

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

Submitted via [NSW Planning Portal](#)

Re: Liverpool City Council response to Draft Cumberland Plain Conservation Plan

Dear Mr Hartley,

I write in response to the public exhibition of the Draft Cumberland Plain Conservation Plan (**Plan**). The vision of the Plan is to 'support Western Sydney's biodiversity and growth', and it applies to parts of the Liverpool Local Government Area, as well as other LGAs across Western Sydney.

It is understood that the Plan establishes Strategic Conservation Planning across Western Sydney. This will protect areas of significant biodiversity where new development is proposed and invest in biodiversity across Western Sydney to offset this development. The Plan also includes a range of commitments regarding conservation programs, management of landscape threats, and education programs.

The public exhibition comprised of the release of various documents, including the draft Plan and an Explanation of Intended Effects for a proposed State Environmental Planning Policy. Council staff have reviewed these documents and provide the attached comments regarding the following issues:

- Relationship of the Plan with the Liverpool LGA
- Rezoning with Dwyer Road Precinct
- Strategic Conservation Areas
- Offsets
- Risk of Strategic Conservation Planning
- Essential Infrastructure Guidelines
- Commitments and Actions

If you require further clarification on Council's comments, please contact Nancy-Leigh Norris, Acting Senior Strategic Planner on [REDACTED]

Yours sincerely,

[REDACTED]
David Smith
A/Director City Economy & Growth

Enclosed: Submission



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Overview of relationship with the Liverpool Local Government Area (LGA)

The Cumberland Plain Conservation Plan (**Plan**) will result in biodiversity certification for part of the Liverpool LGA within the Western Sydney Aerotropolis under the *Environment Protection and Biodiversity Conservation Act 1999* and *Biodiversity Conservation Act 2016*.

Certification under the Plan is only applicable to the Agribusiness Precinct and part of the Dwyer Road Precinct, as the Plan does not apply where the Growth Centres Biodiversity Certification Order currently applies. Within these precincts, the Plan identifies land as either:

- **Certified – urban capable**
This land is biodiversity certified for development and will not need further biodiversity approvals at the development assessment stage;
- **Non-certified – avoided for biodiversity**
Contains land with high biodiversity value, such as significant connected flora/fauna habitat of target species;
- **Non-certified**
Avoided for other purposes: contains land with development constraints such as steep slopes or riparian corridors;
- **Excluded**
Land which has been excluded from the Plan due to a variety of reasons, e.g. it is already environmentally protected, Commonwealth owned land, or contains existing roads and easements.

Land identified as ‘non-certified’ within the agribusiness and Dwyer Road precincts will not become biodiversity certified under this plan. This land is also identified as having an “Environment & Recreation” zone under the Western Sydney Aerotropolis Plan.

It is noted that whilst this land is within the Western Sydney Aerotropolis, the category of “*Non-certified – Western Sydney Aerotropolis*” does not apply within the Agribusiness or Dwyer Road precincts. This category only applies to land within the Aerotropolis north of Elizabeth Drive which is within the Penrith LGA.

Outside of the Aerotropolis, certain areas across the LGA are identified as ‘Strategic Conservation Areas’ (SCA). The SCAs encompasses land with important biodiversity value, such as areas with large remnants of native vegetation, land contributing to biodiversity connectivity and/or land with ecological restoration potential. The SCAs will be used to offset biodiversity impacts over the life of the Plan (via acquisition for establishment of new reserves, biodiversity stewardship sites or ecological restoration).

SCAs within the Liverpool LGA are primarily located within Greendale and Wallacia, with some SCAs also identified in the Eastern part of the LGA. The Plan does not rezone or change permissible uses on these lands, however these areas will require development consent for clearing of native vegetation, as well as additional considerations at a development application stage to ensure the protection of these lands, and consideration when applying to intensify use of the site (e.g. under a planning proposal).

Rezoning within Dwyer Road Precinct

As noted above, land subject to the Environment and Recreation zone under *SEPP Western Sydney Aerotropolis 2020* (within the Agribusiness and Dwyer Road precincts) will not be biodiversity certified under the Plan. As the Agribusiness precinct was rezoned on 1 October 2020, the Environment and Recreation zoning within this precinct is currently in place. However, Dwyer Road is not an initial precinct, therefore its proposed

zoning (to Enterprise and Environment & Recreation) will not come into effect until it is released in the future.

Clarification is requested if the Environment & Recreation zone within the Dwyer Road Precinct will come into effect through *SEPP (Western Sydney Aerotropolis) 2020* once the Plan is made, or if an E2 Environmental Conservation zone will be applied under the Plan proposed SEPP.

Strategic Conservation Areas

Overview of SCAs within the Liverpool LGA

Within the Liverpool LGA, SCAs are primarily located within Greendale and Wallacia, as over half of the area west of the Outer Sydney Orbital is identified as SCAs. There are also pockets of SCAs in the eastern part of the LGA, including:

Sirius Road, Voyager Point

- Council land zoned RE1 Public Recreation & E2 Environmental Conservation
- Private land zoned E3 Environmental Management

Newbridge Road, Moorebank

- Council land zoned E2 Environmental Conservation (Wurrungwuri Reserve)
- Private land zoned E2 Environmental Conservation, (Lot 6 Newbridge Road, currently subject to RZ-2/2020)

Newbridge Road, Chipping Norton

- Council land zoned RE1 Public Recreation (Riverside Park)

Hammondville

- Council land zoned RE1 Public Recreation (Lt Cantello Reserve)
- Privately owned land zoned RE2 Private Recreation (New Brighton Golf Course)

Using SCAs for improved connectivity

The network of SCAs is disjunct in some areas, and it is recommended that connectivity is considered in a more comprehensive manner throughout the Plan area. Large clusters of existing native vegetation in the suburbs of Moorebank and Chipping Norton are identified as SCAs, yet the areas north and south of these lands are also currently zoned for recreation purposes.

Additionally, Holsworthy Army Barracks also contains significant areas of existing native vegetation. Rehabilitation of vegetation along the Georges River could provide for a continuous corridor.

There is ample opportunity in other areas of the Liverpool LGA for the identification of areas of ecological restoration potential, such as within riparian zones, and/or areas identified under the green grid (stemming from the Greener Places Draft Policy and the Government Architects vision for an interconnected area of green open space). It is necessary to identify these areas within the LGA, so the biodiversity lost is offset in the local area for the benefit of residents.

The mapping of important Koala habitat includes an isolated patch within Voyager Point, presumably due to the boundary of the Plan area dissecting this locality. It is recommended that the Plan area boundary in this locality is revised to ensure cohesive management.

Development controls for SCAs

The plans proposed SEPP will contain matters for Council to consider when assessing Development Applications (DA) in lands identified as SCAs. This includes matters that a

consent authority must consider before granting a subdivision approval. Whilst the proposed SEPP should not rule out development of land or undermine existing use rights, permitting subdivision in areas which are SCAs is not ideal, as this will fragment land. This will reduce the ability for land to be acquired for a reserve or for contiguous stewardship sites.

These proposed matters of consideration contain some relatively unspecific terms such as 'minimised'. It is recommended that stronger mechanisms and definitions are considered (such as identified no-clear areas) to ensure that consent authorities have strong justification when determining developments within SCAs.

SCAs have been mapped taking land constraints into consideration. In this regard, where significant species worthy of retention are in conflict with fragmented land ownership or infrastructure, these areas are not included as worthy of retention. The Plan should include all land identified as ecologically significant and provide controls for Council to consider the retention of these areas on a merit-based case-by-case scenario.

Moratorium on Development

SCAs can be used as offset impacts of developments within the Aerotropolis. If these offsets are not keeping pace with developments, the rezoning of remaining precincts will be postponed, and a moratorium on development assessments being determined (within the nominated growth areas – i.e. the Western Sydney Aerotropolis) may be imposed.

Whilst it is appreciated there would be a need to slow down development if sufficient off-sets are not being provided, this must be managed to avoid a situation where Councils are held accountable for circumstances outside of their control. In the unlikely event that this were to happen, there would need to be mechanisms to ensure that:

- Councils are notified of Department of Planning Industry and Environment (DPIE) moving to place a moratorium on development as soon as reasonably practical;
- Any DAs or planning proposals impacted by such moratorium are effectively paused (e.g. Councils do not need to apply for gateway extensions, and the clock for undetermined DAs is stopped);
- DPIE prepares a letter for Councils to be sent to DA applicants or planning proposal proponents outlining the situation, and who to contact for additional information and updates;
- It is clear to developers and members of the public that it is out of Council's control to approve or otherwise continue with a DA or planning proposal assessment; and
- DPIE provides a communication strategy, including a hotline/web service to Council(s) and the public to provide updates regarding the status of a moratorium.

Risk of Strategic Conservation Planning

Retention of existing native vegetation in certified areas

Council agrees that the basis of the Plan is to provide for a strategic and co-ordinated approach to retain native vegetation and habitat in areas which are most suited to retaining whole ecosystems.

This allows for more effective biodiversity outcomes, when compared to alternative solutions such as site-by-site assessment and protecting isolated strands of vegetation. Whilst this approach is supported, the framework provides developers the greenlight to effectively sterilise certified lands of all existing native vegetation. This is considered unintended, but otherwise guaranteed development outcome of the Plan, as seen in areas subject to the Growth Centres Biodiversity Certification Order.

The Plan does not provide any incentives to developers to retain existing native vegetation on development sites. If developers are given greenlight to clear vegetation from a biodiversity perspective, and pay developer contributions to off-set this vegetation, it is difficult to encourage the retention of existing native vegetation where it provides for aesthetic, amenity or micro-climate benefits.

Retention of mature vegetation can add to the character of a new place, provide shade for pedestrians and cyclists when incorporated into the street design (in streets which would otherwise only have immature trees), and retention of canopied trees which would assist Western Sydney to achieve an urban canopy target as well as reduce the urban heat island effect. These place specific benefits that trees provide become secondary to the argument that the loss of this vegetation has already been provided by retaining trees in another area (often far from where clearing takes place).

Securing genetic diversity

As mentioned above, the Plan advocates for the retention of significant strands of vegetation which are best able to provide for whole ecosystems. Whilst supported, this approach has the potential to favour genetically similar specimens (which are more likely to be clustered) whilst losing the genetic diversity of those smaller isolated clusters of vegetation which are cleared.

Therefore, whilst the target tree species and vegetation categories may be retained and enhanced, the genetic diversity of the area could be considerably depleted. This would greatly exaggerate the risks of pest and diseases due to limited genetic diversity.

It is recommended that consideration to be given to maintaining small clusters or single specimens of existing native vegetation in certified areas. Alternatively, the Plan could put controls in place to ensure that the genetic material of cleared vegetation is retained. This could be achieved by requiring the collection of seeds from any existing native vegetation proposed to be cleared and depositing them into a seed bank, or state-owned nursery to be used for growing off-set vegetation.

Appendix A: Guidelines for essential infrastructure development

Council delivery of infrastructure

It is expected that these Guidelines could apply to drainage stormwater infrastructure and road and bridge construction which will require connection through non-certified lands to creeks and riparian corridors. It is likely that it will be necessary for Councils to clear some vegetation to facilitate these construction works which will impact on native vegetation.

Councils are often not the instigators of precinct planning and land release, however, are left with a financial burden of delivering essential infrastructure to facilitate new developments. The proposed land-use plans often dictate where infrastructure is to be located, restricting possible changes during design.

To ensure the existing community is not penalised by new developments, and section 7.11 levies are limited to the essential infrastructure list, Councils need to be provided a mechanism in which it can deliver essential infrastructure without the expense of offsetting impacted vegetation. This could be in the form of additional off sets in the Plan to account for impacts to non-certified lands. Alternatively:

- A mechanism could be established which requires the details of these works to be understood at the precinct planning stage, with any off set approved and funded by the state prior to a precinct being rezoned; or
- A streamlined process be provided for Councils to seek approval to clear and off-set vegetation removal which cannot be avoided when Councils are delivering infrastructure in accordance with a precinct plan. Councils are to be compensated for any off sets as per the funds collected for the implementation of the plan.

A failure to provide Council with funds and statutory mechanisms to deliver critical infrastructure within release areas has the potential to sterilise development potential. Alternatively, it may result in compromised infrastructure being provided, which may not respond to community needs, or be provided much later than required.

It is acknowledged that infrastructure should be designed so as to retain as much existing native vegetation as possible. In this regard, Council delivered infrastructure, namely drainage infrastructure, often has the ability to be enhanced with native vegetation and naturalisation (particularly for creeks/gullies which may already be environmentally degraded).

The guidelines should continue to advocate for avoiding impacts, and also encourage the development of naturalised drainage infrastructure in riparian corridors where re-vegetation of corridors can be acknowledged as an off set.

Application to excluded lands

Council has observed that native vegetation is not being adequately protected or retained when subjected to large infrastructure projects, which are likely to fall into the excluded lands category. This is particularly notable on large road projects, such as Bringelly Road and The Northern Road where large stands of mature native vegetation were cleared, when minor adjustments to the roads could have avoided the extent of tree removal.

It is also noted that several of these projects are only replanting substantial trees in medians (which are slated as areas for future road widening), rather than in the verges where they would also benefit in controlling the microclimate for active transport. Similar observations are also made for water and electricity infrastructure, where vegetation is often cleared, and sympathetic construction techniques are not being utilised.

It is recommended that the guidelines provide a more detailed assessment criteria as to when it is and is not acceptable to clear existing native vegetation. The guidelines should advocate for the retention of vegetation in avoided lands, as well as excluded lands, and stipulate that sympathetic construction techniques must be utilised to minimise impacts on existing native vegetation. Off-setting should only be considered when changes to the design, siting, or construction techniques are not possible.

Notification to Department of Planning, Industry and Environment

The guidelines contain ambiguous details regarding when DPIE should be notified of essential infrastructure within non-certified land. Page 84 of the Plan indicates notification would be required for essential infrastructure within non-certified land, however page 88 indicates notification would only be required when Matters of National Environmental Significance or other relevant EPBC Act matters would be impacted upon within the non-certified land.

It is recommended that the guidelines include further details regarding the process that will be followed once a notification has been made to the DPIE, and an indication of the expected level of detail required to demonstrate whether the guidelines have been complied with.

Proposed Offset Package

Monitoring the Plan

There is a low degree of certainty regarding what the offset package will comprise of due to the flexibility built into the Plan, and the heavy reliance upon remotely sourced data. This will lead to the bio-certification of areas prior to an understanding of the likely effectiveness of the offset measures.

It is recommended that:

- The proposed monitoring, evaluation and reporting program includes robust measures to ensure that the offsetting outcomes are appropriate, and meet (or exceed) the outcomes that would have been achieved via the standard process for site by site assessments.
- A maximum timeframe is set for the release date of the Plan reporting requirements (including an independent review scheduled every 5 years over the life of the plan) to ensure that there are no undue delays in offset release to the public.

Ecological Restoration

The proposed offset package is reliant upon ecological restoration to cover an offset target shortfall. The Plan notes that ecological restoration includes reconstruction activities (i.e. planting cleared land), including large areas of reconstruction within the reserve investigation areas. Reconstructed stands of vegetation are generally of a limited value compared to extant native communities.

It is recommended that:

- The above limitation is acknowledged when determining the suitability of the offset.
- Appropriate measures are implemented to monitor and rectify any offsetting shortcomings due to limited success of reconstruction and restoration activities.

Sub-plan A: Conservation Program and Implementation

Page 153 of this sub-plan notes that the offset target has been reduced by 10% to fund supporting actions for the successful implementation of the plan. This introduces a risk of an offset deficit given that some of the identified supporting actions may have little tangible benefit. It is suggested that such actions should be considered an additional task, rather than a reason to reduce land based offset targets.

The Plan Commitments and Actions

The extent of land intended to be covered by each commitment and action is not clear for some items. It is recommended that further details are provided regarding which elements are applicable for the entire Plan area, the nominated areas, or Strategic Conservation Areas.

Commitment 7, Action 3: Koala mitigation actions

It is recommended that consideration is given to embedding this requirement into the existing *SEPP (Koala Habitat Protection) 2019*. Splitting mitigation controls across multiple instruments would increase the complexity of addressing koala related issues.

Commitment 8, Action 3 & Commitment 13: Ecological restoration

These items allow for up to 25% of the offset target area for protection to be met by reconstruction works (i.e. planting on cleared land).

It is recommended that:

- Reliance upon reconstruction works is minimised given the inherent risks of limited success.
- Restoration Implementation Strategy noted for Commitment 13 includes appropriate performance indicators, monitoring and rectification measures to respond to works that have suboptimal outcomes.

Commitment 9, Action 1: Protection of offset locations

This action indicates that species credits could be purchased from the Cumberland subregion or across NSW.

It is recommended that priority will be given to credit purchases from the Cumberland subregion.

Commitment 11, Action 2: Investigate reserve on Wianamatta-South Creek

An investigation area is identified for a new reserve on Wianamatta-South Creek. It is recommended that clarification is provided regarding the location of this site, and whether the extent of this proposed investigation area is restricted to the Confluence Reserve Investigation area noted within the plan.

Commitment 12: Habitat Corridors

The Plan notes that the identification of Strategic Conservation Areas have considered connectivity, however as noted in this submission, the network of Strategic Conservation Areas is disjunct in some locations.

It is recommended that connectivity is considered in a more comprehensive manner throughout the Plan and further details are provided regarding which areas are considered to be 'priority habitat corridors.

Commitment 21, Actions 3 & 4: Funding for Council Officers

Recommendation - specify whether the biodiversity education officers, and Aboriginal education officers would be funded for the entire life of the Plan.

Complexity of Biodiversity Planning

Some sections of the Plan, including the title give the impression that it is an overarching strategic document that covers all biodiversity conservation matters on the Plan. However, the focus of the Plan is the bio-certification of the nominated areas and identified infrastructure corridors. This is likely to lead to confusion regarding the intended purpose of the plan, and its applicability to specific scenarios.

There is no comprehensive strategic document to lead biodiversity conservation on the Plan due to the plan's focus on bio-certification related matters, and its approach to additional pertinent issues within various other EPIs and plans.

It is recommended that the scope of the Plan is broadened to include issues that span the entire Plan area.

This could include, but not be limited to, the following:

- Assess and respond to impacts associated with infill and intensification of development on land outside of the nominated areas and other landscape scale assessments.
- Standard DCP controls for the entire Plan area;
- Guidance on the application of environmental zones throughout the Plan area;
- Serious and Irreversible Impacts thresholds, particularly for entities with a relatively large anticipated impact (such as Plan Woodland); and
- Best practice standards for bushland and habitat management, or reference made to existing standards such as those within the Plan.

The Plan including its proposed SEPP will be another layer in an already complex matrix of planning and biodiversity considerations within Western Sydney.

It is recommended that further information is provided to specify the relationship of the Plan with other biodiversity considerations, to ensure clarity on which matters apply. This should include, but not be limited to, the following:

- SEPP (Sydney Region Growth Centres) 2006
- SEPP (State Significant Precincts) 2005
- SEPP (Western Sydney Aerotropolis) 2020
- SEPP (Vegetation in Non-Rural Areas) 2017
- SEPP (Koala Habitat Protection) 2019
- Cumberland Plain Recovery Plan
- Wianamatta-South Creek Delivery Strategy (currently being undertaken by the Department)

Miscellaneous Issues

Mitigation Measures

There appears to be a heavy reliance on DCP controls to specify mitigation measures. However, DCP's are generally treated as guidelines, rather than required outcomes. It is recommended that Council's limited ability to require strict adherence to DCP's is considered, and appropriate mechanisms introduced to ensure that pertinent measures are enforceable.

Mitigation measures for Koalas are generally restricted to nominated areas. It is recommended that measures are also considered for other locations, such as known roadkill locations along Heathcote Road, Holsworthy and Moorebank Avenue, Moorebank.

It is recommended that the mitigation measures included in Appendix E are expanded to include additional pertinent measures including, but not limited to, the following:

- Reference to additional best practice guidelines for threatened ecological communities.
- Measures to minimise direct harm to fauna during development, including tree felling and dam dewatering protocols.

Highlight Document

Figure 3: *Components of the Plan* contains an error, indicating a "Koala EOIE" (Explanation of Intended Effects) forms part of this Plan. This figure should refer to the EOIE for Strategic Conservation Planning, which forms part of this exhibition.

Flooding

Although flooding is dealt separately to biodiversity planning, it is beneficial to note within the Plan that the floodplain and flood storage volume shall be maintained to prevent adverse impact of flooding.