



The Policy Framework for the
Identification, Ownership and
Management of Riparian Corridors

Submission of the Urban Development
Institute of Australia NSW

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Introduction

The urban development industry is a major contributor to the NSW economy and its investment decisions are guided by key strategic documents including the State Plan, the Sydney Metropolitan Strategy and various Regional Strategies. The residential sector of the industry alone contributes more than \$15 billion worth of activity to the NSW economy annually. UDIA NSW believes in genuine sustainability including the preservation of environmental outcomes in balance with social equity and economic stability.

UDIA NSW has previously raised concern surrounding the identification, ownership and ongoing management of riparian corridors with the NSW Government. UDIA NSW addressed the Government's CEO Approvals Group on Thursday 16 July 2009, and has expressed to this group the need for a more coordinated approach between the Department of Planning (DOP) and the Department of Water and Energy (now the Department of Environment, Climate Change and Water, DECCW) on this issue.

Particularly, UDIA NSW is concerned that the application of the *Water Management Act 2000* (the WM Act) and associated guidelines have resulted in the setting aside of unrealistic and unjustifiably large zoned riparian corridors in urban areas. This is in many cases counter to the strategic planning outcomes of the Government's Metropolitan, Regional and Subregional Strategies. The delivery of higher density and mixed use urban environments capable of supporting a range of socio-economic planning objectives is inconsistent with the current riparian corridor framework.

The application of the WM Act has been further exacerbated by the imposition of publicly prescribed maintenance regimes on individual landholders. This has arisen as a result of the removal of the capacity of local government to acquire riparian land through the development contribution framework.

This submission provides UDIA NSW member case studies that illustrate the current inequitable and unsustainable outcomes of the existing riparian corridor policy framework. These case studies also identify the inefficiencies of existing regulatory processes that contribute to poor outcomes in a strategic planning context.

Identification of Riparian Corridors

The application of the WM Act and associated *Guidelines for Controlled Activities – Riparian Corridors* (the Guidelines) lack a balanced and consistent approach to the identification of riparian lands. The Guidelines also evolve regularly without any industry or community consultation.

Case Study 1 – Riparian Corridor Identification Issues, Black Hill Part 3A

The proponent submitted a Part 3A application for concept plan approval and rezoning for 183 hectares of light industrial land at Black Hill in April 2009. Although the *Water Management Act* is not triggered by Part 3A, the proponent is nevertheless required to respond to submissions on riparian issues from local government and state government agencies before approval is given.

Based on an agreement with the NSW Government, the environmental outcomes for Black Hill had already been offset through the dedication of conservation lands. The proponent had also proposed adequate setbacks in the concept plan to cater for proposed hydrological/drainage requirements in consideration of the existing ecological character.

In its submission to the Department of Planning (DOP), despite the WM Act not being triggered by Part 3A of the EPA Act, the DECCW submitted that *'For the assessment of riparian corridor widths, regard should be given to the DWE's Guidelines for Controlled Activities, the extent of riparian corridors may need to be reviewed in light of the following comments:'*

The DECCW continued, *'The NSW Rivers and Estuaries Policy and the controlled activities provisions of the Act require that works for stormwater capture and treatment are located outside any riparian buffer. The proposal should investigate options for the siting of stormwater treatment structures to conform to these requirements.'*

This matter remains unresolved thereby delaying DOP approval of the proposal without regard to the applicability of the WM Act. The DECCW submission also lacks consideration within the context of positive environmental offsets and dedication of conservation lands. Further, the submission does not reflect a reasonable understanding of the basis of locating stormwater treatment structures within the riparian zone, and is not reflective of the need for sustainable development and broader economic outcomes in a regional area.

UDIA NSW contends that this enhances the complexity of the riparian corridor identification process for the DECCW assessing officers, results in the inconsistent and subjective identification of corridors, and creates uncertainty for industry in the planning stage of a development proposal. Consequently, the identification of riparian corridors lacks strategic direction.

Often the DECCWs identification of riparian corridors and submissions to the Department of Planning (DOP) do not reflect the fact that the DECCW is not a concurrence authority under Part 3A of the *Environmental Planning and Assessment Act 1979* (EPA Act), which is not a trigger for the WM Act. The DECCWs application of the WM Act where it is not applicable in relation to Part 3A is a frequent cause for delay of Part 3A determinations by the DOP as evident in Case Study 1.

UDIA NSW contends that the DOP requires a more decisive role in ensuring sustainable urban outcomes in the riparian corridor context. The environmental and social outcomes of the current riparian lands identification regime and application of the Guidelines are questionable in their own right whilst also contributing to poor development outcomes in urban and suburban areas.

This is particularly evident in greenfield release areas. There have also been instances where 40 metre wide riparian corridors have been required in a full urban context on sites in Sydney's Inner West.

The application of the Guidelines is highly dependent upon the views of the assessing officer within the DECCW, rather than any quantitative assessment. Anecdotally, UDIA NSW members have expressed concern that some officers can be over zealous and even arbitrary in their application of a minimum standard for riparian corridor widths.

Equally, UDIA NSW acknowledges that some assessing officers can be more pragmatic and flexible in their assessment approach. However the concern remains that there is a lack of consistency and certainty for the development industry in this assessment where there is an onus to achieve riparian outcomes alongside broader social and economic objectives such as housing affordability, employment creation and the effective use of public land.

Case Study 2 – Riparian Corridor and Asset Protection Zone Issues – Research Road Narara

A proposed 12 lot subdivision on Lot 322 Research Road Narara, Central Coast, was submitted to the then Department of Infrastructure Planning and Natural Resources (DIPNR) in 2005. A small section of Narara Creek (approximately 35 metres in length) flows through the corner of Lot 322 and is surrounded by highly degraded remnant vegetation and cleared pasture vegetation for which DIPNR requested a 20 metre riparian buffer zone.

By nature of the cleared areas of the site surrounding the creek, a 20 metre Asset Protection Zone (APZ) as required in accordance with the *Rural Fires Act (1997)* would generally correspond with the recommended 20 metre riparian buffer zone. The expert environmental consultant for the site noted, *'The future management of the riparian buffer zone can achieve the objectives of an asset protection zone while still providing the functions of a buffer zone between the proposed development and creekline.'*

However, correspondence to the proponent from DIPNR (now DECCW) required that, *'All development, including any asset protection zone, must be outside the riparian buffer zone.'* The environmental consultant for the subject site further observed that a 10 metre riparian buffer would be adequate in protecting the aquatic and habitat values of Narara Creek.

The proposed 10 metre riparian buffer would still result in a net gain in riparian vegetation and habitat within the subject site and within the local area. Further, it had been submitted by the proponent that in a planning context, a 10 metre riparian buffer would be consistent with buffer widths of areas downstream of the subject site. Despite a pragmatic proposal from the proponent that would integrate the riparian buffer zone with the APZ, or reduce the riparian zone to 10 metres to achieve the same environmental outcome, this matter was not resolved satisfactorily.

RECOMMENDATION 1

UDIA NSW recommends the Department of Planning take a more central role in ensuring the delivery of sustainable urban outcomes in the riparian corridor context.

RECOMMENDATION 2

UDIA NSW recommends the Guidelines for Controlled Activities – Riparian Corridors be reviewed with genuine stakeholder consultation to provide a more balanced approach to the identification of riparian lands, and the determination of required management actions.

Agency Coordination

The impact on development economics, and therefore housing affordability and creation of employment lands, is further compromised by a layered and uncoordinated approach by Government agencies to identifying riparian corridors and implementing the Guidelines. The application of the Guidelines is resulting in unrealistically wide overall corridor widths comprised of the core riparian zone (CRZ) and vegetated buffer. This in turn often leads to additional land loss as a result of increased asset protection zone requirements under the *Rural Fires Act 1997*.

Case Study 2 provides an example of the layered outcomes of the riparian framework within the context of the *Rural Fires Act (1997)*. Without the flexibility to incorporate the APZ within the riparian buffer, as may be recommended by expert consultants or as a proposal may warrant, the development potential of urban land can be compromised. This is despite pragmatic solutions from proponents that can meet both the intended environmental outcomes of the riparian Guidelines and the requirements of the *Rural Fires Act (1997)*.

Due to the inflexible application of the Guidelines, as Case Study 2 illustrates, riparian buffer widths are often in excess of what is reasonably required to protect the existing environmental values of a watercourse. Further, riparian buffer zones are often imposed on new development without consideration or consistency with the existing downstream buffer zones and the surrounding urban area.

RECOMMENDATION 3

UDIA NSW recommends that landuses compatible with riparian corridors, such as bushfire asset protection zones, be prescribed in the Guidelines for Controlled Activities – Riparian Corridors

Ownership and Management of Riparian Corridors

The process for obtaining Controlled Activity Approvals (CAA) to restore often unjustifiably large riparian corridors is conditional on the preparation and delivery of Vegetation Management Plans and Works Management Plans, which are complex and provide very limited opportunity to make effective use of riparian land. Urban design outcomes often result in riparian corridors at the rear of individual lots rather than adjoining perimeter roads and integrated into open space networks.

Case Study 3 – Riparian Corridor Ownership and Management Issues, Minmi/ Link Rd Part 3A

The proponent for a Part 3A proposal in the Hunter Valley was required to respond to various local government and state government agency submissions on riparian zones following public exhibition of the concept plan for a proposed 3,300 lot residential estate. The proponent has expressed to Newcastle City Council that all riparian land will be provided to Council at no cost provided that Council accept ownership and management responsibility for that land.

In its submission to the proposal, even though land would be dedicated at nil cost to Council by the proponent, Council refused ownership of riparian land and suggested that instead ongoing management for environment/conservation lands should be funded via a community title scheme or other form of sustainable tenure. The proponent could not accept Council's suggestion to fund riparian land via a community title scheme due to a low acceptance of this form of title in the marketplace.

In its submission, Council further suggested that riparian corridors are of 'no public use or benefit and should be funded by a community title scheme or other form of sustainable tenure'. Significantly, this implies that Council is unwilling to spend general rate revenue on the ongoing management of riparian corridors despite what will be an increase in rate revenue from the proposed development. This matter remains unresolved.

As a result of these complex and expensive management regimes over large areas of land, and because new section 94 plans can no longer contain riparian land, Councils are increasingly reluctant to assume ownership of riparian land.

Effectively, the burden of publicly prescribed management for often unrealistically large riparian zones is resting on the individual landholder. Consequently, management outcomes are inevitably uncoordinated and lack strategic direction.

UDIA NSW contends that the burden of management creates intergenerational and geographical inequity. At a geographic level, the onerous requirements under the WM Act and associated Guidelines are being imposed on new development, generally in greenfield areas, imposing a financial burden on homebuyers that would not apply to purchasers of homes in existing areas.

Intergenerational inequity on first home buyers is perpetuated by riparian corridor requirements which were not previously integrated with the *Environmental Planning and Assessment Act 1979* (EPA Act). As a result, previous homebuyers were not subject to the financial costs associated with the ownership and maintenance of riparian corridors. This inequity is further exacerbated by the cost-shifting of NSW Government responsibility, firstly on to local Councils through section 94, and now on to first homebuyers in new release areas.

UDIA NSW contends that the NSW Government, through the DECCW, should assume financing responsibility for the ownership and management of riparian corridors. This would address the inequities of the existing framework and provide an impetus to the DECCW to develop a more realistic policy framework. The reintroduction of riparian corridors into section 94 would provide a funding mechanism to support the public acquisition, ownership and strategic management of riparian lands.

UDIA NSW would support the reintroduction of riparian corridors into section 94 provided this is done in tandem with a more realistic, flexible and pragmatic approach to identifying riparian corridors. Alternatively, UDIA NSW proposes a proportion of the State Infrastructure Contribution (SIC) be allocated to the DECCW to provide that agency with the funding necessary for the ongoing maintenance of riparian lands.

This rightly puts the onus of financing back on to the state agency prescribing the management regime. The introduction of riparian corridors into a SIC is supported provided a transparent, flexible and realistic approach is used to identify corridor widths. UDIA NSW contends that any such framework should provide developers with works in kind arrangements and offsets against any SIC obligation for works done.

RECOMMENDATION 4

UDIA NSW recommends that riparian corridors be reintroduced into section 94 contributions to provide a funding mechanism to support the public acquisition and ownership of core riparian lands. Alternatively a proportion of the SIC should be allocated to fund riparian corridors.

Case Study 3 provides an example of a local Council refusing ownership of riparian land, even if dedicated to Council at nil cost, as a result of the current unsustainable funding framework for the ongoing management of such land. Council further identified such land as being of 'no public use or benefit'.

UDIA NSW contends that Council's position is reflective of the complex nature of Vegetation Management Plans and Works Management Plans that limit the effective use, and impose a financial burden, on what should be valued public land. Council unwillingness to accept ownership and management responsibilities for riparian land is further exacerbated by the removal of riparian corridors from the section 94 funding mechanism.

As Case Study 3 illustrates, despite significant increased rate revenue potential from new development, local Councils are still unwilling to accept management responsibility for riparian corridors. This is a consequence of both a poor policy framework and no viable funding mechanism. This contributes to riparian outcomes perceived as of, 'little public benefit', at a local scale.

Inconsistent Application in Existing Urban Areas

The management framework for riparian corridors is further compromised by the lack of a consistent policy framework from government over time, resulting in poor social and environmental outcomes. As evident in Case Study 2, new development is often subject to different management and planning outcomes compared to what has previously applied to existing development along a watercourse.

In such situations it is often a requirement of new development to accommodate riparian corridor widths that are grossly inconsistent with the overall corridor. As a result, new development is required to address oversights from past planning decisions on adjoining landholdings. Case Study 4 demonstrates this inconsistency within the context of questionable environmental outcomes.

Case Study 4 – Riparian Corridor Management Inconsistency, North Richmond

A development proposal before Hawkesbury Council, on a site granted a site compatibility certificate, is adjacent to an existing urban area through which a tributary of the Redbank Creek flows. The existing area was developed in the early 1990s with the tributary piped under the existing urban area or directed through drainage swales.

The upper part of the riparian corridor formed a boundary to the urban area and had a small setback to properties along the side of the corridor that was developed. However, under current DECCW requirements, this riparian corridor was reclassified as category 2.

The category 2 classification requires far greater setbacks, significant enhancement of the corridor and vegetated buffers not previously required by the existing urban area on the opposite side of the creek. The inconsistent policy framework has resulted in new development on one side of the creek requiring substantially greater setbacks than the existing developed area on the other side of the creek. The vegetated buffers, not required in the existing area opposite, reduce the developable potential of the land and negatively affect development feasibility.

This is counterintuitive to the intended environmental and planning outcomes associated with the riparian corridor requirements of the DECCW. It is also highly questionable whether or not Council will be able to maintain the riparian corridor in the long term even if they accept ownership of the land under the current framework.

Excessive Consumption of Land

In urban areas the identification and preservation of land to achieve riparian objectives is undertaken in a context against the achievement of other environmental goals. In greenfield release areas, development proposals are required to maximise the efficient use of land.

The need for the efficient use of land is embodied in the NSW Government's Metropolitan and Regional Strategies which seek to limit urban sprawl and increase gross urban densities. The purpose of these objectives is to achieve broader social and environmental outcomes such as the promotion of public transport use, promote walkable neighbourhoods, achieve quality urban design and ensure the effective provision of infrastructure.

The existing riparian corridor framework in new urban areas is being achieved at the expense of other competing objectives. Case Study 5 demonstrates the implications of an excessive consumption of land for riparian purposes at the expense of the broader objectives outlined in the NSW Government's Metropolitan Strategy.

Case Study 5 – Excessive Consumption of Land: Oran Park Precinct South West Growth Centre

The indicative Layout Plan for the Oran Park precinct west of the Northern Road was required to identify 12 hectares for the creation of Category 1 Riparian Corridors in an area at the gateway to the western part of the precinct.

The declaration of the status of both creek lines as Category 1 Watercourses is questionable and was challenged during the plan preparation process. In particular, it was noted that the declaration failed to recognise or acknowledge the presence of a stream hierarchy /ordering consistent with the Strahler System of Stream ordering. All watercourses were merely categorised as 1. No opportunity for peer review was made available to the design team and there was no reappraisal of the corridors undertaken.

The corridors are now zoned for riparian protection resulting in the loss of 12 hectares of developable land. This amounts to a minimum loss of 180 dwellings (based on NSW Government targets of 15 dwellings per hectare). The riparian corridors in this part of the precinct absorb nearly one third of the potential urban development footprint.

Significantly, this loss of dwellings and potential population (over 400 persons) takes place in an area that would otherwise have exceptionally good access to major bus routes along the Northern Road and subarterial roads within the Oran Park precinct. Furthermore, this part of the precinct will represent an intensively used urban area.

The long term environmental values of the riparian corridor are questionable with more appropriate and potentially successful locations within the precinct that could be dedicated to riparian corridor protection. This result is contrary to the aim of achieving a balanced sustainable outcome and demonstrates that the competing interests for land in new release areas are not being balanced in an equitable manner.

Conclusion

The case studies contained in this submission are representative of the complex and uncoordinated approach to the identification, ownership and management of riparian corridors. They are not atypical of development subject to the WM Act and its associated guidelines. The intended environmental outcomes are often counterintuitive and unbalanced in the context of broader social and economic outcomes associated with urban land use and the objectives of the NSW Government's Metropolitan, Regional and Subregional strategies.

UDIA NSW contends that the existing riparian corridor policy framework requires a comprehensive review that integrates intended environmental outcomes within the bounds of realistic planning outcomes. A holistic approach by government that does not compromise broader planning objectives for this state and facilitates sustainable development is required. UDIA NSW offers the following recommendations to support this approach.

Recommendations

1. *UDIA NSW recommends the Department of Planning take a more central role in ensuring the delivery of sustainable urban outcomes in the riparian corridor context.*
2. *UDIA NSW recommends the Guidelines for Controlled Activities – Riparian Corridors be reviewed with genuine stakeholder consultation to provide a more balanced approach to the identification of riparian lands, and the determination of required management actions.*
3. *UDIA NSW recommends that landuses compatible with riparian corridors, such as bushfire asset protection zones, be prescribed in the Guidelines for Controlled Activities – Riparian Corridors.*
4. *UDIA NSW recommends that riparian corridors be reintroduced into section 94 contributions to provide a funding mechanism to support the public acquisition and ownership of core riparian lands. Alternatively a proportion of the SIC should be allocated to fund riparian corridors.*
5. *UDIA NSW recommends that without the application of the above recommendations, the NSW Government 'switch off' the Water Management Act in relation to riparian corridors in urban zones.*