Planning Institute of Australia (NSW Division)


The Planning Institute of Australia is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 4,500 members nationally and around 1,300 members in New South Wales. PIA NSW plays key roles in promoting and supporting the planning profession within NSW and advocating key planning and public policy issues. This submission has been prepared on behalf of PIA NSW by Members of the Institute.

Introduction

The Planning Institute of Australia (NSW Division) welcomes the opportunity to comment on the Draft Sydney Growth Centres Strategic Assessment Report and Draft Sydney Growth Centres Program Report (named ‘the draft Reports’ hereafter) which were released by the NSW Minister of Planning on 25 May 2010.

The Institute strongly supports the NSW Government’s approach to undertake strategic planning and assessment as a preferred way to address biodiversity issues and other environmental matters within Growth Centres. We consider this approach to be a good example of integration between biodiversity protection and strategic land use planning in NSW.

The Institute supports the strategic assessment of Matters of National Environmental Significance (MNES) under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act). The approach of a single assessment based on the Strategic Planning and Growth Centres Biodiversity Certification work undertaken under NSW Legislation is also supported.
The following concerns however, are submitted by the Institute for consideration, prior to the approval of the draft Reports:-

- Use of Mitigation Hierarchy Principles
- Protection of Matters of National Environmental Significance through the NSW Planning Process
- Uncertain Management Costs Funding
- Using Similar Vegetation Communities to offset Matters of National Environmental Significance
- Accuracy in the Identification of Environmental Protection and Biodiversity Conservation Act Vegetation Communities

The detail of these concerns is set out below.

**Use of Mitigation Hierarchy Principles**

The draft Reports state that impacts on threatened communities considered to be MNES under the EPBC Act have been avoided whenever possible.

However, it is noted that 80% (251 out of 310 hectares) of Shale Sandstone Transition Forest (SSTF), more than 50% (1,187 out of 2,185 hectares) of Cumberland Plain Shale Woodlands (CPSW) and Shale Gravel Transition Forest (SGTF) and all existing Turpentine Ironbark Forest (TIB) (2.2 hectares) will be lost in the Growth Centres. These threatened communities are listed under the EPBC Act and are MNES.

The amount of threatened communities to be lost appears to be significant and raises the question of how the impact on vegetation communities has been avoided or minimised whenever possible before considering the alternative of compensation to avoid net losses.

The draft Reports should provide details about how the NSW Government considered reasonable alternatives to avoid and minimise clearing before proposing clearing and compensating losses in accordance to the mitigation hierarchy principles (that is, firstly avoiding impacts, secondly minimizing impacts and lastly offsetting residual impacts). We believe the mitigation hierarchy principles are relevant for this assessment in the context of protecting EPBC MNES and in particular listed threatened communities and threatened flora and fauna species.

**Protection of Matters of National Environmental Significance through the NSW Planning Process**

NSW PIA supports the use of environmental planning instruments and appropriate land use zoning for the protection of land containing EPBC listed threatened communities and other MNES within the Growth Centres. These mechanisms are considered to provide a good level of protection to MNES.
However, we believe these mechanisms are insufficient to ensure these lands within the Growth Centres are protected and managed in perpetuity for the following reasons:

1. The land use zones proposed for the Growth Centre’s MNES can be rezoned in the future under the existing NSW planning system. Rezoning of these lands may potentially allow development that requires vegetation clearing or that may negatively impact on areas of MNES.

2. Under the existing NSW planning system certain types of public infrastructure development such as water, electricity and road projects do not require consent for vegetation clearing in the land use zones proposed to protect MNES.

3. The existing NSW Planning System has mechanisms to restrict or suspend the application of existing covenants, agreements and planning instruments currently protecting these lands.

The Institute believes that in order to protect these lands within the Growth Centres in perpetuity the Commonwealth should impose appropriate conditions that strengthen the proposed protection measures of the NSW Planning System. Such conditions could include the signatory of an intergovernmental agreement whereby the NSW Government commits to maintain the proposed land use zoning, avoid vegetation clearing for infrastructure or other major projects and not to suspend or restrict existing covenants, agreements or planning instruments applied to these lands.

**Uncertain Management Costs Funding**

The Institute also supports the proposed public ownership model for the long term protection of land containing EPBC listed threatened communities and threatened flora and fauna species. The proposed public ownership model sets a 30 year $530 M conservation funding strategy focused on public land acquisition within and outside the Growth Centres.

The Institute notes that no funding mechanism for the ongoing management of the 1,057 ha of protected land containing vegetation communities and flora and fauna listed in the EPBC Act has been identified or discussed in the draft Reports. This raises concern about assigning the responsibility of managing such areas to State or local government authorities without identifying future funding sources for their ongoing management. The NSW government authorities and in particular local councils may be too under resourced to manage the natural resource areas.

In order to ensure the threatened communities and threatened flora and fauna listed in the EPBC Act are protected in perpetuity, the draft Reports should clearly identify funding mechanisms for the:

1. Preparation of Environmental Management Plans (EMPs) and Plans of Management (PoM) for each of the protected lands; and
2. Implementation of ongoing management activities identified by such plans and to restore, maintain, protect and/or enhance existing threatened communities and flora and fauna species.

Certainty in the funding arrangements for recurrent costs incurred by management activities will be crucial to achieve the “maintain and improve” approach to MNES.

Using Similar Vegetation Communities to offset Matters of National Environmental Significance

The Institute notes that the NSW Government proposes to offset Cumberland Plain Shale Woodlands (CPSW) & Shale Gravel Transition Forest (SGTF) losses with Grassy Woodland communities which are floristically similar to the CPSW & SGTF communities. This is partially due to the cost involved in acquiring land with CPSW & SGTF communities (see page 116). It is unclear how this approach would deliver the biodiversity outcomes of "like to like" as required by the EPBC Act Offset Policy.

If the proposal to replace EPBC listed vegetation communities with similar vegetation communities is approved, the NSW government will create a precedent. NSW developers may seek to replace listed threatened, endangered or critically endangered vegetation communities with other vegetation communities of similar floristical composition, but not necessarily threatened or endangered communities on the basis that the "like to like" outcome is too expensive to achieve.

It is unclear why economic criteria appear to overrule ecological criteria in an EPBC listed vegetation community context. Both the Commonwealth and the NSW Department of Environment Climate Change and Water (DECCW) should carefully examine the consequences of setting such a precedent.

Accuracy in the Identification of Environmental Protection and Biodiversity Conservation Act Vegetation Communities

One of the condition thresholds for vegetation to meet the EPBC description for CPSW and SGTF is that the patch size be at least 0.5 hectares in size (see page 94, Table 6). However, the draft Report acknowledges that the area calculation for each ecological community listed in the EPBC Act has a tolerance of 1 to 2 hectares due to rounding error and the potential fine scale derivations inherent in GIS data measurements (see page 92).

Clarification is required on how 0.5 hectares of CPSW & SSTF vegetation patches can be identified using GIS information with tolerance of +/- 2 hectares.

Conclusion

The Institute welcomes the opportunity to make this submission and would be pleased to discuss any aspect of the points raised with the relevant Officers.