

19 April 2007



Growth Centres Commission
PO Box 1457
PARRAMATTA 2124

Dear Sir,

DRAFT GROWTH CENTRES CONSERVATION PLAN – UDIA NSW SUBMISSION

I refer to the exhibition of the Draft Growth Centres Commission Conservation Plan dated February 2007.

UDIA NSW commends the Growth Centres Commission (GCC) on the initiative to prepare a conservation plan and welcomes the opportunity to comment. UDIA NSW recognises the GCC's efforts to ensure the draft Plan received appropriate exposure to the industry and community and in particular the specific briefing given to UDIA NSW members.

UDIA NSW generally supports the principle of balancing conservation and development objectives through mechanisms like biodiversity certification. The Conservation Plan has the potential to provide greater certainty for the urban development industry and greater efficiencies towards a streamlined approval process. UDIA NSW contends that it is critical that the plan provide sufficient clarity and accuracy in the vegetation mapping and in the designation and definition of respective conservation areas to underpin the Growth Centres objective of providing a consistent and continuous supply of housing for Sydney.

UDIA NSW has reviewed the draft Conservation Plan and supports the GCC for pursuing a framework that provides balance for conservation outcomes and the provision of new communities in Sydney's Growth Centres. In providing this response UDIA NSW reserves its position on biodiversity banking and specifically the offsets arrangements for conservation lands. UDIA NSW is still formulating its view and examining the practical application of the scheme and will propose a mechanism that we believe will underpin the success of BioBanking in providing equitable conservation outcomes.

The comments provided overleaf provide constructive input that UDIA NSW believes will assist in contributing to the final preparation of the conservation plan. If you require any further clarification please the undersigned on 0438 113 105.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ross Blancato', is positioned below the 'Yours sincerely' text.

Ross Blancato
President

UDIA COMMENTS ON THE DRAFT GROWTH CENTRES CONSERVATION PLAN

To ensure that the Conservation Plan reflects the outcome that has been expressed, UDIA NSW would like to confirm that our understanding of the Draft Conservation Plan is as follows:

- The native vegetation communities shown in green on figures 4 and 5 depict the areas of native vegetation that are in good condition and that can be removed as a consequence of the adoption of the Growth Centres Conservation Plan. These lands do not include those with yellow hatching – which are protected.
- The offset vegetation communities that will be acquired from within the Growth Centres land (yellow hatched areas) and, outside the Growth Centres land, will be bought using part of the levy applied to development within the Growth Centres.
- That component of the levy totals \$530 million.
- The native vegetation communities shown in green (un-hatched) are therefore able to be removed and the land used for development, unless other factors that would normally preclude development, apply.

1. Verification of Biodiversity Information

Verification of the vegetation types within the protected zones should be ground-truthed and verified to provide certainty to land owners and developers, but also greater credibility to the Conservation Plan.

Many landowners have indicated that the type of vegetation within the protected zone may not be that which should be retained and their conservation will not generate the offset outcomes as stated in the draft Plan. It is critical that erroneous designation of land and vegetation be addressed to ensure the desired balance between conservation and development is accurately achieved. This will create greater certainty for the planning and development process.

RECOMMENDATION 1

Ground-truthing of mapping be undertaken where inconsistencies are claimed to ensure accurate offset calculations and conservation outcomes. Ground truthing be undertaken prior to the gazettal of the Conservation Plan.

2. Definition and Scope of Biodiversity

There is concern from the development industry that the manner in which the habitat has been calculated, namely the definition and calculation has chosen a canopy of trees of 10% or more. It is understood that the 10% canopy cover may have been chosen as

there is existing data produced by the National Parks and Wildlife Service (NPWS) that uses this variable.

The NPWS mapped the vegetation of the Cumberland Plain and used a three tiered system: Canopy Cover <10%, Canopy Cover >105, and <10% Urban. Using the 10% or more canopy cover in a practical sense would imply where tree canopy in an area of approximately 4ha of land are approximately 50m apart, they would need to be retained. It is a concern that the 10% canopy cover may be used as a precedent for future Biodiversity Certifications.

RECOMMENDATION 2

The definitions of biodiversity in relation to the calculations of the canopy cover and 'improve or maintain' be given greater transparency.

3. Definition of the Protected Areas

Clarity in regard to the Protected Areas needs to be given in order to create certainty and understanding in the development industry. The certainty is required in order that the 'rules' are consistently applied and transparency is achieved in the process.

The yellow hatched areas are lands to be protected through either the SEPP zoning, development control through the SEPP, or are protected through an existing reservation or zoning. It is understood that the purchase or establishment of conservation agreements over some of these areas will be funded by the Special Infrastructure Contribution. The quantum of this funding, and what lands in particular will be purchased or covered by a conservation agreement is unclear.

The green zones that are not hatched can be developed, subject to local Tree Management Policies by Council. The *Threatened Species Conservation Act 1995* is not applicable to the green zone after certification has been granted. However, at a precinct planning level it is the green zones that would be considered more carefully in the planning process to be incorporated into the local open space.

Outside these zones, there is additional requirements in certain areas, as outlined in Table 7 (page 31) of the Draft Conservation Plan, where requirements must be met to "improve or maintain" the flora species. There is some uncertainty as to when the additional requirements to meet improve or maintain outcome for flora species as described in Table 7, will apply and the implications of the outcome of further investigation. For example, if a greater population of a particular species or additional species are discovered.

The Frequently Asked Questions document released by the GCC provides some additional guidance on the provisions of the draft Plan that should be incorporated into the final Conservation Plan to avoid any ambiguity in interpretation.

RECOMMENDATION 3

Clear definition and outline of each of the zones be provided in the Conservation Plan as per the FAQs document.

RECOMMENDATION 4

Provide further explanation and guidance on the application of Table 7 – Additional Requirements to meet Improve or Maintain outcome for flora species.

4. Relationship to Commonwealth Legislation

While the draft Conservation Plan provides a good mechanism to effectively ‘turn off’ the provisions of the *Threatened Species Conservation Act 1995*, there remains a potential conflict with Commonwealth legislation.

The application of the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act) as it applies to threatened species conservation has the potential to usurp the objectives and outcomes of the Conservation Plan. As Commonwealth Legislation the EPBC Act has primacy over NSW Legislation and could potentially be applied to land within the Growth Centres, negating the streamlined certainty offered by the Conservation Plan.

UDIA NSW suggests that given the extensive work undertaken to prepare the plan, the GCC pursue a bilateral agreement with the Federal Minister for Environment to effectively turn off the provisions of the EPBC Act and allow for the application of the Conservation Plan as the sole legislative mechanism for biodiversity conservation. This will provide a greater degree of certainty and finality for the development industry.

RECOMMENDATION 5

The GCC pursue a Bilateral Agreement as described under Part 5 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) for the Growth Centres to provide greater certainty and finality for conservation and development outcomes.

5. Approval and Flexibility in the future

Once the Conservation Plan is certified there needs to be an outline of how the zones can be amended, if necessary. Possibly to ensure that final details can be developed during the precinct planning process, there should be a ‘flexibility’ zone or a ‘buffer’ to allow for the zone to move within a specific distance, say 20m. The flexibility zone however needs to consider how the amendment to the zones make up the offset required by the certification of the Conservation Plan. This process needs to be clear and transparent to the Industry at the time of approval.

UDIA NSW supports the principle that the zones need to have the flexibility to be amended as precinct plans are being developed. The amendment will need to be

verified and approved, and then we assume the SEPP is amended. This approval process needs to be confirmed.

RECOMMENDATION 6

The GCC consider the issue of flexibility within the zones within the precinct planning process.

6. Certification

Granting biodiversity certification to the Growth Centres SEPP will see conservation values determined at a precinct scale and the need to undertake threatened species requirements as outlined in s.5A of the EPAA 1979 negated. It is considered that the overall impacts of biodiversity certification on the precinct planning process will be positive, as the process will facilitate strategic planning and development while also significantly reducing the time and costs associated with determining precinct conservation values across the Growth Centre precincts.

Certification occurs at the Growth Centres level, however in affect it is granting conditional certification, as the detailed planning only occurs at the precinct level. Is development certainty in relation to certification therefore obtained at the Growth Centres level or after approval of the precinct plan? If certification occurs at the Growth Centre level, then a process to allow amendments, together with a balance of conservation and development land still needs to occur. It is uncertain how this amendment and re-certification will occur.

RECOMMENDATION 7

On approval of the Draft Conservation Plan, a map clearly outlining the zones and a statement in the SEPP should state that the Map is a “certified map”.

7. Implementation and approval by Local Councils

At a local government level, despite the provisions of the Conservation Plan and commensurate certification, when a development application is assessed there is nothing to preclude a council under pressure from residents, or of its own volition, to refuse the application on the basis of a loss of local amenity. Councils may also have existing tree preservation orders that have significant implications for development applications on certain sites.

A process needs to be outlined, and the Growth Centres need to work closely with local government about the implementation of the SEPP and Conservation Plan, at development application stage. The GCC should undertake a communication strategy to ensure that the local councils can relate and understand the certification process.

The process and strategy with Councils also need to outline the approach to the green zone to ensure that certainty is provided to the development industry that the green zone

do not obtain a lower value if included in a Section 94 Plan, but rather considered on market value.

RECOMMENDATION 8

Clear detail of the Conservation Plan and the implications of Biodiversity Certification be provided to local Councils to prevent misunderstanding and conflict in development assessment, as part of a communication and education program.

8. Clarification of the Review process

The draft Conservation Plan provides for the regular review of Certification and this is welcomed by UDIA NSW. Given the fluctuations in biodiversity it is recommended that the mechanism for review be given greater regularity than the four years that are provided for the SEPP.

UDIA NSW proposes that a clear understanding of the review process be outlined including:-

- circumstances that may warrant an extraordinary review of certification; and
- who can identify changes and how are changes identified.

RECOMMENDATION 9

A clear framework for the review of the Conservation Plan be provided with detail on circumstances that may warrant a review outside the designated four year timeframe, and who can request a review.

9. Principles and process for the purchase of land

The draft Conservation Plan identifies the allocation of \$530 million of the Special Infrastructure Contribution towards the purchase of land in the protected zones and the establishment of conservation agreements over some of the protected lands. As mentioned earlier the quantum of this funding for land inside the Growth Centres, and what lands in particular will be purchased or covered by a conservation agreement is unclear.

The draft Plan provides scant detail on the principles of how and when the land will be purchased and no detail on the criteria for ensuring the maintenance and improvement of the land in the interim or indeed, once the ownership of these lands have been transferred.

RECOMMENDATION 10

A framework that details when DEC intends to purchase land, timing milestones, together with the process for such purchase arrangements should be developed.

CONCLUSION

UDIA NSW has reviewed the draft Conservation Plan and commends the GCC for its initiative in pursuing a framework that provides for the provision of new communities within a context that ensures an appropriate level of biodiversity conservation. This submission raises a number of issues that UDIA NSW believes deserve further consideration before the plan is finalised.

UDIA NSW offers the following recommendations for the Growth Centres Commission on the draft Conservation Plan:

1. Ground-truthing of mapping be undertaken where inconsistencies are claimed to ensure accurate offset calculations and conservation outcomes. Ground truthing be undertaken prior to the gazettal of the Conservation Plan.
2. The definitions of biodiversity in relation to the calculations of the canopy cover and 'improve or maintain' be given greater transparency.
3. Clear definition and outline of each of the zones be provided in the Conservation Plan as per the FAQs document.
4. Provide further explanation and guidance on the application of Table 7 – Additional Requirements to meet Improve or Maintain outcome for flora species.
5. The GCC pursue a Bilateral Agreement as described under Part 5 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) for the Growth Centres to provide greater certainty and finality for conservation and development outcomes.
6. The GCC consider the issue of flexibility within the zones within the precinct planning process.
7. Clear detail of the Conservation Plan and the implications of Biodiversity Certification be provided to local Councils to prevent misunderstanding and conflict in development assessment, as part of a communication and education program.
8. On approval of the Draft Conservation Plan, a map clearly outlining the zones and a statement in the SEPP should state that the Map is a "certified map".
9. A clear framework for the review of the Conservation Plan be provided with detail on circumstances that may warrant a review a review outside the designated four year timeframe, and who can request a review.
10. A framework that details where DEC intends to purchase land, timing milestones, together with the process for such purchase arrangements should be developed.