be opportunities to integrate water sensitive urban design (WSUD) outcomes with biodiversity outcomes, particularly in terms of ways to minimise and mitigate biodiversity impacts. This includes creation of artificial wetlands, water retention ponds etc. Greater consideration could be given to integrating biodiversity and WSUD outcomes within the principles of 'minimise' and 'mitigate'.
- The Plan could give greater consideration to bushfire safety and the need for and, potential biodiversity impacts arising from, the creation of Asset Protection Zones. Guidance should be offered as to whether Asset Protection Zones can be treated as an impact to biodiversity and the degree they can serve or be designed to service some biodiversity outcomes while not compromising their prime function of delivering fire safety. The Plan may benefit by recognising that any Asset Protection Zone required to safeguard new development needs to be kept on the site of the development and accounted for in any biodiversity impact assessment. This is currently identified in the Statement of Intended Effect for the Proposed Strategic Conservation Planning SEPP

(Page 4) but would be potentially more effective if restated in the Plan. It may be also useful to include this as a Commitment in the Plan.

- The Plan does not address aquatic biodiversity. While this is not its prime purpose, it would be useful if the Plan made some reference wetlands and riparian areas also helping to protect aquatic species, habitats and ecosystems.
- The term 'biodiversity approvals' is often mentioned throughout the Plan. It would be helpful if the term 'biodiversity approvals' was defined in the Glossary.
- The photo of 'Sydney water pipelines at Mamre Road' on Page 26 are actually the Warragamba Pipelines that area owned and managed by WaterNSW, not Sydney Water.
- Appendix A – the numbering of Commitments 2, 2.1. 2.3, page 85, seems askew. The numbering need to read 2.1, 2.2 and 2.3.

## **ATTACHMENT 2: Proposed Strategic Conservation Planning SEPP: Explanation of Intended Effect**

### **Part 1 Background and Context**

#### ***1.4.1 Supporting Avoidance in the Nominated Areas***

The Statement of Intended Effect provides an overview of the planning-related instruments and mechanisms designed to assist the delivery and implementation of the Draft Cumberland Plain Conservation Plan. To support protection of biodiversity and general avoidance of 'avoided land' as identified in the Plan, it is proposed that several planning controls will be adopted:

- requirements to ensure that certified—urban capable land in precinct plans covered by biodiversity approvals are consistent with the areas of biodiversity certified land
- the application of environmental conservation (E2) zoning to protect avoided land, including land with high-value biodiversity, riparian corridors and steep slopes
- requirements to ensure that asset protection zones are located wholly within urban capable land
- a Ministerial Direction under section 9.1 of the EP&A Act to protect avoided land.

WaterNSW generally supports the above. It is unclear how 'requirements to ensure that asset protection zones are located wholly within urban capable land' will be given effect. As a minimum, this should be mentioned in the Final Cumberland Plain Conservation Plan.

For Part 5 activities undertaken by government agencies, consideration may need to be given to integrating reference to the 'Guidelines for Essential Infrastructure Development' (Appendix A of the Plan) into the SEPP (Infrastructure) 2007.

#### ***1.5.1 Consistency Clause***

The Plan proposes a requirement to ensure consistency between the urban capable land in precinct plans and the areas of certified—urban capable land identified by the Plan to contain urban development to the biodiversity certified areas and protect avoided land for its important environmental value. It may be useful if the relevant Ministerial Direction reflected the requirement for Precinct Plans to be consistent the areas of land identified as 'certified-urban capable' as identified by the Plan.

#### ***1.5.2 Environmental Conservation (E2) Zoning for Avoided Land***

Environmental conservation (E2) zones are discussed below in relation to the proposed SEPP.

#### ***1.5.3 Planning Controls for the Strategic Conservation Area***

The proposed planning controls will include matters relating to biodiversity values for the consent or determining authority to consider when assessing any development applications in the strategic conservation area. These controls mainly pertain to the SEPP (discussed below).

It would also be useful for the proposed Ministerial Direction to make provision for consideration of the Strategic Conservation Areas. The proposed heads of consideration to be applied by consent or determining authorities, could equally be adopted in the Direction for consideration by the Relevant Planning Authority at Planning Proposal stage.

#### ***1.5.4 Section 9.1 Ministerial Direction for land identified in the Plan***

The section 9.1 Ministerial Direction propose will apply when a relevant planning authority prepares a planning proposal for avoided land within the 'nominated areas' (i.e, the Growth) Areas or prepares a planning proposal that would result in an intensification of land use in the Strategic Conservation Area.

If the planning proposal is for 'avoided land', it is proposed that the Ministerial Direction will require that the objectives of the E2 zone are met, or consider impacts on strategic biodiversity values if the planning proposal is for the 'Strategic Conservation Area'. As raised above, heads

of consideration could also be introduced for the Strategic Conservation Areas to help reduce and mitigate any impacts associated with the intensification of land uses.

The above does not address the situation where new E2 zoning is being proposed over 'avoided land' or 'Strategic Conservation Areas'. The Direction may benefit by including the zoning objectives to be applied to the E2 land where E2 zoning is proposed for biodiversity conservation purposes. It may also benefit by including any particular considerations that need to be applied in the E2 rezoning process such as whether the draft LEP is proposing to change the Minimum Lot Size (MLS) and allow dwellings in the E2 zone (i.e., making dwellings permissible with consent). It would be very useful for the Direction or supporting material to limit or restrict dwelling entitlements in the E2 zone and generally not support decreasing the MLS in proposed E2 zones.

#### **1.5.5 Acquisition clauses to secure suitable conservation lands**

To deliver the Plan, the NSW Government proposes to acquire some areas of private land in Western Sydney to create new public reserves or national parks. Such land will generally be acquired from private landowners over time, subject to available funding and consultation with community and key stakeholders. Acquisition clauses are proposed to be included in the proposed SEPP. WaterNSW generally supports this approach provided due consultation with agencies and stakeholders occurs when compulsory acquisition is proposed.

#### **1.5.6 Guidelines for infrastructure development in the nominated areas**

We note that the Department is proposing to introduce guidelines to manage the impacts of infrastructure development on matters protected under the BC Act and EPBC Act. We assume that these are the Guidelines that are provided in Appendix A of the Plan. Our previous comments on *Guidelines for essential infrastructure development* (Appendix A of the Plan) apply.

### **Part 2 – Proposed State Environmental Planning Policy**

The proposed Strategic Conservation Planning SEPP is being developed as the key statutory mechanism to implement strategic conservation planning and provide certainty for the Cumberland Plain Conservation Plan's commitments.

#### **2.1 Objectives of the proposed SEPP**

WaterNSW notes that the objectives of the SEPP relate to biodiversity conservation. WaterNSW's only concern with the objectives is that dot points 4 and 6 refer to the Cumberland subregion. The objective should relate to the Plan Area as the Cumberland subregion appears to be based on a much wider area (see previous comments). Alternatively, the Cumberland subregion' needs to be more tightly defined in the Plan and tied to the Plan Area. Currently the objective to 'support the acquisition of priority areas of high-value biodiversity in the Cumberland subregion as conservation lands in perpetuity' would seemingly facilitate acquisition of lands beyond the Plan Area.

#### **2.2 Planning controls**

The proposed SEPP will include:

- a clause that requires consistency between the certified—urban capable land in precinct plans and the areas of biodiversity certified land covered by the biodiversity approvals, to protect avoided land identified in the Plan
- environmental conservation (E2) zoning to protect avoided land
- planning controls designed to minimise impacts to the strategic conservation area, which is identified by the Plan as having strategic biodiversity value, important connectivity or ecological restoration potential

- acquisition clauses that allow the relevant acquisition authority to secure lands suitable for public reserves, such as national parks and local council reserves, subject to funding availability

WaterNSW is generally supportive of these provisions. However, it is unclear whether the SEPP will simply establish a process for invoking E2 zoning over land or actually invoke E2 zoning over particular parcels of land. If the latter is proposed, then WaterNSW would like to be consulted on what parcels of land are actually proposed for E2 zoning. If the former approach proposed, then there needs to be greater synergies with the proposed Ministerial Direction which might also be used for this purpose.

It needs to be clarified whether the SEPP is designating the ‘Strategic Conservation Area’ or simply deferring this to the broad maps of the Plan which are currently for broad to be meaningful for planning purposes. It also needs to be clarified whether the planning controls proposed for the ‘Strategic Conservation Area’ are really heads of consideration for consent authorities or whether it is intended to extend to determining authorities as well?

### ***2.2.1 Consistency clause to contain urban development to the certified—urban capable land***

The proposed clause will apply to precinct plans prepared in any of the nominated areas. It will require precinct plans to be consistent with the biodiversity approvals under the Plan, and specifically to identify the certified—urban capable land as the biodiversity certified land mapped by the Plan. We are supportive of this approach. We also note that the proposed SEPP will require that Asset Protection Zones be located wholly within the certified—urban capable land, and not in avoided land identified by the Plan. WaterNSW is strongly supportive of this provision as it will help protect the ecological integrity of those Special Areas lying adjacent to Growth Areas.

### ***2.2.2 Environmental conservation (E2) zoning for avoided land***

We note that the E2 zone will be applied to lands in the nominated areas that have been identified by the Plan as being non-certified—avoided for biodiversity purposes, and also to lands identified as non-certified—avoided for other purposes (for example, riparian corridors along creek lines and steep land). These lands are mapped in the *Draft Cumberland Plain Conservation Plan Viewer* for public exhibition. As raised earlier, WaterNSW has concerns that part of the Upper Canal is proposed to be rezoned to E2. It is critical that the SP2 zoning be retained.

### ***2.2.3 Planning controls for the strategic conservation area***

As raised earlier we believe that the Upper canal and Warragamba Pipeline Corridors are not identified as ‘Strategic Conservation Areas’ (as based on the viewer). WaterNSW has no issues with the proposed provisions for Strategic Conservation Areas.

### ***2.2.4 Acquisition clauses to secure suitable conservation lands***

WaterNSW has no issues with the proposed provisions and process for acquisition.