



The Cumberland Plain Conservation Plan

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This factsheet was last updated on 31 August 2023

What is this factsheet about?

This factsheet provides information about the Cumberland Plain Conservation Plan (CPCP). It will be useful for anyone who wants to know more about the CPCP or about biodiversity certification in NSW more broadly.

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SUMMARY

The Cumberland Plain Conservation Plan (CPCP) is a strategic conservation plan. It guides land use, environmental protection and growth in western Sydney.

The CPCP is made up of three documents:

- *The overarching Plan:* describes how development will occur within the CPCP Area and how impacts to biodiversity values will be addressed through the Plan's conservation program and implementation framework.
- *Sub-plan A: Conservation Program and Implementation:* Sub-plan A details the conservation program and its implementation. It includes 26 commitments and 131 actions.
- *Sub-plan B: Koalas:* Sub-plan B details how the significant koala population in Western Sydney will be protected under the Plan and how the Plan will support other government initiatives to protect the koala.

The CPCP is given legal effect by:

- A Ministerial Order conferring strategic biodiversity certification under the NSW *Biodiversity Conservation Act 2016* (**BC Act**) (**Certification Order**);¹
- provisions of Chapter 13 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (**Chapter 13, Biodiversity and Conservation SEPP**), including development controls;² and
- a Ministerial Direction issued under section 9.1(2) of the NSW *Environmental Planning and Assessment Act 1979* (**EP&A Act**) that restricts the rezoning of land (**Ministerial Direction**).³

Land in the CPCP Area is allocated into the following categories:

- *Certified-urban capable land:* area suitable for development.
- *Certified – major transport corridor:* area suitable for development.
- *Avoided land:* high biodiversity values and/or strategic importance.
- *Excluded land:* land that has been excluded from the CPCP (i.e. CPCP does not apply).

¹ https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2022_2022-380.pdf

² <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0722>

³ <https://www.planning.nsw.gov.au/sites/default/files/2023-03/local-planning-directions.pdf>

- *Strategic conservation area*: area of important biodiversity value / ear-marked to deliver long-term conservation outcomes.

The plan envisages different outcomes for each of these categories of land. In particular:

- *'Certified – urban capable land'* and *'Certified – major transport corridor'*: These areas have received strategic biodiversity certification by the Certification Order. This provides an upfront assessment of biodiversity impacts – meaning that biodiversity impacts do not need to be re-assessed at the individual development assessment stage. Development approval may still be required - but biodiversity impacts don't need to be assessed.
- *Avoided land*: Chapter 13, Biodiversity and Conservation SEPP includes development controls aimed at preserving native vegetation on avoided land. The Ministerial Direction restricts the rezoning of avoided land.
- *Strategic conservation area*: Chapter 13, Biodiversity and Conservation SEPP includes development controls aimed at preserving native vegetation in the strategic conservation area. The Ministerial Direction restricts the rezoning of strategic conservation area.

1. Introduction

1.1. Background to the Cumberland Plain Conservation Plan

The Cumberland Plain Conservation Plan (**CPCP**) is a strategic conservation plan.

The preparation of the CPCP was one of the commitments under the [Western Sydney City Deal](#).⁴ A key component of the Western Sydney City Deal is the [Western Parkland City](#). The CPCP was developed by the NSW Department of Planning and Environment (**DPE**) to support the delivery of new housing, jobs, and infrastructure for the Western Parkland City until 2056.

The Western Parkland City is part of the overall growth strategy for Sydney as identified in the [Greater Sydney Regional Plan](#). The Greater Sydney Regional Plan is a strategic planning framework that guides the future development and management of the Greater Sydney region.

⁴ The Western Sydney City Deal was signed in March 2018 and is a partnership agreement between the Australian Government, New South Wales Government, and local governments of Western Sydney. Under this deal, the NSW Government has committed to publish 5-year and 20-year housing targets for each local government area, to deliver the 185,000 new homes in the next 20 years.

The CPCP supports the implementation of the Western Parkland City and liveability planning priorities in the [Western City District Plan](#) under the Greater Sydney Regional Plan, including:

- Planning Priority W13 – creating a Parkland City urban structure and identity, with Wianamatta (South Creek) as a defining spatial element;
- Planning Priority W14 – protecting and enhancing bushland and biodiversity;
- Planning Priority W16 – protecting and enhancing scenic and cultural landscapes.

The geographic area covered by the CPCP (referred to in the CPCP as the “CPCP Area”) extends from north of Windsor to Picton in the south, and from the Hawkesbury-Nepean River in the west to the Georges River near Liverpool in the east and comprises around 200,000 hectares of land. This includes parts of eight local government areas – Wollondilly, Camden, Campbelltown, Liverpool, Fairfield, Penrith, Blacktown, and Hawkesbury.

1.2 Overview of the Cumberland Plain Conservation Plan

The CPCP is made up of three documents - the overarching Plan and two sub-plans.

The overarching Plan describes how development will occur within the CPCP Area and how impacts to biodiversity values will be addressed through the Plan’s conservation program and implementation framework, including a set of commitments to address the impacts.

The sub-plans contain more detail on how the overarching Plan will be implemented, including sets of actions for each commitment. The actions set out how the commitments will be delivered.

The sub-plans are:

- Sub-plan A: Conservation Program and Implementation – this details the conservation program and its implementation, including the evaluation program. The conservation program has been designed to achieve the CPCP’s objective and outcome and offset the impacts of development on biodiversity values. It includes 26 commitments and 131 actions designed to protect biodiversity and improve ecological resilience.
- Sub-plan B: Koalas – this details how the significant koala population in Western Sydney aims to be protected under the Plan and how the Plan will support other government initiatives to protect the koala.

The CPCP itself is not a legal instrument.

Key elements of the CPCP are however implemented (and given legal effect) through:

- A Ministerial Order conferring strategic biodiversity certification on specified land in the CPCP Area under the NSW *Biodiversity Conservation Act 2016* (**BC Act**) (**Certification Order**);⁵
- provisions of Chapter 13 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (**Chapter 13, Biodiversity and Conservation SEPP**), including development controls;⁶ and
- a Ministerial Direction issued under section 9.1(2) of the NSW *Environmental Planning and Assessment Act 1979* (**EP&A Act**) that restricts the rezoning of land (**Ministerial Direction**).⁷

An application for strategic assessment under the Federal *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) relying on the CPCP is currently under assessment.

Each of these is discussed in further detail below.

2. Strategic biodiversity certification and strategic assessment

2.1 Strategic biodiversity certification under the BC Act

The CPCP was used by DPE to support an application to the NSW Environment Minister for strategic biodiversity certification under the *Biodiversity Conservation Act 2016* (NSW) (**BC Act**) of certain land within four nominated areas (and transport corridors within those area) in the CPCP.

What is strategic biodiversity certification?

Biodiversity certification is a streamlined biodiversity assessment process for large areas of land proposed for development.⁸ It involves large-scale, upfront assessment of biodiversity values and impacts in a designated area. It is often used for strategic planning at a landscape scale (e.g., a large area of undeveloped land in an urban or rural area that someone (usually a developer or government) wants to develop).

Under section 8.7 of the BC Act, the NSW Environment Minister may only confer biodiversity certification if the Minister is satisfied that the approved conservation measures under the biodiversity certification adequately address the likely impacts on biodiversity values of the biodiversity certification of the land. In doing so, the Minister must have regard to the biodiversity certification

⁵ https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2022_2022-380.pdf

⁶ <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0722>

⁷ <https://www.planning.nsw.gov.au/sites/default/files/2023-03/local-planning-directions.pdf>

⁸ See *Biodiversity Conservation Act 2016* (NSW), Part 8.

assessment report that is required to accompany an application for biodiversity certification.

Once land is given biodiversity certification, development on that land may proceed without the usual requirement for site-by-site biodiversity assessment. The BC Act distinguishes between standard biodiversity certification and strategic biodiversity certification. Strategic biodiversity conservation is only available to planning authorities such as the NSW Minister for Planning, the Secretary of the DPE, or a local council.

The CPCP was the first proposal to seek strategic biodiversity certification under the BC Act.

On 17 August 2022, the NSW Environment Minister approved DPE's application for strategic biodiversity certification.

The NSW Environment Minister published an order in the NSW Gazette (**Certification Order**) conferring biodiversity certification on specified land identified in the CPCP as 'Certified – urban capable land' and 'Certified – major transport corridor'.⁹ Other areas of the CPCP (i.e., avoided land, excluded land and the strategic conservation area) have not been granted strategic biodiversity certification.

Amongst other things, the Certification Order specifies a number of:

- “approved conservation measures”¹⁰ that aim to offset the impacts on biodiversity values of the clearing of native vegetation and the loss of habitat on the relevant land.¹¹ These include 26 Commitments set out in Appendix C of the CPCP (amongst others). Clause 2 of Schedule 3 of the Certification Order states that the approved conservation measures are to be delivered in accordance with the Certification Order and the CPCP, and that the CPCP is enforceable by the Minister under the Certification Order.

⁹ See definition of “Specified Land” in the Gazette notice of 17 August 2022:

https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2022_2022-380.pdf

¹⁰ Section 8.3 of the *Biodiversity Conservation Act 2016* (NSW) provides that the order conferring biodiversity certification is to specify the measures that are approved conservation measures under the biodiversity certification. Section 8.3(2) of the *Biodiversity Conservation Act 2016* (NSW) specifies the “approved conservation measures”. These include: the retirement of biodiversity credits; the reservation of land under the *National Parks and Wildlife Act 1974* (NSW); the adoption of development controls under *Environmental Planning and Assessment Act 1979* that conserve or enhance the natural environment; or any other measure determined by the Minister.

¹¹ Listed in Schedule 3 to the Certification Order.

- “other approved measures”, which:
 - set out requirements as to the timing, monitoring, reporting and auditing of the implementation of the proposed and other approved conservation measures;
 - aim to avoid or minimise the impacts on biodiversity values of the clearing of native vegetation and the loss of habitat on the relevant land; and
 - aim to minimise likely serious and irreversible impacts on biodiversity values.¹²

The full list of measures is set out in Schedules 3 and 4 of the Certification Order.

These measures must be implemented or delivered by DPE (with assistance from a number of “delivery partners”, including local councils and the National Parks and Wildlife Service).

2.2 Strategic assessment under the EPBC Act

The CPCP was also used by DPE to support an application to the Commonwealth Environment Minister to endorse the CPCP under the ‘strategic assessment’ provisions of the *Environment Protection and Biodiversity Act 1999* (Cth) (**EPBC Act**).

What is a strategic assessment under the EPBC Act?

Strategic assessments are established under Part 10 of the EPBC Act. They are landscape-scale assessments that consider impacts on matters protected by national environmental law and associated with the implementation of a policy, plan, or program. Strategic assessments are undertaken at a broader scale than project by project assessments. Like strategic biodiversity certification, strategic assessments are designed to streamline the assessment of impacts of actions and address cumulative impacts at the landscape scale early in the planning process.

If a policy, plan, or program is endorsed by the Commonwealth Environment Minister under the EPBC Act, a person can then ask the Minister to approve a class of actions that are described in the policy, plan or program. If approval is granted for that class of actions, individual actions (that fall within the class of actions and comply with the policy, plan, or program) are not required to be further assessed or approved under the EPBC Act (even if they are likely to have a significant impact on a matter protected by national environmental law e.g., listed threatened species like the Koala).

The Commonwealth Environment Minister has not yet endorsed the CPCP under the strategic assessment provisions of the EPBC Act. This means that if a person currently wishes to carry out an action (e.g., development) in the CPCP Area that is likely to have a significant impact on a matter of national environmental significance the person is required to refer that action to the Commonwealth Environment Minister for a decision on

¹² Listed in Schedule 4 of the Certification Order.

whether assessment and approval is required under the EPBC Act. For more information, see EDO Factsheet: [The Environment Protection and Biodiversity Conservation Act 1999 \(Cth\), Referrals and Opportunities to Comment](#).

The remainder of this factsheet will focus on the CPCP's interaction with the NSW planning and environment framework.

3. Understanding how the CPCP works

The CPCP applies to all land in the CPCP Area.

The land in the CPCP Area is allocated into the following categories:

- Certified-urban capable land;
- Certified – major transport corridor;
- Avoided land;
- Excluded land;
- Strategic conservation area.

The plan envisages different outcomes for each of these categories of land.

As noted above, the Certification Order only confers strategic biodiversity certification on specified land that is classified as ‘Certified-urban capable land’ and ‘Certified – major transport corridor’. This means different rules apply to land that has been conferred strategic biodiversity certification (i.e., Certified-urban capable land and Certified – major transport corridor) and land that has not been granted strategic biodiversity certification (i.e., avoided land, excluded land and the strategic conservation area).

The Biodiversity and Conservation SEPP defines Certified-urban capable land, Certified – major transport corridor, avoided land, and strategic conservation area with reference to specific maps made for the purpose of SEPP.

3.1 Certified-urban capable land and Certified – major transport corridor

‘Certified-urban capable land’ and ‘Certified – major transport corridor’ are the categories of land identified in the CPCP as “areas suitable for development within the four nominated areas”.¹³ The Biodiversity and Conservation SEPP defines Certified-urban capable land with reference to the [State Environmental Planning Policy \(Biodiversity and Conservation\) 2021 Strategic Conservation Planning Certified Urban Capable Land Map](#).

Development assessment and approval

If a person wants to develop land on ‘Certified-urban capable land’ or in a ‘Certified – major transport corridor’, they may be required to submit a development application for development consent under the *Environmental Planning and Assessment Act* (NSW) (**EP&A Act**). See EDO Factsheet: [Development Applications and Consents in NSW](#).

¹³ Cumberland Plain Conservation Plan, p 1.

However:

- an assessment of the likely impacts on biodiversity is not required under Part 4 and Part 5.1 of the EP&A Act.¹⁴
- a consent authority is not required to consider the likely impacts of that development on biodiversity when determining a development application under Part 4 of the EP&A Act.¹⁵
- an activity under Part 5 of the EP&A Act is taken to be an activity that is not likely to significantly affect any threatened species or ecological community under the BC Act (or its habitat).¹⁶
- a determining authority under Part 5 of the EP&A Act is not required to consider impacts on biodiversity.¹⁷
- the person does not have to comply with Chapters 3 and 4 of *State Environmental Planning Policy (Biodiversity and Conservation 2021 (Biodiversity and Conservation SEPP) – Koala Habitat Protection* (i.e. the Koala SEPP).¹⁸

The justification for this is that the impacts to biodiversity values have already been assessed as part of the biodiversity certification application process.¹⁹

Nevertheless, a person is still required to comply with any relevant planning controls contained in Chapter 13 of the Biodiversity and Conservation SEPP.²⁰ For example, clause 13.16 of the Biodiversity and Conservation SEPP provides that development consent must not be granted to development on certified urban capable land unless the consent authority has considered whether the development is consistent with the CPCP Mitigation Measures Guideline.²¹

The CPCP Mitigation Measures Guideline sets out a number of ‘mitigation requirements’ that development under Part 4 of the EP&A Act on Certified-urban capable land or in a

¹⁴ *Biodiversity Conservation Act 2016* (NSW), section 8.4(1)-(2).

¹⁵ *Biodiversity Conservation Act 2016* (NSW), section 8.4(3).

¹⁶ *Biodiversity Conservation Act 2016* (NSW), section 8.4(4).

¹⁷ *Biodiversity Conservation Act 2016* (NSW), section 8.4 (5).

¹⁸ *State Environmental Planning Policy (Biodiversity and Conservation 2021)*, clause 3.3(1A); clause 4.4(3)(c).

¹⁹ Section 8.5(4) of the BC Act provides that an application for biodiversity certification must be accompanied by a biodiversity certification assessment report. The Cumberland Plain Assessment Report that accompanied the NSW Government’s application for biodiversity certification can be viewed here:

<https://www.planningportal.nsw.gov.au/sites/default/files/documents/2022/Cumberland-Plain-Assessment-Report-202208.pdf>.

²⁰ The relevant planning controls for certified urban capable land include clauses 13.15 and 13.16 of the *State Environmental Planning Policy (Biodiversity and Conservation 2021)*.

²¹ The CPCP Mitigation Measures Guideline can be viewed here:

https://www.planningportal.nsw.gov.au/sites/default/files/documents/2022/Cumberland-Plain-Conservation-Plan-Mitigation-Measures-Guidelines_202208.pdf.

Certified – major transport corridor (in certain areas) must address to ensure consistency with the Certification Order (and the CPCP). Part 1 of the Guideline applies to the Greater Macarthur Growth Area and relates to Koala. Part 2 of the Guideline applies to the Greater Macarthur Growth Area and Greater Penrith to Eastern Creek Investigation Area and relates to threatened species and ecological communities.

Clearing of native vegetation

Non-rural land: If a person wants to clear native vegetation on land that is classified as ‘Certified – urban capable land’ or ‘Certified – major transport corridor’ and it is in a non-rural area, they are not required to obtain approval from the Native Vegetation Panel if the clearing exceeds the Biodiversity Offsets Scheme Threshold (BOS Threshold).²² It is unclear if council approval is needed for clearing below the BOS Threshold. This will likely depend on whether the relevant development control plan prepared by the local council declares vegetation to be subject to Part 2.3 of the Biodiversity and Conservation SEPP.

Rural land: Land identified as ‘Certified – urban capable land’ or ‘Certified – major transport corridor’ is categorised as category 1 – exempt land under the *Local Land Services Act 2013* (NSW) (**LLS Act**) (by reason of it being biodiversity certified).²³ This means there are no restrictions on the clearing of native vegetation on that land.

However, as noted above, a person must comply with the planning controls set out in Chapter 13 of the Biodiversity and Conservation SEPP if clearing is associated with development.

Rezoning

Rezoning to support future urban development will be allowed within the identified certified-urban capable land.²⁴

Precinct plans will be developed over time to identify land uses, associated development and infrastructure at the finer scale. Rezoning under each precinct plan will be implemented through the relevant place based environmental planning instrument (such as the Growth Centres SEPP or the Aerotropolis SEPP).²⁵

Other approvals

While a person may not have to assess or consider the impacts of development on biodiversity, a range of planning and environmental approvals may still be required, including:

- Planning approvals under the EP&A Act;

²² *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 2.6(3). The Native Vegetation Panel is established under section 60ZE of the *Local Land Services Act 2013* (NSW). The Panel has the function of determining applications for approval to clear native vegetation.

²³ *Local Land Services Act 2013* (NSW), section 60H(3).

²⁴ Cumberland Plain Conservation Plan, p 24.

²⁵ Cumberland Plain Conservation Plan, p 24.

- Aboriginal cultural heritage approvals under the *National Parks and Wildlife Act 1974*;
- Built heritage approvals under the *Heritage Act 1977* (NSW);
- Noise, water, air pollution approvals under the *Protection of the Environment Operations Act 1997* (NSW);
- Water management approvals under the *Water Management Act 2000* (NSW);
- Approvals for impacts to threatened fish and other matters listed under the *Fisheries Management Act 1994* (NSW).

3.2 Avoided land

Avoided land is land that has been identified in the CPCP as having high biodiversity values and/or strategic importance. The purpose of avoided land is to avoid and minimise impacts to biodiversity from development in the nominated areas. The Biodiversity and Conservation SEPP defines avoided land with reference to the [State Environmental Planning Policy \(Biodiversity and Conservation\) 2021 Strategic Conservation Planning Avoided Land Map](#).

Development controls

In addition to the legislative requirements that ordinarily apply to land in NSW, (e.g., a person is required to assess the likely impacts of development on biodiversity), avoided land is subject to further development controls.

Part 13.3 of the Biodiversity and Conservation SEPP sets out the majority of these controls.

Clearing of native vegetation

Clause 13.7 provides that a person must not clear native vegetation on avoided land without development consent.²⁶ And development consent must not be granted for the clearing of native vegetation unless the consent authority is satisfied that:²⁷

- sufficient measures have been, or will be, taken to:
 - avoid or minimise the impact of the development on biodiversity values, and
 - avoid the impact of the development on Matters of National Environmental Significance (under the EPBC Act), and
 - protect or enhance the biodiversity values and ecological integrity of the land, and

²⁶ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.7(2). Note that this clause does not apply to the following: clearing of native vegetation carried out by or on behalf of a public authority; clearing to remove vegetation that the council is satisfied is a risk to human life or property; bush fire hazard reduction works carried out in accordance with *State Environmental Planning Policy (Transport and Infrastructure) 2021* (clause 13.7(4), *State Environmental Planning Policy (Biodiversity and Conservation) 2021*).

²⁷ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.7(3).

- there is no reasonable alternative to the disturbance of the native vegetation, and
- the loss of native vegetation caused by the disturbance will be compensated by:
 - revegetation on the land on which the development is carried out of an amount equivalent to a ratio of at least 1:1, or
 - a condition imposed on the development consent under section 7.13(3) of the BC Act requiring the applicant to retire biodiversity credits, and
- the clearing of the vegetation is unlikely to cause or increase soil erosion, salination, land slip, flooding, pollution or other adverse land or water impacts.

Development generally

Clause 13.8 provides that development consent must not be granted for development on avoided land unless the consent authority has considered whether the development is likely to cause an adverse impact on:

- threatened ecological communities, threatened species and their habitats, both on the site of the development and on adjoining land that is avoided land;
- habitat connectivity and fauna movement, including koala and wildlife corridors, both on the site of the development and on adjoining land that is avoided land;
- the integrity and resilience of the biophysical, ecological and hydrological environments, including surface and groundwater, and the quality of the natural flow of water in a riparian corridor;
- Matter of National Environmental Significance (under the EPBC Act).

Further, development consent must not be granted on avoided land unless the consent authority is satisfied that the development, and its supporting infrastructure, is designed to avoid an adverse impact.²⁸

Infrastructure

Infrastructure (within the meaning of *State Environmental Planning Policy (Transport and Infrastructure) 2021*) can only be carried out on avoided land in certain circumstances. Specifically, clause 13.9 provides that a consent authority must be satisfied that the infrastructure development is designed to avoid an adverse impact and must have also considered whether the infrastructure development is consistent with Part 2 of the CPCP Guidelines.²⁹

²⁸ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.8(3). Note, however, that this clause does not apply to development to which clause 13.9 applies.

²⁹ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.9(2) and (3).

Subdivision

Subdivision of avoided land is prohibited unless:³⁰

- it is necessary for the purpose of entering into a biodiversity stewardship agreement on that land; or
- the subdivision will be carried out by or on behalf of a public authority and relates to development under Part 2.3, Division 4, 5, 12A, 17, 18, 20, 21, 23 or 24 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*; or
- the subdivision is being carried out by the National Parks and Wildlife Service.

Rezoning of land

A person may apply to rezone land (known as a ‘planning proposal’) on avoided land. However, a Ministerial Direction issued under section 9.1(2) of the EP&A Act restricts the kind of rezoning that may be carried out.³¹

The Ministerial Direction states that:³²

- A planning proposal authority must be satisfied that a planning proposal that applies to avoided land demonstrates that it is consistent with:
 - the protection or enhancement of native vegetation;
 - the protection or enhancement of riparian corridors, including native vegetation and water quality;
 - the protection of threatened ecological communities, threatened species and their habitats;
 - the protection or enhancement of koala habitat and corridors; and
 - the protection of matters of national environmental significance.

A planning proposal must not rezone avoided land to a rural, residential, employment, mixed use, SP1 Special Activities, SP2 Infrastructure, SP3 Tourist, SP4 Enterprise, SP5 Metropolitan Centre, RE2 Private Recreation, W4 Working Waterfront or equivalent zone.³³

³⁰ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.10.

³¹ A copy of the Ministerial Direction dated 13 December 2022 can be viewed here:

<https://www.planning.nsw.gov.au/sites/default/files/2023-03/local-planning-directions.pdf>.

³² Direction 3.6(1) of the Ministerial Direction dated 13 December 2022.

³³ Direction 3.6(3) of the Ministerial Direction dated 13 December 2022. Note that the Direction says that a planning proposal may rezone land identified as avoided land to Zone SP2 if the relevant planning authority can satisfy the Planning Secretary that the planning proposal demonstrates i) the rezoning is to facilitate infrastructure that is required to service or support development within nominated areas; and ii) the planning proposal is consistent with the Cumberland Plain Conservation Plan Guidelines.

3.3 Excluded land

Excluded land is defined by the CPCP to be “land that has been excluded from the CPCP and for which NSW strategic biodiversity certification and approval through the federal strategic assessment will not be sought”.³⁴

The reason for some land’s classification as “excluded land” is that the land:

- is already identified for urban use;
- is in the nominated areas and already assessed as part of another development approval, or is progressing through an alternative development assessment and biodiversity certification approval process;
- has approved major projects in the avoided land;
- is environmentally protected, including reserves and existing offset sites;
- is Commonwealth land; or
- has roads or easements that intersect with areas of high biodiversity (avoided land).

Given the type of land that falls under the “excluded land” category can vary drastically (from national parks through to existing urban areas), the specific development controls may also vary widely. Nevertheless, as excluded land has not been conferred biodiversity certification, landholders will be required to adhere to the relevant requirements under the EP&A Act and assess the likely impacts of any proposed development on biodiversity.

3.4 Strategic Conservation Area

The strategic conservation area represents areas of important biodiversity value and covers approximately 27,200 hectares. It has been identified as the area of greatest strategic value to deliver long-term conservation outcomes in the Cumberland subregion and which contains vegetation communities needed to offset biodiversity impacts under the CPCP. The Biodiversity and Conservation SEPP defines strategic conservation area with reference to the [State Environmental Planning Policy \(Biodiversity and Conservation\) 2021 Strategic Conservation Planning Land Reservation Acquisition Map](#).

Development may still be carried out in the strategic conservation area. However, like with avoided land, land within the strategic conservation area is subject to further development controls (in addition to the legislative requirements that ordinarily apply to land in NSW (e.g., a person is required to assess the likely impacts of development on biodiversity)).

Part 13.4 of the Biodiversity and Conservation SEPP sets out the majority of these controls.

³⁴ Cumberland Plain Conservation Plan, p 21.

Clearing of native vegetation

Part 13.4 of the Biodiversity and Conservation SEPP provides that a person must not clear native vegetation on land in a strategic conservation area without development consent.³⁵

Development consent must not be granted for the clearing of native vegetation unless the consent authority is satisfied that:³⁶

- sufficient measures have been, or will be, taken -
 - to avoid or minimise the impact of the development on biodiversity values; and
 - to protect or enhance the biodiversity values and ecological integrity of the land; and
- there is no reasonable alternative available to the disturbance of the native vegetation caused by the clearing; and
- the loss of native vegetation caused by the disturbance will be compensated by:
 - revegetation on the land on which the development is carried out of an amount equivalent to a ratio of at least 1:1; or
 - a condition imposed on the development consent requiring the applicant to retire biodiversity credits; and
- the clearing of the vegetation is unlikely to cause or increase soil erosion, salination, land slip, flooding, pollution or other adverse land or water impacts.

Development generally

Clause 13.12(2) of the Biodiversity and Conservation SEPP provides that development consent must not be granted for development on land in a strategic conservation area unless the consent authority has considered whether the development is likely to cause an adverse impact on:

- the biodiversity values of the land;
- threatened ecological communities, threatened species and their habitats, both on the site of the development and on adjoining land in a strategic conservation area;
- habitat connectivity and fauna movement, including koala and wildlife corridors and links to ecological restoration areas, both on the site of the development and on adjoining land in a strategic conservation area;

³⁵ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.11(2).

³⁶ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.11(3). Note that this clause does not apply to the following: clearing of native vegetation carried out by or on behalf of a public authority; clearing to remove vegetation that the council is satisfied is a risk to human life or property; bush fire hazard reduction works carried out in accordance with *State Environmental Planning Policy (Transport and Infrastructure) 2021* (clause 13.11(4)).

- the integrity and resilience of the biophysical, ecological and hydrological environments, including surface and groundwater, and the quality of the natural flow of water in a riparian corridor;
- Matter of National Environmental Significance (under the EPBC Act).

Further, development consent must not be granted to development on land in a strategic conservation area unless the consent authority has considered whether the cumulative impact of the development and other development for which consent or an approval has been granted in relation to the land is likely to cause an adverse impact on the following –

- the matters referred to in clause 13.12(2) (above);
- the potential for the ecological restoration of the land;
- adjoining land identified as a strategic conservation area.

Subdivision

Subdivision of land in a strategic conservation area is prohibited unless the consent authority is satisfied the subdivision:³⁷

- will allow for the continued protection of threatened ecological communities, threatened species and their habitats;
- will facilitate the long-term biodiversity conservation management of the land;
- will not increase the risk of disturbance to threatened ecological communities, threatened species and their habitats; and
- will not increase the potential for land use conflict or intensify land uses.

Ecological restoration works

Development for the purposes of environmental protection works³⁸ may be carried out by or on behalf of a public authority without development consent if the environmental protection works will give effect to the CPCP.³⁹

Rezoning of land

A person may apply to rezone land (known as a ‘planning proposal’) in a strategic conservation area. However, the same Ministerial Direction that applies to avoided land also applies to rezoning of land in a strategic conservation area.

³⁷ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.13.

³⁸ *Environmental protection works* has the same meaning as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*. It means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection work.

³⁹ *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, clause 13.14.

The Ministerial Direction states that:⁴⁰

- A planning proposal authority must be satisfied that a planning proposal that applies to a strategic conservation area demonstrates that it is consistent with:
 - the protection or enhancement of native vegetation;
 - the minimisation of impacts on areas of regionally significant biodiversity, including threatened ecological communities, threatened species and their habitats;
 - the protection or enhancement of koala habitat and corridors, including habitat connectivity and fauna movement and links to ecological restoration areas; and
 - the maintenance or enhancement of ecological function.

A planning proposal must not rezone a strategic conservation area to RU4, RU5, RU6, residential, employment, mixed use, SP1 Special Activities, SP2 Infrastructure, SP3 Tourist, SP4 Enterprise, SP5 Metropolitan Centre, RE2 Private Recreation, W4 Working Waterfront or equivalent zone.⁴¹

4. Modification or revocation of the Biodiversity Certification Order

4.1 Can the Certification Order be modified or revoked?

The Minister may suspend or revoke the Certification Order (which gives effect to the CPCP) if:

- the approved conservation or other measures set out in the Certification Order have not been complied with to the satisfaction of the Minister;⁴²
- the Minister is of the opinion that a party to the biodiversity certification has failed to comply with an order made by the Minister;⁴³ or
- the Minister is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened;⁴⁴ or
- the Minister is no longer satisfied that the approved conservation measures set out in the Certification Order adequately address the likely impacts on the biodiversity values of the relevant land.⁴⁵

⁴⁰ Direction 3.6(2) of the Ministerial Direction dated 13 December 2022.

⁴¹ Direction 3.6(4) of the Ministerial Direction dated 13 December 2022. Note that the Direction says that a planning proposal may rezone land identified as a strategic conservation area to Zone SP2 if the relevant planning authority can satisfy the Planning Secretary that planning proposal demonstrates that i) the rezoning is to facilitate infrastructure that is required to service or support development within nominated areas; and ii) the planning proposal is consistent with the Cumberland Plain Conservation Plan Guidelines.

⁴² *Biodiversity Conservation Act 2016* (NSW), section 8.21(2).

⁴³ *Biodiversity Conservation Act 2016* (NSW), section 8.21(2).

⁴⁴ *Biodiversity Conservation Act 2016* (NSW), section 8.21(2).

⁴⁵ *Biodiversity Conservation Regulation 2017* (NSW), clause 8.6.

The Minister may modify the Certification Order by:⁴⁶

- modifying the description of land that is biodiversity certified (to extend or limit biodiversity certification); or
- modifying the approved conservation or other measures under the biodiversity certification.

A party to the Certification Order (e.g., the NSW Planning Minister) may apply to the Environment Minister to modify the Order, or the Minister may modify the Certification Order on the Minister's own initiative.⁴⁷

Ordinarily, an application for a modification of a biodiversity certification must be accompanied by a revised biodiversity certification assessment report.⁴⁸ However, a biodiversity certification assessment report is not required if a modification application proposes to substitute an approved conservation measure with an 'equivalent conservation measure'.⁴⁹ An equivalent conservation measure is a conservation measure that is determined by the NSW Environment Minister to have an equivalent biodiversity value to the approved conservation measures.⁵⁰

Public notice⁵¹ of any suspension, revocation or modification is to be given within 21 days.⁵²

There is no explicit requirement for the NSW Environment Minister to carry out public consultation on an application to modify a biodiversity certification (including if the Minister substitutes approved conservation measures with equivalent conservation measures), or on considering whether to revoke or suspend a biodiversity certification.

Calls for modification proposals

DPE has said that it intends to ask the NSW Minister for the Environment to modify the Certification Order at different times during the life of the CPCP (which is until 2056).

From 24 January 2023 to 30 June 2023, interested landholders were able to apply for minor amendments to the CPCP mapping for their land.⁵³ DPE accepted applications (from landholders, including developers) for

⁴⁶ *Biodiversity Conservation Act 2016* (NSW), section 8.22(1).

⁴⁷ *Biodiversity Conservation Act 2016* (NSW), section 8.22(2).

⁴⁸ *Biodiversity Conservation Act 2016* (NSW), section 8.7.

⁴⁹ *Biodiversity Conservation Act 2016* (NSW), section 8.22(3).

⁵⁰ *Biodiversity Conservation Act 2016* (NSW), section 8.14(1).

⁵¹ Public notice will have been given if the notice is published on a government website maintained by the CEO of Environment and Heritage within DPE.

⁵² *Biodiversity Conservation Act 2016* (NSW), section 8.24(1).

⁵³ <https://www.planning.nsw.gov.au/policy-and-legislation/strategic-conservation-planning/cumberland-plain-conservation-plan/mapping>

amendments to ‘Certified-urban capable land and avoided land in the nominated areas (Greater Macarthur Growth Area, Wilton Growth Area, Western Sydney Aerotropolis and Greater Penrith – Eastern Creek Investigation Area).

According to DPE’s website, DPE is now compiling the proposed amendments and preparing a biodiversity assessment report for public consultation, and aims to exhibit the amendments for public feedback before the end of 2023. After exhibition, the department will seek approval from the NSW Minister for the Environment to modify the certified-urban capable land and avoided land.⁵⁴

The modification process does not include changes to the mapping of excluded land and the strategic conservation area in the CPCP.

5. Enforcing the CPCP

5.1 How is the CPCP enforced?

The CPCP is enforced via the legal instruments that give effect to the CPCP. For example, clause 2 of Schedule 3 of the Certification Order states that the approved conservation measures are to be delivered in accordance with the Certification Order and the CPCP, and that the CPCP is enforceable by the Minister under the Certification Order.

Under the BC Act, the NSW Environment Minister may require the NSW Planning Minister to rectify any failure to comply with the ‘approved conservation or other measures’ set out in the Certification Order (these measures include the commitments listed in Appendix C to the CPCP).⁵⁵

Additionally, some circumstances may give rise to a breach of the EP&A Act or an environmental planning instrument such as Biodiversity and Conservation SEPP, or the BC Act. In such circumstances, any person may be able to take action to remedy a breach of either legislation.⁵⁶ Third parties (e.g., individuals and community groups) should seek further legal advice regarding potential breaches of the legislation.

5.2 Are there any further public consultation opportunities?

In accordance with section 8.6(3) of the BC Act, the draft CPCP and the Cumberland Plain Assessment Report were put on public exhibition from 26 August to 2 November 2020.

⁵⁴ <https://www.planning.nsw.gov.au/policy-and-legislation/strategic-conservation-planning/cumberland-plain-conservation-plan/mapping>

⁵⁵ *Biodiversity Conservation Act 2016* (NSW), section 8.13(1).

⁵⁶ *Environmental Planning and Assessment Act 1979* (NSW), section 9.45; *Biodiversity Conservation Act 2016* (NSW) section 13.14.

The BC Act does not require any further public consultation to be carried out in relation to the Certification Order or the CPCP. However, we note that DPE has indicated its intention to undertake public consultation on proposed modifications to CPCP mapping in the second half of 2023.

Other opportunities for public consultation are provided under the EP&A Act (however, these opportunities will relate to applications for development consent, not the CPCP). Where the Certification Order applies, biodiversity impacts do not need to be considered, and therefore public consultation does not need to address biodiversity impacts.

6. Monitoring and reporting on compliance with the CPCP

The Certification Order includes eight measures that relate to the monitoring, reporting or auditing of the implementation of the approved conservation measures.⁵⁷ Some of these include:

- Providing an Annual Report to the NSW Environment Minister every 12 months which provides an update on a number of different matters (including progress on establishing the George's River Koala Reserve and monitoring undertaken in accordance with the CPCP (amongst other things). The Annual Report must be published on the NSW Government website;
- Providing information to the NSW Environment Minister regarding the CPCP's actual and projected funding for the following five year period;
- Providing the Minister with a five-yearly independent review report of the CPCP.

The Certification Order also says that a number of Commitments in the CPCP that relate to monitoring, reporting and compliance must be delivered: Some of these include:

- Commitment 24 - To establish governance arrangements including roles, responsibilities and funding to ensure the efficient and effective implementation of the CPCP.
- Commitment 25 - Implement an evaluation program for the CPCP that sets out requirements for monitoring, evaluation, reporting and adaptive management.
- Commitment 26 - Implement a compliance program to ensure compliance with the CPCP and conditions of approval.

7. Funding

DPE is responsible for implementing the CPCP over its life to 2056. This includes ensuring funding is available to deliver the measures in the Certification Order and the Commitments in the CPCP. As a partner to the CPCP, Transport for NSW also has some funding responsibilities.

⁵⁷ These eight measures are in Schedule 4 to the Certification Order.

8. Evaluate this resource

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

