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### **Sydney Water submission to the Draft Cumberland Plain Conservation Plan 2020-2056 and Explanation of Intended Effect for SEPP for Strategic Conservation Planning**

Thank you for giving Sydney Water the opportunity to provide feedback on the August 2020 Draft Cumberland Plain Conservation Plan (the Plan) and the Explanation of Intended Effect (EIE) for the SEPP for Strategic Conservation Planning.

We recognise the importance of protecting the environment and conserving biodiversity in the four nominated areas for development in Western Sydney. Sydney Water supports the:

- Plan's vision to support Western Sydney's biodiversity and growth
- streamlined biodiversity assessment approach for urban development and related infrastructure, that removes the need for site by site assessment on land once it is certified
- intent of the proposed strategic conservation programs.

Our submission is focussed on ensuring the Plan and the proposed SEPP for SCP will enable Sydney Water to continue our effective delivery and maintenance of essential water infrastructure and provide services to the development occurring on urban capable land.

When water infrastructure traverses non-certified lands, the Plan must ensure there is a very clear assessment and approval process for essential infrastructure, that's in line with current processes.

We strongly advocate that the application of the Plan and supporting SEPP does not require Sydney Water to seek consent for development that it can currently carry out without consent under Part 5 of the Environmental Planning and Assessment (EP&A) Act and the Infrastructure SEPP because this will hinder the timely and cost-effective delivery of infrastructure to support urban capable lands.

We also strongly advocate that Sydney Water-owned land not be identified as avoided land, rezoned to E2 or identified as strategic conservation land. We have land holdings because they are needed for current or proposed water infrastructure. This does not make our land compatible with core conservation land. We suggest that Sydney Water land could be appropriately identified as urban capable land or excluded land.

While our submission is strongly focussed on infrastructure delivery, we are very aware that as a State Owned Corporation, we have three equal principal objectives: to protect the environment, be a successful business and protect public health. Under the EP&A Act, Sydney Water must

take into account to the fullest extent possible, all matters affecting or likely to affect the environment from its activities and works.

We have existing robust processes to facilitate infrastructure delivery while protecting biodiversity. We do thorough assessment, take all steps to avoid impacts of native vegetation removal or damage on biodiversity values, and mitigate remaining impacts. Our position on maintaining and enhancing biodiversity values influences all aspects of the project life-cycle from master planning through delivery and operations to management of land holdings.

Sydney Water welcomes the opportunity for ongoing collaboration on waterway management. We believe there are further synergies to be explored between conservation of biodiversity in riparian and waterway areas, and Western Sydney waterway management. This will enable improved planning and delivery of all water services while contributing to enhanced conservation and management of biodiversity in riparian corridors and waterways.

Our detailed comments are available in the tables at Attachment A.

We would like to take the opportunity to discuss our comments and clarify areas of ambiguity. We will also appreciate an opportunity to review the draft clauses of the SEPP for SCP before they are finalised. Would you please contact Lyndall Pickering (Senior Strategy Advisor at [REDACTED]) or Gill Fowler (Lead Environmental Scientist at [REDACTED]) to discuss further?

Yours sincerely,



Paul Higham  
Head of Corporate Strategy &  
Corporate Social Responsibility

# Attachment A

## Sydney Water's detailed response to the Draft Cumberland Plain Conservation Plan 2020 -2056

Draft Cumberland Plain Conservation Plan (sections)	Sydney Water's Response
<b>Foreword and Executive Summary</b>	First sentence - change name of new airport to Nancy- <b>Bird</b> Walton, not Nancy Boyd
<b>Introduction pg. 1 and Scope pg. 7</b> <ul style="list-style-type: none"><li>• Introduction – pg. 1</li><li>• Legislative context – pg. 2</li><li>• Plan Area and Timeframe pg. 7</li><li>• Conservation Values - pg. 8</li><li>• Meeting the Plan's vision - pg. 10</li><li>• Aboriginal Cultural Knowledge - pg. 15</li><li>• Premier's Priorities – pg. 15</li></ul>	<p>Sydney Water supports the Plan's vision to support Western Sydney's biodiversity and growth, and its alignment with the Premier's Priorities of greening our city and improving access to open spaces.</p> <p>We note the four growth areas and major transport infrastructure corridors covered by this plan.</p> <p>Our comments are focussed on ensuring this Plan enables Sydney Water to continue to deliver and maintain essential infrastructure in an effective and efficient way, whilst protecting the environment and maintaining important biodiversity. We support a streamlined biodiversity assessment approach for urban development and related infrastructure that removes the need for site by site assessment on land once certification is complete.</p> <p>We are planning for new water and wastewater infrastructure to service the four nominated growth areas that will be certified in this Plan. The nature of water and wastewater servicing means that sometimes our infrastructure needs to be located on land that is not urban capable and therefore not proposed to be certified. For example, our assets may be constrained by topography, or new infrastructure must connect into existing networks.</p> <p>This may result in infrastructure development occurring on land which the draft Plan has identified to be avoided for other types of development because of biodiversity riparian values, or other purposes. This means our infrastructure may occur on land which is h is not certified by the Plan in its current state - even though it provides essential services for development on certified urban capable land Sydney Water seeks to ensure:</p> <ul style="list-style-type: none"><li>• alignment of the Plan with the current NSW planning framework for essential infrastructure development (including the Environmental Planning and Assessment Act 1979 (EP&amp;A Act) and Infrastructure SEPP 2007)</li></ul>

- certainty and clarity for biodiversity approvals and processes for essential infrastructure - in both certified and non-certified areas
- no unanticipated approvals or constraints to deliver and maintain essential water infrastructure within the proposed zonings.

Sydney Water notes the early engagement by DPIE with stakeholders, and the balanced summary of feedback. We support DPIE's intention to form partnerships with local Aboriginal people to implement the Plan.

**Recommendation:** The Plan must outline a very clear assessment process for delivery of essential water infrastructure in non-certified areas when it supports the development of urban capable land. We request the Plan does not impose additional requirements or obligations on essential infrastructure providers than currently exist in planning approval process under current NSW legislation.

**Development- pg. 16**

- Western Sydney City Deal,
- Greater Sydney Region Plan and Western City District Plan – pg. 17
- Development in nominated areas – pg. 18
- Categories of land under the Plan – pg. 20

**Development and planning context**

We agree that this plan supports the implementation of the Greater Sydney Region Plan and Western City District Plan (WCDP) by protecting and enhancing terrestrial biodiversity.

However, it has limited actions to enhance riparian land and waterway management. Sydney Water is collaborating with DPIE, the Planning Partnership and others to plan for development and water services in the Aerotropolis initial precincts, including integrated water cycle management plans to inform Precinct Plans so that Precinct Plans deliver upon the objectives of the WCDP and the Western Sydney Aerotropolis Plan.

**Categories of land**

The categories of land under the Plan to be certified or those that will remain uncertified are generally clearly defined.

However, categorisation of the strategic conservation area needs clarification. Sometimes lands mapped as strategic conservation area seem to occur within avoided lands, and at other times they are outside the avoided lands, in the wider Plan area.

**Zoning**

On page 19 the Plan states “Environmental conservation zoning will protect areas that have been avoided for biodiversity reasons. Zoning will be implemented through the proposed SEPP for strategic conservation planning or the relevant place based Environmental Planning Instrument (EPI), such as the Growth Centres SEPP 2006 or the draft Aerotropolis SEPP, if that is more appropriate.”

However, we note that the areas identified in the Growth Centres SEPP are excluded from this plan.

Where the precincts have not yet been re-zoned by an EPI the proposed SEPP will rezone the avoided land to E2 as part of the finalisation of the Plan. It is important for DPIE to confirm if this proposal is for **all** avoided land - or only avoided land for biodiversity purposes.

We also recommended that the environmental conservation zoning is consistent across the SEPPs that are relevant to the area: the Growth Centres SEPP, the proposed Strategic Conservation Plan SEPP and the Aerotropolis SEPP 2020, to avoid unanticipated constraints on infrastructure development from different zone rules or requirements. On page 20, the Plan notes that a Ministerial Direction made under section 9.1 of the *Environmental Planning and Assessment Act 1979*, will restrict future rezoning of land avoided for biodiversity or other environmental purposes to more intensive land uses. Councils are required to address and follow the section 9.1 Directions in considering any Planning Proposals submitted to them.

As noted, Sydney Water's strong preference is for Sydney Water lands not to be zoned E2, as this could restrict the development of essential supporting infrastructure.

The Plan notes on page 21 that for additional infrastructure development in non-certified land Environmental Protection and Biodiversity Conservation Act 1999 (EPBC) approval is being sought for certain essential infrastructure development, such as utilities. We strongly support EPBC Act approval (where appropriate) being sought for essential infrastructure development, on non-certified land in the nominated areas.

We are comfortable with the principle of applying the guidelines for essential infrastructure development (Appendix A) and continuing to assess these essential works under the current NSW planning framework, as development permissible without consent in accordance with the EP&A Act, Sydney Water Act 1994 and Infrastructure SEPP.

**Description of Actions- pg. 27**

- Urban and industrial development- pg. 27
- Infrastructure- pg. 28
- Major infrastructure corridors- pg. 30

Page 26 – Photo - Update the caption so that it refers to Water NSW pipelines at Mamre Rd (not Sydney Water).

Page 28 - The class of actions for Infrastructure on page 28 does not list sewerage systems, but this class is listed in Appendix A. Please add sewerage systems to this list for consistency throughout the document.

**Infrastructure**

The Plan notes that infrastructure development will generally be limited to certified-urban capable land within the nominated areas. However, it acknowledges that essential infrastructure development may be carried out on non-certified land in accordance with the guidelines specified in Appendix A. This is important because even though the primary purpose of Sydney Water's operations is to support urban development that occurs on certified urban capable land, we will need to construct, install and maintain infrastructure in non-certified areas.

A focus of ours is ensuring that the processes are clear for delivering essential infrastructure on non-certified land. This enables timely works that are consistent with existing processes for minimising impacts on biodiversity and ensuring ongoing maintenance can occur. As noted above, our preference is that the Plan and supporting SEPP

enable Sydney Water to apply the guidelines for essential infrastructure development, and assess them as development permissible without consent.

Therefore, the ability for Sydney Water to provide essential infrastructure in non-certified land is crucial. We seek further clarification from DPIE on provisions relating to development without consent for essential infrastructure activities. These are outlined in our comments on the EIE for the SCP SEPP (see Table 2 below).

We acknowledge the importance of protecting important areas of biodiversity. We also acknowledge the complexity of mapping at a strategic, or landscape scale. The Plan states that avoided land under the Plan is avoided from development due to identified biodiversity values (including matters of national environmental significance (MNES) on the site, or because the land cannot legally or feasibly be developed due to its topography or because of an environmental feature such as a riparian corridor.

However, we note that some areas identified to be protected (either avoided for biodiversity or because it has potential for future strategic conservations lands) contain water infrastructure assets, making these land parcels less compatible with conservation programs, and not suitable for zoning that prevents more intensive future land uses.

Therefore, we request that Sydney Water owned land, currently identified as being avoided land or within the strategic conservation area is excluded from this classification. If Sydney Water land is adjacent to other urban capable lands, we recommend it be identified as urban capable land.

Sydney Water can provide further details on the Lot/DPs impacted.

**Recommendation:** Sydney Water owned land should not be classified as avoided land or a strategic conservation area because this is not consistent with its purpose of enabling infrastructure.

**The Conservation Program pg. 35**

- What is the strategic conservation area? – pg. 37
- What will the conservation program deliver? - pg. 39

We generally support the Conservation Program. Its focus on supporting an ecologically functioning and connected landscape is sound.

We seek clarity on items discussed in the Conservation Program:

- uncertified areas that are avoided for biodiversity purposes have also been categorised as strategic conservation area for future planning. The proposal is that these avoided lands will have an E2 zoning. Sydney Water requests that only one set of planning provisions is required to be considered for these areas.
- page 39 notes the Conservation Program will protect priority areas for conservation from within the strategic conservation area. We would appreciate further clarification on how these priority areas will be identified.

We note that there are strong potential synergies between management of conservation areas and consistent management of waterway land in the Plan area.

We also note that the way the strategic conservation area is managed (especially riparian areas) may have impacts on flood planning and urban development assumptions upstream. Specifically, if revegetation (natural or managed) reduces the rate and volume of floodwaters that can be conveyed by waterways, it may affect flood planning levels. Management of this requires early collaboration between urban planning, flood planning and strategic conservation planning.

**Recommendation:** Only one set of planning provisions be attached to land that is avoided for biodiversity purposes, and clarify the process by which priority conservation areas will be identified.

**Plan Commitments- pg. 46**

- Urban development- pg. 47
- Biodiversity- pg. 49
- Mitigating impact- pg. 52
- Conserving flora, fauna and habitat- pg. 57
- Managing landscape threats- pg. 63
- Building knowledge and capacity- pg. 65

Sydney Water generally supports the Plan's 28 commitments and 141 actions.

The Plan acknowledges that essential infrastructure is staged and may impact non-certified areas throughout the life of the Plan. In recognition of this, the Plan's avoidance commitment (Commitment 2) has been reduced by 10% of the total area of avoided land in the nominated areas. We understand that this will not alter the environmental conservation zoning that's proposed to be applied to all avoided land in the Plan and that the Appendix A guidelines will need to be applied to infrastructure development in all avoided land.

The Plan also notes that the department will be responsible for notifying public authorities of their obligations under the Plan. Sydney Water suggests that the obligations are already set out in the guidelines, and the department has a monitoring and assurance role.

The Plan notes (page 47) that avoided land also includes some non-vegetated land, such as small wetlands and waterbodies, land that is strategically important to protect or enhance corridors, or small enclosed clearings that are surrounded by native vegetation. These areas were identified by applying the avoidance criteria, described in Appendix B.

However, there appears to be some larger cleared areas in avoided lands. Sydney Water has identified that some of its land has been identified as avoided land. These Sydney Water lands contain essential infrastructure assets, and do not always meet the established avoidance criteria. As noted above we are seeking an amendment to the mapping so that our land is not identified as avoided land, as we believe it more appropriate that land that will provide infrastructure be identified as urban capable or excluded land.

The plan notes (page 53 and Appendix E) that the department will establish guidelines that will include the mitigation measures for indirect and prescribed impacts to biodiversity from infrastructure activities, as described in Appendix E. We generally support the development of guidelines, to clarify process and improve certainty. We understand the guidelines will include specific mitigation measures to address residual risk. Sydney Water requests to be consulted during development of these guidelines.

The Plan will be implemented through planning controls introduced in a new SEPP for Strategic Conservation Planning. Sydney Water acknowledges this EPI provides the regulation to protect biodiversity and ensure the conservation outcomes are achieved. Sydney Water's comments on these planning controls are outlined in Table 2 below.

**Recommendation:** Consult with Sydney Water during the development of guidelines for mitigation measures.

**Implementation and Assurance framework- pg. 70**

**Governance - Delivery partners and synergies with waterway management land (Table 4)**

We note that delivery partners have been identified (page 56, and Table 5 on page 57) but no waterway manager delivery partner has been identified. There are strong potential synergies between the Plan's outcomes and waterway management.

We recommend the Plan identify waterway management partners, and we are happy to continue discussions with DPIE on optimum models for Western Sydney waterway management.

Improved stormwater management can address indirect impacts to biodiversity from changed hydrology and (reduced) water quality. Sydney Water is planning for integrated stormwater and waterway management of Wianamatta/South Creek and working with DPIE and the Planning Partnership to develop precinct plans for the initial Aerotropolis precincts.

Land for waterway management should be identified in either the relevant SEPPs, such as the Western Sydney Aerotropolis (and LEPs) that allow for land release (via zoning), or precinct plans.

We note that this Plan states that the SEPP for SCP will require that precinct plans are consistent with the Plan and SEPP – demonstrating an intention for the instruments to “talk” to each other.

Sydney Water is happy to share information on the land which Sydney Water has identified for waterway management compared to conservation land identified in this Plan, and discuss potential approaches for management of land that is identified for both waterway management and to be protected by this plan. We also believe that the strategic planning for the blue green grid in Western Sydney is relevant.

The cumulative impacts of development that affect both this Plan's conservation areas and waterways should be a factor considered when development proposals are assessed. We support the inclusion of requirements in the proposed SEPP. For example, the SEPP can stipulate that development consent can't be granted if the development does not meet the objectives/targets set out in a required integrated water cycle plan and this plan.

**Funding**

We note the proposal to partially fund the Plan through a biodiversity component of a Special Infrastructure Contribution (SIC) on development. (page70).

The Place-based Infrastructure Compact (PIC) for Western Sydney is taking the Cumberland Plain Conservation Plan into consideration. The PIC feeds into the SIC, and the PIC can identify potential land that may need to be

acquired for a public purpose. We are also providing the PIC process with requirements for future waterway management.

**Recommendation:** Continue discussions between Sydney Water and DPIE on optimum models for Western Sydney stormwater and waterway management.

**Appendix A. Guidelines for essential infrastructure development- pg. 83**

Appendix A sets out requirements, that when met, will enable some of our works to proceed without development consent in non-certified areas - as the plan acknowledges that essential infrastructure may need to be located outside certified areas. Essential infrastructure, as defined by these guidelines includes sewerage systems, stormwater management systems and water supply systems.

The Guidelines state that:

*“Essential infrastructure development in non-certified land must also meet **all** the following criteria:*

- *any development by a public authority, this includes:*
- *local development*
- *Part 5 activities (5.1) under the Environmental Planning and Assessment Act 1979 (except for road activities)*  
*and which is also;*
- *essential infrastructure designed to service and support urban and industrial development within nominated areas of the Western Parkland City*
- *wholly or mostly within the nominated areas.”*

Sydney Water seeks further clarification what is considered local development. An essential infrastructure network such as a wastewater network may be located wholly or mostly within the nominated areas. However, because the assessment and delivery of infrastructure is staged, there will likely be scenarios when an assessment and delivery of a stage of essential infrastructure is not wholly or mostly within the nominated areas. We suggest this last point is modified to acknowledge this point.

Sydney Water acknowledges that essential infrastructure will be managed through the NSW planning and approvals framework as current at the time of the project, in accordance with the NSW Biodiversity Conservation Act 2016 and EPBC Act (if relevant).

All proposals will apply *the avoid and mitigate* principles (for the EPBC Act and MNES), and the *avoid, minimise, mitigate and offset* principles (if triggered under the Biodiversity Conservation Act). We believe there is some ambiguity as to when offsets will be required and would appreciate clarification if offsets are only required when triggered under the Biodiversity Conservation Act.

The Guidelines state that a planning proposal must demonstrate how it meets the commitments of the Plan. Whilst there is an overall commitment to protect a certain extent of native vegetation, and for DPIE to monitor

	<p>implementation and assurance, we seek advice on how a public authority on an individual infrastructure project can demonstrate alignment with this commitment?</p> <p>The Guidelines don't explicitly state they apply to all types of non-certified land (i.e. non-certified for biodiversity purposes and non-certified for other purposes). Earlier sections of the Plan specifically distinguish between different types of non-certified land and note that some provisions for non-certified land (other purposes) will be captured in structure plans, or by other legislation, such as the Water Management Act 2000.</p> <p><b>Recommendation:</b> Clarify if the requirements in Guidelines for Essential Infrastructure only apply to non-certified land avoided for Biodiversity Purposes, as these areas are considered avoided under the Biodiversity Assessment Method (BAM) (Appendix B).</p> <p><b>Recommendation:</b> Clarify when offsets are required.</p>
<b>Appendices B to E- pg. 89</b>	<p>Appendix E identifies some "implementation mechanisms" for mitigation measures to address residual risks to threatened fauna. Mechanisms include the DCP, and guidelines for infrastructure assessment including state significant development and Part 5 activities under EP&amp;A Act.</p> <p>We would like to be consulted on these guidelines during their development.</p> <p><b>Recommendation:</b> As recommended in "Plan Commitments", consult with Sydney Water on the development of guidelines for infrastructure assessment.</p>

# Sydney Water's response to the Explanation of Intended Effect for the SEPP for Strategic Conservation Planning (SCP)

## Sydney Water's response

### Interaction of proposed SCP SEPP and Infrastructure SEPP

Sydney Water requests that clauses be included in the SCP SEPP that confirm that:

- the Infrastructure SEPP prevails over the SCP SEPP; and (or in the alternative)
- specifically, the SCP SEPP does not require Sydney Water to obtain development consent for any development, or any part of a development (include vegetation clearing), that Sydney Water can currently carry out without development consent under the Infrastructure SEPP.

**Recommendation:** the implementation of the SCP SEPP should not require Sydney Water to obtain development consent for any development that it can currently carry out without consent under the Infrastructure SEPP.

### Rezoning

Sydney Water has received letters for some of its land parcels that are proposed to be mapped as avoided land for biodiversity and rezoned E2.

Sydney Water requests all its land parcels are excluded from the avoided land mapping and not rezoned, as the land either contains or is proposed to contain water infrastructure such as a water reservoir, to service the urban development.

**Recommendation:** Sydney Water requests that none of our land parcels be rezoned as these land parcel contain, or are proposed to contain, water infrastructure.

### Reserves, national parks and biodiversity stewardship sites

Sydney Water requests DPIE consult with Sydney Water before designating land for a reserve or biodiversity stewardship site, to ensure that adequate provision is made for Sydney Water to be able to carry out its activities and works.

**Recommendation:** Sydney Water requests DPIE consult with Sydney Water before designating land for a reserve or biodiversity stewardship site.

### Biodiversity offsets

Sydney Water requests DPIE confirm that compliance with Part 5 of the Environmental Planning and Assessment (EP&A) Act and notification to DPIE will satisfy the infrastructure guidelines at Appendix A of the Plan for development on 'non-certified land'. That is, is, no further offsets will be required on top of what would be required under Part 5 of the EP&A Act for Sydney Water's development without consent.

**Recommendation:** Confirm that compliance with Part 5 of the EP&A Act and notification to DPIE will satisfy the infrastructure guidelines at Appendix A.

### **The strategic conservation area**

Sydney Water must be able to operate and maintain its assets both on its land and on other land that has been mapped as strategic conservation area, without additional planning approval obligations.

Sydney Water seeks further detail on the planning controls proposed for the strategic conservation area.

Sydney Water requests that its land parcels identified as strategic conservation area are not rezoned.

We note that in the nominated growth areas the areas avoided for biodiversity, riparian and other purposes have also been identified as strategic conservation area (overlapping mapping). Sydney Water seeks clarification on how the proposed planning controls for each of these land classifications will interact. Sydney Water suggests that the guidelines for avoided lands (Appendix A of the Plan) applies only in this scenario, to avoid duplication of guidelines and planning controls for a determining authority to consider.

**Recommendation:** Simplify and clarify planning controls and guidelines for the strategic conservation area.

### **Proposed Section 9.1 Ministerial Direction**

Sydney Water requests that the Ministerial Direction for protecting avoided lands, does not prevent delivery of essential infrastructure if the proposal is inconsistent with the planning objectives of the E2 zone, but in accordance of the Appendix A guidelines. Rather, that the planning authority must consider the planning objectives of such a proposal.

Sydney Water acknowledges that a planning authority must consider impacts on strategic biodiversity values for a proposal in a strategic conservation area.

**Recommendation:** The Ministerial Direction for protecting avoided lands, does not prevent delivery of essential infrastructure if the proposal is inconsistent with the planning objectives of the E2 zone, but in accordance of the Appendix A guideline