

9 October 2020

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

Dear Sir/Madam

Hawkesbury City Council Submission – Draft Cumberland Plain Conservation Plan

I refer to the abovementioned Draft Cumberland Plain Conservation Plan, which is on exhibition, and open for comment until 9 October 2020.

Following consideration of this matter at Council's Ordinary Meeting on 29 September 2020, Council resolved to provide the following comments for your consideration in finalising the Draft Cumberland Plain Conservation Plan and amendment to legislation.

This response provides Council's understanding of the purpose of the Draft Plan, identifies potential issues arising from the new legislation, and provides suggestions to resolve the identified issues.

Council understands that the purpose of the Draft Cumberland Plain Conservation Plan is to identify how development in Western Sydney will impact on biodiversity, and to identify the mechanisms to avoid impacts on biodiversity or offset the loss of biodiversity.

The Plan's vision is to 'support Western Sydney's biodiversity and growth' by supporting the delivery of infrastructure, housing and jobs for Western Sydney in a planned and strategic way that protects and maintains important biodiversity, including threatened flora and fauna.

It is noted that the Draft Cumberland Plain Conservation Plan facilitates the delivery of the following four areas nominated for urban development and major transport infrastructure.

- Greater Macarthur Growth Area
- Greater Penrith to Eastern Creek Investigation Area
- Western Sydney Aerotropolis
- Wilton Growth Area.

The Plan's conservation program will offset development impacts on biodiversity and help to protect biodiversity over the life of the Plan. The Plan commits to securing at least 5,475 hectares of native vegetation in the Cumberland subregion to conserve biodiversity values. The Plan proposes to introduce legal mechanisms, as required, to support the identification, management and acquisition of sites that have been proposed for future public land conservation (for example public reserves and new or additional national parks) to offset development impacts and help meet the Plan's commitments.

The Plan identifies areas across Western Sydney:

- that have strategic biodiversity value and include threatened ecological communities and species



- with important connectivity across the landscape
- with ecological restoration potential.

These areas are identified as the Strategic Conservation Area in the Plan, some of which are located within the Hawkesbury Local Government Area.

The Draft Cumberland Plain Conservation Plan proposes planning controls for the Strategic Conservation Areas to be introduced within a new State Environmental Planning Proposal and Section 9.1 Ministerial Direction, along with guidelines for development undertaken by public authorities or under Part 5 of the *Environmental Planning and Assessment Act, 1979*.

A discussion of the implications of the Draft Cumberland Plain Conservation Plan is provided below:

Biodiversity Offsets and Cumberland Plain Woodland

Whilst in this particular instance the Draft Cumberland Plain Conservation Plan does not propose the loss of biodiversity within the Hawkesbury Local Government Area, Council would like to take this opportunity to raise concerns and issues associated with biodiversity offset programs such as that proposed. In particular, the concerns and issues which should be addressed include:

- *Clear objectives for protecting biodiversity are lacking*
- *There is no consideration of impacts on water quality, salinity and soil quality*
- *It does not provide absolute protection (red flags or no-go zones) for areas of high conservation value*
- *The like-for-like principle is undermined*
- *Supplementary measures are allowed in lieu of genuine offsets*
- *Mine site rehabilitation can be used as an offset credit*
- *Developers can pay money into a fund rather than find an appropriate offset site*
- *Offset obligations can be 'discounted' under the discretion of the Minister*
- *Offset areas are not guaranteed protection in perpetuity*

Within the Hawkesbury Local Government Area, the Draft Cumberland Plain Conservation Plan impacts those who seek funding to protect and restore bushland on their properties, including Hawkesbury Council as a landowner. The Draft Cumberland Plain Conservation Plan offers developers a voluntary and cheaper offset scheme compared to the offset scheme currently available under the Biodiversity Conservation Act. As a result, Hawkesbury landowners will have a reduced ability to receive funding, and/or a reduced contribution towards conserving and restoring bushland on their property.

The Strategic Conservation Areas identify the land considered most suitable as an offset should the landowner be interested. In this regard, if a landowners property has been identified, however there is no consideration/eligibility for suitable land that has not been identified. The reduced opportunities for Hawkesbury landowners are further reflected in the mapping of the Strategic Conservation Areas as those areas identified in the Hawkesbury are limited in comparison to other local government areas included in the Plan. This results in fewer opportunities to Hawkesbury landowners, despite the significance of remaining vegetation communities in the Hawkesbury Local Government Area.

In addition, it is identified that land prices in the Hawkesbury are higher than a number of other areas within the Plan, and that the Draft Cumberland Plain Conservation Plan explicitly avoids mapping 'small' lots (where land value is higher per hectare) as a way of reducing offset cost. It is understood that this is in keeping with broader government efforts to minimise offset costs/price, where the Biodiversity Conservation Trust who implement the scheme have changed the rules, and now 'caution' landowners with bushland under 20 hectares, and do not allow landowners with less than 15 hectares of bushland from entering the scheme. This is despite the majority of unconserved Cumberland Plain Woodland being on land parcels which are under 20 hectares, particularly in the Hawkesbury area.



Additionally, Council also wishes to raise an objection to a Plan that will facilitate the loss of approximately 10% of the remaining Cumberland Plain Woodland, a Critically Endangered Ecological Community that has already been significantly denuded by urban development over time. It is considered that the loss of such a significant proportion of this ecological community elevates the significance of remaining Cumberland Plain Woodland within the Hawkesbury Local Government Area which should be recognised in the prioritisation of offset sites and in funding for those sites.

Given that most properties within the Hawkesbury Local Government Area are of a smaller size and therefore are not eligible for offsetting as a Strategic Conservation Area, it is requested that the Department of Planning, Industry and Environment more strongly focuses their offset strategy to the Cumberland Plain Woodland community and change the size criteria for offset sites to enable more effective conservation of the remaining Cumberland Plain Woodland.

Not only will the Draft Cumberland Plain Conservation Plan contribute to the loss of 10% of the remaining Cumberland Plain Woodland, it will also facilitate the clearing of 10,470 hectares of land, effectively cutting off and isolating animals, including the koala, from south-west Sydney, and segregating National Parks.

In this regard, Council wishes to express its preference for the retention of as much of the existing ecological communities as possible to:

- retain and enhance connectivity to ensure the retention of biodiversity as provided for in the *Environment Protection and Biodiversity Conservation Act, 1999*, and
- alleviate the impacts of urban heat on humans and animals

In addition, Council raises concern with respect to the methodology proposed for conservation. Research demonstrates that neither traditional nor scalp-and-seed revegetation compensates for the clearing of Cumberland Plain Woodland, and as a result Council further reinforces its position for the retention of ecological communities as discussed above.

Mapping and Proposed Strategic Conservation Area

The Draft Cumberland Plain Conservation Plan identifies a Strategic Conservation Area representing areas of important biodiversity value to the Cumberland subregion including areas containing large remnants of native vegetation, areas with important connectivity across the landscape, and some areas with ecological restoration potential.

It is considered that the Hawkesbury Cumberland Plain is highly significant as an area containing important remnant Cumberland Plain Woodland Vegetation, as well as other endangered and critically endangered ecological communities, and therefore central to conservation of these critically endangered ecological community and the animals it supports.

It is further considered that any areas nominated as Strategic Conservation Areas should benefit the Hawkesbury Local Government Area by conserving and protecting important vegetation communities and habitats, as well as contributing to the amenity and liveability of the locality.

Certain land within the suburbs of Freemans Reach, Grose Vale, Grose Wold, Mulgrave, North Richmond, Richmond Lowlands, Windsor Downs, South Windsor and Yarramundi in the Hawkesbury Local Government Area are within the Strategic Conservation Area. None of these lands has been identified by Council or Council's Draft Local Housing, Employment and Rural Land Strategies as a future/potential investigation land/area for rezoning/development.

In general, whilst no objection is raised to the Strategic Conservation Areas proposed, it should be noted that Council has a concern that the Draft Plan has been informed by out of date mapping, and encourages the use of the most up to date information/data available. In this respect, it should be noted that Council is currently undertaking biodiversity mapping within the Hawkesbury Local Government Area and identifying Council owned and controlled sites that could potentially be



included within the Strategic Conservation Area. The Department of Planning, Industry and Environment's consideration of this updated mapping and/or identification of Council owned or controlled sites is encouraged. Additionally, in terms of the currently identified Strategic Conservation Area, of particular note is the significant environmental benefit that will result from the inclusion of land within the Grose Vale and Grose Wold localities that are identified as Environmental Constraint Area under *Hawkesbury Local Environmental Plan 2012*, as well as Bushells Lagoon and Bakers Lagoon.

The Strategic Conservation Area proposed within Grose Vale and Grose Wold predominantly corresponds to the areas mapped as Environmental Constraint Area under the *Hawkesbury Local Environmental Plan 2012*, and areas of remnant vegetation surrounding and linking these mapped Environmental Constraint Areas. The Environmental Constraint Area was introduced into the Hawkesbury Local Environmental Plan 1989 to protect Cumberland Plain Woodland in the locality.

Therefore, the Draft Cumberland Plain Conservation Plan will provide an additional mechanism in which the Cumberland Plain Woodland in these areas can be protected into the future, as well as providing for the rehabilitation of the community and creation of corridors to link existing remnant vegetation.

The inclusion of Bushells Lagoon and Bakers Lagoon as Strategic Conservation Areas is supported, however concerns are raised in relation to the future management of these lagoons. Of particular concern is the ongoing impacts of contamination of Per and Poly Fluoroalkyl Substances (PFAS) on Bakers Lagoon from the Richmond RAAF Base (as identified in the Australian Government, Department of Defence PFAS Investigation and Management), and whether this was considered in the determination of including Bakers Lagoon as a Strategic Conservation Area.

Given that Bushells Lagoon and Bakers Lagoon are located within agricultural areas used for turf farms or market gardens, concern is also raised in respect to the protection of these wetlands from the impacts of adjoining land uses. In this respect, the revegetation of the areas around these lagoons with native plant communities may be impacted by nutrient rich water runoff or pesticide spray drift. In addition, these lagoons are located within a denuded landscape, and any revegetation in the nominated area will have no physical linkages to other native vegetation communities.

Whilst welcoming the revegetation of important wetland communities, Council requests that the Draft Cumberland Plain Conservation Plan ensures that mechanisms are in place to ensure the viability of revegetated areas in perpetuity, including self-perpetuation.

It is recognised that improved legal powers would better protect wetlands, and in this regard it is requested that the Department of Planning, Industry and Environment review the proposed legislation to be developed to ensure better protection, as well as incorporating development controls within the proposed State Environmental Planning Policy that effectively protects the wetlands from the impacts of adjoining land uses.

The Confluence Reserve Investigation Area

In order to deliver the Draft Cumberland Plain Conservation Plan, the NSW Government proposes to acquire properties/areas of land in Western Sydney to create new public reserves or national parks, which are integral to the delivery of the Plan.

The Draft Cumberland Plain Conservation Plan states that the NSW Government has already committed \$84 million to support the Plan's implementation in the first five years. This will fund a number of key priority actions to deliver commitments identified in the Draft Cumberland Plain Conservation Plan. Commitment 11 of the Draft Plan is to establish at least two new reserves in addition to the Georges River Koala Reserve that will protect threatened communities, species and habitat that are targeted for protection through the Plan. In line with this commitment, the following three new reserves have been identified in order to protect threatened ecological communities, species and their habitats.



- Georges River Koala Reserve
- Gulguer Reserve Investigation Area in the Wollondilly area
- The Confluence Reserve Investigation Area.

The Confluence Reserve Investigation Area is located in the Hawkesbury Local Government Area as shown in Figure 1.

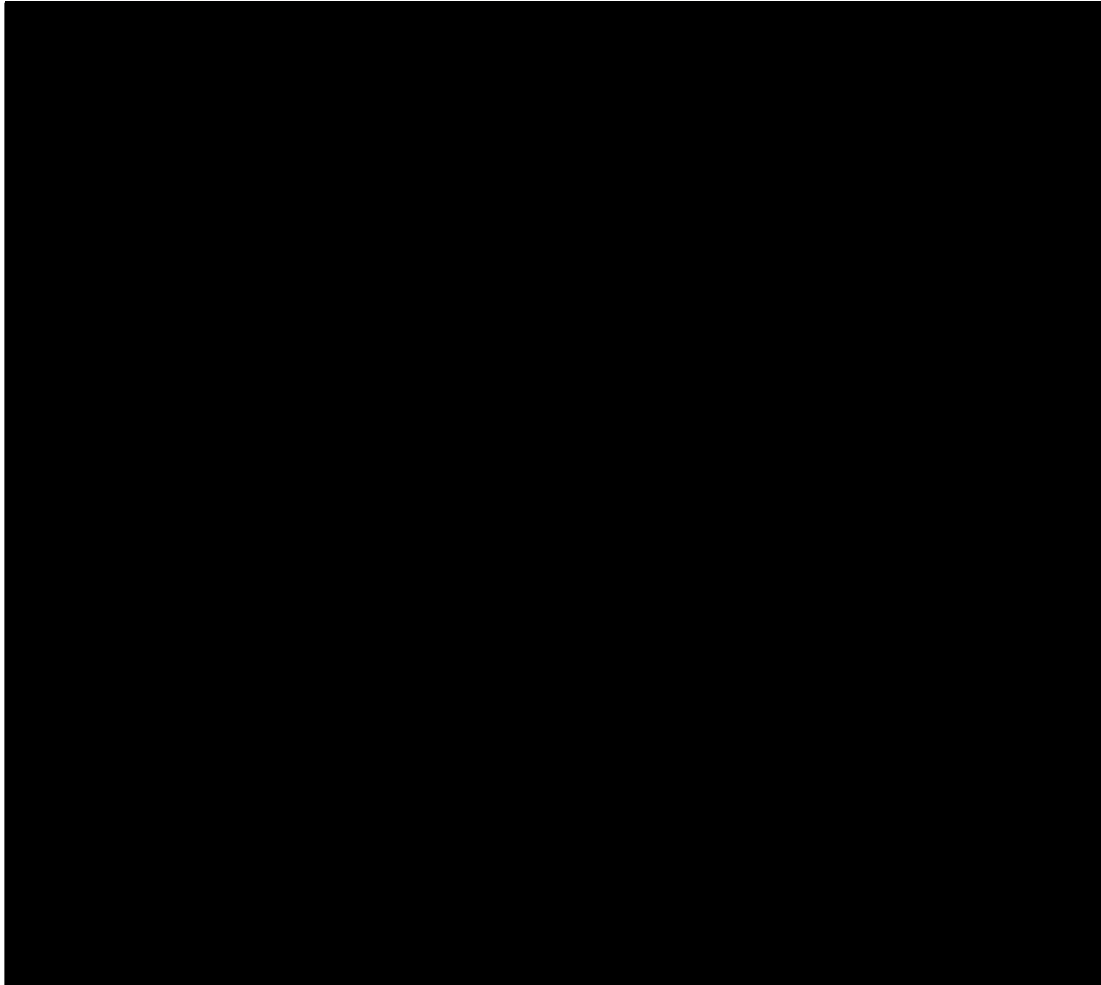


Figure 1: The Confluence Reserve Investigation Area

The Draft Cumberland Plain Conservation Plan highlights that the Confluence Reserve Investigation Area contains small patches of vegetation ranging from poor to good condition, and contains around 60 hectares of River-Flat Eucalypt Forest and 50 hectares of Freshwater Wetlands. Other Threatened Ecological Species listed under both the *Biodiversity Conservation Act 2016* and the *Environment Protection and Biodiversity Conservation Act 1999* are present in the area, including some Cooks River/Castlereagh Ironbark Forest, Cumberland Plain Woodland and Shale Gravel Transition Forest. The ecological restoration opportunity, with up to 365 hectares of cleared land targeted for restoration. Communities likely to be restored include Cooks River/Castlereagh Ironbark Forest, River-Flat Eucalypt Forest and Cumberland Plain Woodland.

A review of Spatial Mapping showing the Strategic Conservation Area within the Draft Cumberland Plain Conservation Plan reveals that the Confluence Reserve Investigation Area which is approximately 600 hectares in size is formed by 35 privately owned properties within the suburbs of Windsor Downs, South Windsor and Mulgrave in the Hawkesbury Local Government Area.

The Confluence Reserve Investigation Area, much of which is flood prone and unsuitable for development, is identified as a potential area for conservation and ecological restoration efforts due to its proximity to several existing nature reserves, thus improving local connectivity. It also



provides an opportunity to link with the Wianamatta (South Creek) Corridor, which has been identified as a priority in the Sydney Green Grid. For these reasons Council supports the inclusion of this Strategic Conservation Area and the identification of it as a priority for establishment as a reserve.

However, Council would like to take this opportunity to highlight that it does not endorse compulsory land acquisition and placing caveats on property in this respect. In this regard, Council request that the Department of Planning, Industry and Environment investigate and identify alternative processes to acquire land other than by compulsory acquisition.

In addition, concern is also raised in respect to the management of external impacts on the Confluence Reserve Investigation Area, in particular the impacts from upstream development in the South Creek catchment. It is therefore requested that the Department of Planning, Industry and Environment consider these impacts, and make provision within the Plan to manage such impacts to ensure the longevity of the Reserve for biodiversity conservation.

Proposed New Legislation and Guidelines

Proposed State Environmental Planning Policy for Strategic Conservation Planning

It is understood that in order to support the Draft Cumberland Plain Conservation Plan, a draft State Environmental Planning Policy for Strategic Conservation Planning is being developed by the Department of Planning, Industry and Environment. This will be the key statutory mechanism to implement strategic conservation planning and provide certainty that the Plan's commitments and actions to protect, enhance, maintain and restore biodiversity in Western Sydney will be met.

The proposed Environmental Planning Policy includes a set of objectives and planning controls including the following proposed controls for strategic conservation that a consent authority must consider and satisfy before granting development consent on the strategic conservation area.

- impacts on the biodiversity values of the site, such as:
 - ecological function
 - ecological communities
 - species habitat and population numbers
 - habitat connectivity
 - ecosystem resilience
- whether the development will cause a negative impact on the condition and ecological function of vegetation, or else result in a detrimental change to the distribution of native flora and fauna communities, either on or adjacent to the site.
- whether the development will disturb a site's native fauna, cause a loss of habitat, or else impact a threatened species, habitat connectivity or links to wildlife corridors and restoration areas.
- development being designed, sited and managed to minimise vegetation clearing, and to avoid adverse impact to high-value vegetation or potential vegetation restoration areas.
- that the height, bulk, scale, size and proposed use of the development would not disturb habitat or disrupt the surrounding natural environment.
- that any setback, asset protection zones or infrastructure required for the development would not adversely impact the environmental values or result in the removal of vegetation

Proposed Section 9.1 Ministerial Direction

The Draft Cumberland Plain Conservation Plan also proposes the introduction of a Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act, 1979*. The section



9.1 Ministerial Direction will apply when a relevant planning authority prepares a planning proposal for avoided land within the nominated areas or prepares a planning proposal that would result in an intensification of land use in the Strategic Conservation Area.

Proposed Guidelines

The Department of Planning, Industry and Environment intends to introduce guidelines to manage the impacts of infrastructure development on matters protected under the *Biodiversity Conservation Act, 2016* and the *Environment Protection and Biodiversity Conservation Act, 1999*.

These guidelines will include:

- requirements for public authorities to notify the department and avoid, minimise, mitigate and offset impacts to biodiversity when undertaking essential infrastructure development on avoided land in the nominated areas or certain land in the Western Sydney Aerotropolis identified under the Plan;
- planning controls for the strategic conservation area that a determining authority must consider for activities assessed under Part 5 of the EP&A Act;
- mitigation measures to address indirect and prescribed impacts on biodiversity from infrastructure development in the nominated areas.

Council raises no objection to the purpose of, or to the proposed controls within the new State Environmental Planning Policy, Section 9.1 Ministerial Direction and Guideline to protect those areas identified for conservation to offset the loss of vegetation as a consequence of development within Western Sydney.

Council's Role and Funding

Councils will be required to play a role in helping to implement the Plan. The Department of Planning, Industry and Environment advises that it will support councils, providing guidance and information to ensure they can act in accordance with the Plan's environmental outcomes.

It is understood that councils will:

- assess development applications to meet the Plan's commitments and actions, as implemented under the proposed State Environmental Planning Policy (SEPP) for strategic conservation planning and development control plans,
- assist in establishing and managing conservation lands to be secured under the Plan. This will offset the impacts of development and oversee compliance on land identified in the Plan. The Plan commits to providing extension services to help councils build capacity to implement the Plan and undertake conservation management actions.

The Department of Planning, Industry and Environment is requested to ensure that the Plan is clear in terms of the level of support that will be provided to Council with respect to planning assessments against the proposed State Environmental Planning Policy for Strategic Conservation Planning. This is particularly relevant given that for many councils, they do not have trained and experienced officers to undertake such detailed and technical assessments.

To ensure that development is consistent with the Plan, the Department of Planning, Industry and Environment proposes annual updates on the Plan's progress, a five-yearly review of the Plan's implementation, and regular auditing and reporting. A compliance working group will be established, comprising the department, local councils and other relevant stakeholders, to prepare a compliance strategy to set out responsibilities. Local councils will have a compliance role, ensuring that conservation measures are implemented in accordance with the Plan. The Plan commits to providing funding for at least three council-based officers across Western Sydney to ensure compliance with the conservation program. These officers will work closely with council rangers to monitor activities such as illegal dumping and vegetation clearing. Council considers that given the size of the area covered by the Draft Plan that three officers is insufficient.



The Draft Cumberland Plain Conservation Plan states that the NSW Government has already committed \$84 million to support the Plan's implementation in the first five years, including the funding for the acquisition of properties to establish the Confluence Reserve Investigation Area within the Hawkesbury Local Government Area. However, it is unclear how the establishment of this reserve will be funded in the long term once land has been acquired and initial conservation works have been completed.

Given the above, Council requests that the Department of Planning, Industry and Environment ensure that funding is available to maintain the newly formed reserve until such time as it is self-supporting/perpetuating, as this could be required for many decades. Without such funding, responsibility for maintenance of the reserve will likely fall to Council which may be an untenable financial burden. In this regard, the Draft Cumberland Plain Conservation Plan must identify sufficient resources up front to ensure that offsets are actually delivered, and that the maintenance of Conservation Areas are funded in the long-term.

Future Additional Sites

Council is currently undertaking a Biodiversity Strategic Planning Framework which will provide updated mapping, and assess the ecological value of approximately 28 Council owned or managed sites. It is considered that any site identified as having significant value could be included in the Plan should additional sites be needed in the future. In this regard it is requested that the Department of Planning, Industry and Environment engage in discussions with Council in terms of the use of updated mapping and/or consideration for inclusion of Council owned or controlled sites within the Strategic Conservation Area.

Thank you for the opportunity to provide comment on the Draft Cumberland Plain Conservation Plan.

Should you have any enquiries or require further clarification in terms of Council's submission, please contact Colleen Haron, Senior Strategic Land Use Planner on [REDACTED]

Yours faithfully

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 **Andrew Kearns**
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