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Creating for Generations

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9 October 2020

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

Dear Mr Betts

Draft Cumberland Plain Conservation Plan

The Property Council of Australia welcomes the opportunity to provide comments to the Department of Planning, Industry and Environment (the Department) on the draft Cumberland Plain Conservation Plan (the Plan).

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes, including residential, industrial and office developments. We are pleased to provide the attached comments for your consideration.

In summary, we support the development of the Plan, and its supporting State Environmental Planning Policy, as it will provide for greater certainty for the development industry, allowing for the streamlined delivery of new housing and jobs within Western Sydney particularly in the key precincts of the Western Sydney Aerotropolis, Greater Macarthur and Wilton Growth Areas and the Penrith to Eastern Creek investigation area.

Should you have any questions regarding the content of this submission please contact Ross Grove, Western Sydney Director on 0412 897 130 or Troy Loveday, NSW Policy Manager, on 0414 265152 or tloveday@propertycouncil.com.au

Yours sincerely

A handwritten signature in black ink, appearing to read "Belinda Ngo".

Belinda Ngo
Acting NSW Executive Director
Property Council of Australia

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Submission to Department of Planning, Industry and Environment

Draft Cumberland Plain Conservation Plan

9 October 2020

1.0 Introduction

1.1 Importance of Biodiversity Protection in Western Sydney

Many decades of vegetation clearance for agriculture and housing has placed Western Sydney's biodiversity under threat. Many species of flora and fauna have become endangered as development pressures remove native habitat. Many of the ecological communities found within the Cumberland Plain are under threat and without immediate action they would be lost.

There are significant opportunities for development in the future to deliver improved conservation outcomes through the funding, dedication and realignment of biodiversity corridors.

A significant development site within the Cumberland Plain is the Western Sydney Airport at Badgerys Creek, which was granted Commonwealth environmental approval in 2016. The airport's approval involved the loss of about 360 hectares of remnant native vegetation and a biodiversity offset plan formed part of the approval. A large number of biodiversity offset credits were purchased by the Commonwealth under the approved offset delivery plan. Rather than proponents of other development within Western Sydney having to compete for credits with the Western Sydney Airport, appropriately a strategic conservation approach to the region's biodiversity values was chosen.

1.2 Strategic Conservation Planning Approach

The provisions of the *Biodiversity Conservation Act 2016* commenced in August 2017. It provides for the use of strategic biodiversity certification as one of the pathways available within the legislation's Biodiversity Offsets Scheme, to manage potential adverse impacts on biodiversity values. It is understood that to provide time for the strategic conservation plan to be established, the commencement of parts of the new legislation was delayed by 15 months in respect of seven Western Sydney local government areas. The new requirements took effect from November 2019.

Strategic biodiversity certification has been used elsewhere to support significant regional development. The Sydney Region Growth Centres was planned with a strategic approach to conservation planning. This approach provides a mechanism that addresses the potential impacts on biodiversity during strategic land use planning.

The EIE indicates that the Department of Planning, Industry and Environment (DPIE) has nominated four areas for strategic biodiversity conservation. These areas are:

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

The adoption of strategic biodiversity certification approach to these areas is appropriate.

Proposed State Environmental Planning Policy for Strategic Conservation Planning

1.1 Objectives

It is noted that the objectives of the proposed SEPP that have been set out in the EIE include facilitating appropriate development on biodiversity certified areas. It is important that the SEPP does not obstruct existing development rights being exercised on land where the current LEP zoning provides for rural, industrial, residential or commercial development.

2.2 Planning Controls

According to section 2.2 of the EIE, the proposed SEPP includes the following planning controls:

2.2.1 Consistency Clause

This will be a clause that requires consistency between the 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.

The EIE indicates that precinct plans relating to urban development within the nominated Growth Areas will be required to be consistent with the approved Plan and the associated biodiversity approvals.

The Property Council agrees with the need to ensure that precinct plans for urban development must be consistent with the approved Plan.

2.2.2 Environmental Conservation Zone

The SEPP will apply an E2 Environmental Conservation zoning to all 'avoided' land, being any land where its biodiversity values require all impacts to those values being avoided. This is land that the Plan identifies as non-certified for biodiversity purposes. This includes land with threatened ecological communities listed in Schedule 2 of the *Biodiversity Conservation Act 2016* (including regional koala corridors and priority koala habitat).

It is understood all avoided land will be zoned E2 Environmental Conservation immediately upon the making of the SEPP and the Plan to protect its biodiversity value.

We welcome the intention to use split zones for large parcels of land so avoided land does not occupy the entire parcel. The part of the site comprising avoided land will be zoned E2 Environmental Conservation and the remainder of the site will retain its existing zoning under the underlying LEP.

We note that 'existing-use rights' will apply to any avoided land that is zoned E2 Environmental Conservation. It is intended that existing uses will be allowed to continue, however there will be a restriction on any further extension of those same uses. We support the recognition and legal protection of existing use rights where they apply to avoided land.

2.2.3 Planning controls for the strategic conservation area

The SEPP will include planning controls that will be designed to minimise impacts of development on the strategic conservation area, identified by the Plan. Although it has not been clearly articulated within the EIE, it is taken that this clause effects privately-owned land as well as public-owned land.

Strategic conservation areas include:

- remnant native vegetation;
- threatened ecological communities;
- areas with important connectivity across the landscape; and
- areas that will enhance connectivity.

The EIE indicates that the proposed SEPP will contain a number of matters that must be considered by a consent authority when considering development consent on the strategic conservation area. These are matters that will form part of the assessment of proposals of land that holds biodiversity value and must be conserved to protect those values.

The Property Council supports these proposals.

2.2.4 Acquisition clauses to secure suitable conservation lands

The SEPP will contain an acquisition clause that allow the relevant acquisition authority to secure lands suitable for public reserves, such as National Parks and local council reserves, subject to funding.

It is understood the delivery of the Plan will require a staged increase in publicly protected land that will be acquired from private owners. Some private land will be identified in the SEPP for future acquisition.

We endorse the intention to primarily use voluntarily acquisition processes for most land that is needed for long-term protection. It is appropriate that compulsory acquisition will only be used in limited circumstances, where land is critical to creating a conservation reserve and voluntary mechanisms have not been successful.

2.3 Other changes

2.3.1 Ministerial Direction

Section 3.1 of the EIE indicates that it is intended to make a Ministerial Direction under Section 9.1 of the *Environmental Planning and Assessment Act* 1979, that will protect both avoided land from future rezoning and the strategic conservation area from increased development or intensified land uses.

Any planning proposal for land identified in the Ministerial Direction must be consistent with the direction's requirements and consider the proposal's consistency with the relevant zoning applying under the SEPP.

The Property Council supports the protection of avoided land and the strategic conservation area by the making of a Ministerial Direction.

2.3.2 Proposed guidelines for infrastructure development

Section 3.2 of the EIE indicates that DPIE will issue guidelines to manage impacts of infrastructure development on protected biodiversity. The following specific types of guidelines will be prepared:

1. Planning controls to support essential infrastructure development;
2. Planning controls for strategic conservation area (Part 5 development); and
3. Mitigation measures for indirect and prescribed impacts on biodiversity.

The Property Council welcomes the preparation of the additional guidance information outlined above.

3.0 Draft Cumberland Plain Conservation Plan

3.1 NSW Strategic Biodiversity Certification

The draft Plan has been developed in response to the planned future growth of the Western Parkland City that is set out within the *Western City District Plan* prepared by the Greater Sydney Commission (GSC).

The Plan will rightly identify strategically important biodiversity areas within the Cumberland subregion to offset the biodiversity impacts of future urban development that has been granted planning approval or is currently under investigation.

It is understood the draft Plan meets the statutory requirements of the *Biodiversity Conservation Act 2016* (NSW) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Also, final approval of the plan by both the NSW and Commonwealth Governments will turn off the provisions of both Acts for the development of land within the Plan's area. We welcome the streamlining of biodiversity approvals into a single strategic assessment under the Plan.

It is also understood that a strategic assessment of biodiversity impacts under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) forms part of the requirements of the Western City Deal. The Property Council supports the NSW Government coordinating this strategic assessment process.

3.2 Plan area and timeframe

The Plan applies to parts of the following eight (8) local government areas of Wollondilly, Camden, Campbelltown, Liverpool, Fairfield, Penrith, Hawkesbury and Blacktown, comprising an area of approximately 200,000 hectares. The plan does not include Western Sydney Airport site, the parts of the Western Sydney Aerotropolis located within the South West Growth Area and a portion of the Mamre Road precinct.

Delivery of the Plan's conservation program will span the next 36 years until 2056, which is appropriate as it will be aligned to the GSC's *Metropolis of Three Cities* and the Transport for NSW, *Future Transport Strategy 2056*.

3.3 Activities covered by the Plan

The Plan will facilitate the future delivery of areas nominated for urban development, including the Greater Macarthur Growth Area, Wilton Growth Area, Western Sydney Aerotropolis and the Greater Penrith to Eastern Creek Investigation Area.

Certain major infrastructure projects are also included as part of the Plan and their impact of biodiversity will be offset through the delivery of the Plan.

The implementation of the draft Plan will improve certainty and reduce timeframes for development by managing biodiversity impacts at a strategic level.

3.4 Development

The section of the Plan titled Development provides background on the planned growth in Western Sydney and identifies areas in the four (4) nominated areas that will be certified under the *Biodiversity Conservation Act 2016* as having the biodiversity approvals to progress development.

3.4.1 Future Urban Development areas in Western Sydney

The Plan states “the nominated areas identified for development in the Plan represent the strategic prioritisation and delivery of new precincts as part of the long-term growth of Greater Sydney”. Additionally, “the locations of these areas have been determined through strategic planning processes and investigations”. The Property Council supports the selection of the nominated areas for future urban development that are included within the Plan.

3.6 Categories of land under the Plan

There are three (3) categories of land under the Plan; certified, non-certified and excluded. Each of these land categories is considered below:

3.6.1 Certified – Urban Capable Land

As part of preparing this Plan, DPIE has reviewed the nominated areas to locate and design the urban capable land to avoid and minimise impacts on biodiversity values. We understand that all urban capable land will be subject to strategic certification for development under Part 8 of the *Biodiversity Conservation Act 2016*. We recognise that these areas will not need further site by site biodiversity assessment provided the approved conservation program is implemented by DPIE.

This approach to urban capable land is appropriate and supported.

3.6.2 Non-Certified Land

It is understood there are two types of non-certified land, these being avoided land and non-certified land within the Western Sydney Aerotropolis.

Avoided land is identified as such, due to the biodiversity values on the site or because the land cannot feasibly be developed because of its topography or environmental features. Non-certified land in the Western Sydney Aerotropolis will include land affected by the 1% AEP flood. This land will not be certified as it is not intended for urban development. There will be special provisions made to allow future use of this land for recreational purposes and biodiversity approval will be given if agreed procedures for this type of land are followed.

Without commenting on the merit of any current or future flood modelling, this approach seems appropriate, mindful of the intent of 2.2.2 that to use split zones for large parcels of land so avoided land does not occupy the entire parcel

3.6.3 Excluded Land

Under the Plan, land is excluded land if it is already developed for urban use, development is underway under a separate process, the land is environmentally protected, the land is Commonwealth land, there are roads or easements on the land and it has specific urban zoning and is developed or to be developed.

3.8 Implementation

The final section of the Plan is under the heading “Implementation and assurance”. Key topics include governance, funding, evaluation and compliance.

3.8.1 Governance

This section of the Plan identifies the roles of the respective delivery partners in the implementation of the Plan's commitments. As the lead agency having responsibility for the delivery of the Plan, it is important that it develops a communications plan to update the wider development industry on progress with meeting key milestones. It is important that the DPIE ensure that biodiversity issues do not delay the development assessment processes of local councils in the four nominated areas following the making of the SEPP and the Plan.

3.8.2 Funding

The Plan indicates that funding is required to implement the conservation program over the life of the Plan, including \$84 million that has already been committed by the NSW Government in the first five years of the Plan's life. It is proposed that the conservation program will be funded through developer contributions, with costs recovered from industry through a biodiversity component of a Special Infrastructure Contribution (SIC) to be levied on the four nominated areas.

To date, DPIE has only released amounts for the proposed SIC rates for Wilton and Greater Macarthur. Both rates included significant contributions towards biodiversity conservation. DPIE has yet to release of draft SIC rates for the remaining precincts, being the Western Sydney Aerotropolis and the Greater Penrith to Eastern Creek Investigation Area. It is important that the future costs of biodiversity conservation be released so that they can be included in project feasibility costs. The Property Council urges DPIE to provide information to industry on the expected SIC charges for these future precincts.

Given the current COVID-19 induced recession affecting the NSW economy, the Property Council urges the NSW Government delay the implementation of new SIC levies for biodiversity until there is improvement to the State's economic situation. The burden of imposing new charges on the development of new homes in Greater Western Sydney should be delayed for as long as possible. There would also be benefits of introducing the biodiversity component of these SIC charges with an initial discount and only allowing the full amount to be levied when the State's economic recovery is complete.

3.8.3 Reporting

The Plan states that there will be annual progress updates provided on Plan's outputs, outcomes and commitments. Also, a comprehensive and independent review of the status of the Plan will be prepared on a 5-year cycle.

We support the commitment by DPIE to undertake this reporting of the Plan's implementation.

3.8.3 Compliance

It is proposed that a compliance strategy will be developed as part of the Plan's reporting requirements. The Plan indicates that the Strategy's purpose will be to:

- identify relevant compliance mechanisms;
- set out compliance monitoring and auditing priorities and processes;
- set out a decision-making framework for taking compliance action; and
- setting out procedures and protocols for taking compliance action.

We recognise the importance of transparency in any compliance framework and support initiatives that are intended to document procedures for compliance actions. The Property Council supports these important steps which will be included in the Compliance Strategy.

4.0 Conclusion

The intention to deliver a strategic approach to biodiversity conservation in Western Sydney is supported. By implementing the Cumberland Plain Conservation Plan, it will allow for a whole-of-region consideration of impacts on biodiversity (managed through avoidance, mitigation and offsets) arising from planned urban development in four key nominated precincts.

The costs of implementing this plan, to be shared between Government and industry, must be fair and reasonable. There will be benefits arising from the strategic conservation planning and they include eliminating the need for biodiversity impacts to offset on a site by site basis. We cautiously support the use of SIC rates on urban development in the growth areas to manage biodiversity impacts.

Given the current COVID-19 induced recession affecting the NSW economy, the Property Council urges the NSW Government delay the implementation of new SIC levies for biodiversity until there is improvement to the State's economic situation. The burden of imposing new charges on the development of new homes in Greater Western Sydney should be delayed for as long as possible. There would also be benefits of introducing the biodiversity component of these SIC charges with an initial discount and only allowing the full amount to be levied when the State's economic recovery is complete.

As the EIE for the proposed SEPP describes there will be significant changes to local planning provisions across eight local government areas. Many of those changes will limit future uses of land outside of the nominated areas. DPIE should continue to collaborate with stakeholders (including industry) on the details of the SEPP and its implementation.