

10 April 2025

Mr Steve Hartley
Executive Director – Resilience and Urban Sustainability
Department of Planning, Housing & Infrastructure
Via Email: Steve.Hartley@planning.nsw.gov.au

RE: CUMBERLAND PLAIN CONSERVATION PLAN PLANNING ENHANCEMENTS

Dear Mr Hartley,

Urban Development Institute of Australia NSW (UDIA) is the state's leading development industry body. We represent the leading participants in the industry and have more than 450 members across the entire spectrum of the industry including developers, financiers, builders, suppliers, architects, contractors, engineers, consultants, academics and state and local government bodies.

UDIA invests in evidence-based research that informs our advocacy to state, federal and local government, so that development policies are developed to best meet user needs and ensure critical investment is directed to where it is needed the most. Together with our members, we shape the places where people will live for generations to come and in doing so, we are city shapers.

UDIA welcomes the opportunity to make a submission to the Department of Planning, Housing and Infrastructure (DPHI) on the Cumberland Plain Conservation Plan (CPCP) Planning Enhancements, specifically updates to the Mitigation Measures Guidelines. UDIA supports the principles of the CPCP in fostering sustainable development while protecting biodiversity. However, we urge the Department of Planning, Housing and Infrastructure to consider the following adjustments to the proposed mitigation measures guidelines to ensure they are fit for purpose in the future.

Recommendations Summary:

1. UDIA NSW recommends DPHI implements a needs-based analysis, utilising recognised performance-based metrics on quantum and distribution of community open space requirements in areas which are ecologically valuable and serve the needs of growing communities.
2. UDIA recommends that new legislation is adopted to remove councils' ability to develop independent policies requiring all community open space to be free of all constraints, which reduces opportunities for the use of otherwise constrained land for open space purposes and impacts the efficient use of urban capable certified lands.
3. UDIA proposes removing the extensive mitigation measures, particularly the requirement to retain all trees with a diameter of 50cm or greater within CPCP lands.
4. UDIA recommends the NSW Government allows developers to remove trees earmarked by the CPCP, provided that appropriate mitigation measures, such as offset contributions and habitat restoration efforts, are in place.
5. UDIA proposes changes to the CPCP Guidelines that exclude *'isolated and disconnected'* trees from being subject to the same stringent retention requirements as those in connected groves or conservation areas.

Overview of the CPCP

The Cumberland Plain Conservation Plan is a key component of the Greater Sydney region's broader planning framework, specifically targeting urban development areas while safeguarding the region's biodiversity. The plan plays a critical role in identifying and certifying land suitable for urban development, alongside implementing provisions to offset the environmental impacts of such development on sensitive areas. This offsetting mechanism is central to the plan's sustainability objectives, ensuring that urban expansion occurs without compromising the region's conservation priorities.

One of the CPCP's main functions is to designate "Certified Urban Capable Land" in areas earmarked for growth. This designation ensures that development in these areas is carried out in a way that does not harm established conservation zones, which are vital for the protection of native vegetation, wildlife habitats, and overall biodiversity. The plan mandates the use of offsetting measures to mitigate the inevitable biodiversity loss resulting from urban development. These measures are outlined in the CPCP's guidelines, which include requirements for asset protection zones and specific protocols to preserve key vegetation and wildlife habitats.

Previously, the application of the CPCP Mitigation Guidelines was somewhat unclear. The updated guidelines now provide greater clarity, particularly in their application to strategic planning activities such as rezoning, development control plans (DCPs), integrated land use plans (ILPs), and structure plans—an addition that was not present in the prior version. **UDIA commends the Department for incorporating these updates, as they will ensure that CPCP-related matters are considered earlier in the planning process, promoting more effective integration of conservation goals.**

The CPCP also outlines a comprehensive set of mitigation measures addressing both direct and indirect impacts of development. These measures aim to ensure that development within certified urban land adheres to the biodiversity approvals established under the plan. The mitigation strategies cover a wide range of environmental concerns, including habitat protection, tree retention, stormwater management, and the prevention of habitat fragmentation. Development consent in these areas is contingent upon compliance with the CPCP's mitigation guidelines, requiring developers to take necessary actions to minimise environmental harm.

Recent revisions to the CPCP's mitigation framework provide further clarity and enhancements to the planning process. These changes include the introduction of a Strategic Planning Chapter, which offers precinct-level guidance on protecting native vegetation and integrating open space and parks with natural landscapes. Additionally, the updated guidelines provide more detailed specifications for identifying significant trees, particularly those with hollow-bearing habitats or those that contribute to landscape aesthetics.

Strategic Planning Considerations

One of the significant challenges faced by urban developers in Western Sydney, and other greenfield development areas, is the lack of urban tree canopy. The removal of established canopy trees during development contributes to a loss of biodiversity and an increase in urban heat islands. This challenge is particularly pronounced in areas where the removal of large canopy trees disrupts established ecosystems and local wildlife corridors. Addressing these issues requires more comprehensive planning that not only retains trees but also ensures that new development projects integrate urban greening initiatives to mitigate heat island effects. The policy and planning framework associated with the CPCP seeks to address these issues by promoting more sensitive development practices that prioritise the retention of trees and vegetation within both conservation areas and urban development zones.

The integration of these trees into open spaces must be carefully considered to ensure that the open space remains functional, accessible, and aligned with community needs. The quantity and distribution of open space must be carefully planned to avoid compromising the overall design of the development. Retaining existing trees in larger front and backyard areas is one solution, but this may not always be feasible given the nature of typical greenfield subdivision lot sizes. In areas with significant slopes, larger lots may support tree retention, but in flatter areas, this strategy may not align with the need for efficient land use and the feasibility of the development project. It is essential to ensure that this strategy does not compromise the overall goals of urban development, particularly in terms of community needs for open space and infrastructure. Open space planning must be supported by a targeted needs analysis to ensure that these areas are not only ecologically valuable but also serve the needs of the growing community.

Recommendation:

UDIA recommends DPHI implements a needs-based analysis, utilising recognised performance-based metrics on quantum and distribution of community open space requirements in areas which are ecologically valuable and serve the needs of growing communities.

The role of local councils

There is also an ever-present need for local councils to accept more constrained and site-responsive open spaces as part of local community infrastructure commitments. Some local councils have policies that may hinder the effective integration of open space and vegetation retention in the planning process. A more flexible approach that allows for innovative solutions in the design of open spaces would benefit both the environment and the community. UDIA also encourages the NSW Government to adopt legislation that removes councils' ability to develop independent policies requiring all community open space to be free of all constraints. By doing so, this will reduce opportunities for the use of otherwise constrained land for open space purposes and impacts the efficient use of urban capable certified lands.

Recommendation:

UDIA recommends that new legislation is adopted to remove councils' ability to develop independent policies requiring all community open space to be free of all constraints, which reduces opportunities for the use of otherwise constrained land for open space purposes and impacts the efficient use of urban capable certified lands.

Proposed Mitigation Measures for Orchard Hills

The current guidelines, if left unchanged, will have a significant impact on the feasibility of land development in areas like Orchard Hills and could undermine the goals of urban growth and biodiversity conservation. The extensive mitigation measures, particularly the requirement to retain all trees with a diameter of 50cm or greater, will significantly impact on the ability of the development industry to proceed with the development of land that has been acquired in the area. The proposed mitigation measures, if implemented as currently drafted, would result in large areas of land being undeveloped and effectively sterilised, particularly as developers would be required to avoid removing any tree with a diameter of 50cm or more.

This situation is concerning as it implies that developers would need to retain trees across the entire site, including those that may be isolated, disconnected, or of little ecological or amenity value. This approach could substantially hinder the ability to develop the land in a way that meets the community's needs for housing and infrastructure. Additionally, the process of seeking approval to remove trees in paddocks after having already protected significant conservation lands seems cumbersome and inefficient.

Recommendation:

UDIA proposes removing the extensive mitigation measures, particularly the requirement to retain all trees with a diameter of 50cm or greater within CPCP lands.

Retention of Trees

A key issue UDIA and its members would like to see the Department address prior to the finalisation of the Guidelines is a revision to mitigation measures for isolated and disconnected trees. If a tree is isolated and disconnected from others, it should be easier to justify its removal. UDIA proposes changes to the CPCP Guidelines that exclude isolated and disconnected trees from being subject to the same stringent retention requirements as those in connected groves or conservation areas. In cases where a grove of trees is removed, developers should be allowed to provide a balanced outcome by planting new trees in adjacent parklands or open spaces. This would help meet ecological objectives while also enabling the development of urban areas to accommodate the growing population.

UDIA understands the reasoning behind these proposed changes, but it is crucial to review the pathway for assessing the removal of trees in urban capable lands. The complexity and constraints imposed by the new guidelines risk creating an unnecessary

burden on developers and could delay or even derail carefully planned development projects across Western Sydney growth areas.

Another critical point of contention arises when the retention of trees conflicts with the efficient use of land. While tree retention is crucial for maintaining biodiversity and ecological health, it can also impede the planned density and efficiency of urban development. The balance between environmental stewardship and development efficiency is crucial for ensuring the long-term success of urban development projects. Existing trees that can contribute to providing a balanced open space network should be planned for within the Guidelines, where it makes sense for those existing trees to be integrated into a proposed community park or riparian corridor regeneration.

Recommendation:

UDIA recommends the NSW Government allows developers to remove trees earmarked by the CPCP, provided that appropriate mitigation measures, such as offset contributions and habitat restoration efforts, are in place.

UDIA proposes changes to the CPCP Guidelines that exclude isolated and disconnected trees from being subject to the same stringent retention requirements as those in connected groves or conservation areas.

Other Considerations

Developers must also be mindful of the potential need for environmental approvals under the Environment Protection and Biodiversity Conservation (EPBC) Act. In cases where development may impact matters of national environmental significance, an EPBC referral and approval may be required. This process can be time consuming and may limit the scope of development if additional assessments are needed. Therefore, mitigation measures that address these concerns proactively are essential for streamlining the approval process and ensuring compliance with both state and federal regulations.

The CPCP's mitigation measures are an essential component of urban planning in the Greater Sydney region, providing a framework for balancing development with the protection of significant biodiversity values. However, the implementation of these measures must be carefully managed to ensure that development is both environmentally responsible and economically viable. UDIA recommends further exploration of specific strategic planning outcomes that balance tree retention with the efficient use of land, provide flexibility for councils in open space design, and streamline the approval process by ensuring comprehensive mitigation measures are in place.

The ongoing evolution of the CPCP's mitigation measures should focus on refining the balance between development needs and environmental sustainability, ensuring that urban growth does not come at the expense of the region's rich natural heritage.

UDIA looks forward to engaging further with the Department on these critical issues and hope that the final guidelines will reflect a more balanced and practical approach.

Should you need any additional information in relation to this submission, please feel free to contact me directly or **Charles Kekovich, Director – Greater Western Sydney** at ckekovich@udiansw.com.au or on 0409 776 588.

Kind regards,

A handwritten signature in black ink, appearing to read 'Stuart Ayres', with a long, sweeping horizontal line extending to the right.

Hon Stuart Ayres
Chief Executive Officer
UDIA NSW