



New South Wales

State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022

under the

Environmental Planning and Assessment Act 1979

His Honour the Administrator, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

ANTHONY ROBERTS, MP
Minister for Planning

State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022*.

2 Commencement

- (1) This Policy commences on the day on which this Policy is published on the NSW legislation website, except as provided by subsection (2).
- (2) Section 3(c) commences on 30 September 2022.

3 Maps

The maps adopted by the following are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Policy—

- (a) *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapters 3 and 4 in relation to this Policy,
- (b) *State Environmental Planning Policy (Industry and Employment) 2021*, Chapter 2,
- (c) *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 3 in relation to *State Environmental Planning Policy (Precincts—Western Parkland City) Amendment (Wilton Town Centre Precinct) 2022*.

4 Repeal of Policy

This Policy is repealed at the beginning of the day after all the provisions of this Policy have commenced.

Schedule 1 Amendment of State Environmental Planning Policy (Biodiversity and Conservation) 2021

[1] Section 3.3 Land to which Chapter applies

Insert after section 3.3(1)—

- (1A) This Chapter does not apply to certified urban capable land within the meaning of Chapter 13.

[2] Chapter 13

Insert after Chapter 12—

Chapter 13 Strategic conservation planning

Part 13.1 Preliminary

13.1 Land to which Chapter applies

- (1) This Chapter applies to land shown on the Land Application Map.
- (2) This Chapter does not apply to land subject to a claim lodged in accordance with the *Aboriginal Land Rights Act 1983*, section 36.
- (3) Parts 13.3 and 13.4 do not apply to land acquired or reserved under the *National Parks and Wildlife Act 1974*.

13.2 Aims of Chapter

The aims of this Chapter are as follows—

- (a) to ensure development in the nominated areas is consistent with the biodiversity certification under the *Biodiversity Conservation Act 2016*, Part 8 and strategic assessment under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, Part 10,
- (b) to facilitate appropriate development on biodiversity certified areas,
- (c) to identify and protect areas with high biodiversity value or regionally significant biodiversity that can support ecological functions, including threatened ecological communities, species and areas with important connectivity or ecological restoration potential,
- (d) to avoid or minimise impacts from future development on biodiversity values in areas with high biodiversity value,
- (e) to support the acquisition of priority areas with high biodiversity value as conservation lands in perpetuity.

13.3 Relationship to other environmental planning instruments

- (1) This Chapter prevails over another provision of this Policy or another environmental planning instrument, whether made before or after this Chapter, to the extent of an inconsistency.
- (2) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 3.20 prevails to the extent of an inconsistency between the section and this Chapter.

13.4 Definitions

- (1) In this Chapter—

avoided land means land identified as “avoided land” on the Avoided Land Map.

Avoided Land Map means the State Environmental Planning Policy (Biodiversity and Conservation) 2021 Strategic Conservation Planning Avoided Land Map.

certified urban capable land means land identified as “certified urban capable land” on the Certified Urban Capable Land Map.

Certified Urban Capable Land Map means the State Environmental Planning Policy (Biodiversity and Conservation) 2021 Strategic Conservation Planning Certified Urban Capable Land Map.

Cumberland Plain Conservation Plan means the document titled “*Cumberland Plain Conservation Plan*” published by the Department on the commencement of this Chapter and available on the NSW planning portal.

Cumberland Plain Conservation Plan Guidelines means the document titled “*Cumberland Plain Conservation Plan Guidelines for Infrastructure Development*” published by the Department on the commencement of this Chapter and available on the NSW planning portal.

Land Application Map means the State Environmental Planning Policy (Biodiversity and Conservation) 2021 Strategic Conservation Planning Land Application Map.

Land Reservation Acquisition Map means the State Environmental Planning Policy (Biodiversity and Conservation) 2021 Strategic Conservation Planning Land Reservation Acquisition Map.

Note— When this Chapter commenced, there was no Land Reservation Acquisition Map.

strategic conservation area means land identified as “strategic conservation area” on the Strategic Conservation Area Map.

Strategic Conservation Area Map means the State Environmental Planning Policy (Biodiversity and Conservation) 2021 Strategic Conservation Planning Strategic Conservation Area Map.

the Act means the *Environmental Planning and Assessment Act 1979*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Chapter.

- (2) Words used in this Chapter have the same meanings as in the *Biodiversity Conservation Act 2016* unless otherwise defined in this Chapter.

13.5 Maps

- (1) A reference in this Chapter to a named map adopted by this Chapter is a reference to a map by that name—
- approved by the Minister when the map is adopted, and
 - as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the persons making the instruments when the instruments are made.
- (2) Two or more named maps may be combined into a single map and a reference in this Chapter to a named map is a reference to the relevant part or aspect of the single map.
- (3) The maps adopted by this Chapter must be kept electronically and made available for public access in accordance with arrangements approved by the Minister.

Part 13.2 Development controls—general

13.6 Koala fences and fauna crossings

- (1) Development involving the erection, maintenance or modification of a fauna crossing or koala fence may be carried out by or on behalf of a public authority without development consent if the crossing or fence is consistent with the Cumberland Plain Conservation Plan.
- (2) In this section—
fauna crossing means a crossing to facilitate the movement of fauna across the land.
koala fence means a fence used to impede the movement of koalas towards roads and urban land, whether or not the fence is also used for another purpose.

Part 13.3 Development controls—avoided land

13.7 Preservation of native vegetation on avoided land

- (1) The objectives of this section are—
 - (a) to protect and enhance native vegetation on avoided land, and
 - (b) to promote the conservation of, and minimise the impact of development on, native vegetation.
- (2) A person must not clear native vegetation on avoided land without development consent.
- (3) Development consent must not be granted for the clearing of native vegetation unless the consent authority is satisfied—
 - (a) sufficient measures have been, or will be, taken—
 - (i) to avoid or minimise the impact of the development on biodiversity values, and
 - (ii) to avoid the impact of the development on matters of national environmental significance set out in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, Chapter 2, Part 3, Division 1, and
 - (iii) to protect or enhance the biodiversity values and ecological integrity of the land, and
 - (b) there is no reasonable alternative available to the disturbance of the native vegetation, and
 - (c) the loss of native vegetation caused by the disturbance will be compensated by—
 - (i) revegetation on the land on which the development is carried out of an amount equivalent to a ratio of at least 1:1, or
 - (ii) a condition imposed on the development consent under the *Biodiversity Conservation Act 2016*, section 7.13(3) requiring the applicant to retire biodiversity credits, and
 - (d) 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.
- (4) This section does not apply to the following—
 - (a) clearing of native vegetation carried out by or on behalf of a public authority,

- (b) clearing to remove vegetation that the council is satisfied is a risk to human life or property,
- (c) bush fire hazard reduction work carried out in accordance with *State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 2.52(8).

Note— Development consent is not required for clearing for the construction and maintenance of certain fences and farm tracks—see section 13.18.

13.8 Development on avoided land generally

- (1) The objectives of this section are as follows—
 - (a) to protect threatened ecological communities, threatened species and their habitats,
 - (b) to protect and enhance koala habitat and corridors,
 - (c) to protect matters of national environmental significance,
 - (d) to encourage the conservation and recovery of ecological communities and their habitats.
- (2) 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 the following—
 - (a) threatened ecological communities, threatened species and their habitats, both on the site of the development and on adjoining land that is avoided land,
 - (b) 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,
 - (c) 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,
 - (d) matters of national environmental significance set out in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, Chapter 2, Part 3, Division 1.
- (3) Development consent must not be granted to development on avoided land unless the consent authority is satisfied that—
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (2) (an **adverse impact**), and
 - (b) the height, bulk, scale, size and proposed use of the development avoids an adverse impact, and
 - (c) supporting infrastructure required for the development avoids an adverse impact.
- (4) Subsection (3) does not apply to development to which section 13.9 applies.

13.9 Infrastructure development on avoided land

- (1) This section applies to development carried out on avoided land under *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.3, Division 4, 5, 12A, 17, 18, 20, 21, 23 or 24.
- (2) Development consent must not be granted to development to which this section applies unless the consent authority is satisfied that—
 - (a) the development is designed, sited and will be managed to avoid or minimise an adverse impact, and

- (b) the height, bulk, scale, size and proposed use of the development avoids or minimises an adverse impact, and
 - (c) supporting infrastructure required for the development avoids or minimises an adverse impact.
- (3) Development consent must not be granted to development to which this section applies unless the consent authority has considered whether the development is consistent with the Cumberland Plain Conservation Plan Guidelines, Part 2.
- (4) As soon as practicable after granting development consent to development to which this section applies, the consent authority must give written notice to the Planning Secretary, including—
 - (a) a copy of the development application, and
 - (b) a statement setting out whether the consent authority considers the development is consistent with the Cumberland Plain Conservation Plan Guidelines, Part 2.
- (5) This section does not apply to State significant development.
- (6) In this section—
adverse impact has the same meaning as in section 13.8(3)(a).

13.10 Subdivision of avoided land

- (1) Development consent must not be granted to the subdivision of avoided land unless—
 - (a) the consent authority is satisfied the subdivision is necessary for the purposes of entering into a biodiversity stewardship agreement in relation to the land, or
 - (b) the subdivision will be carried out by or on behalf of a public authority and relates to development carried out under *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.3, Division 4, 5, 12A, 17, 18, 20, 21, 23 or 24.
- (2) If land is identified by this Chapter as avoided land and land in a strategic conservation area, this section prevails over section 13.13.

Part 13.4 Development controls—strategic conservation area

13.11 Preservation of native vegetation in strategic conservation area

- (1) The objectives of this section are—
 - (a) to protect and enhance native vegetation on land in a strategic conservation area, and
 - (b) to promote the conservation of, and minimise the impact of development on, native vegetation.
- (2) A person must not clear native vegetation on land in a strategic conservation area without development consent.
- (3) Development consent must not be granted for the clearing of native vegetation unless the consent authority is satisfied—
 - (a) sufficient measures have been, or will be, taken—

- (i) to avoid or minimise the impact of the development on biodiversity values, and
 - (ii) to protect or enhance the biodiversity values and ecological integrity of the land, and
 - (b) there is no reasonable alternative available to the disturbance of the native vegetation caused by the clearing, and
 - (c) the loss of native vegetation caused by the disturbance will be compensated by—
 - (i) revegetation on the land on which the development is carried out of an amount equivalent to a ratio of at least 1:1, or
 - (ii) a condition imposed on the development consent, under the *Biodiversity Conservation Act 2016*, section 7.13(3), requiring the applicant to retire biodiversity credits, and
 - (d) 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.
- (4) This section does not apply to the following—
- (a) clearing of native vegetation carried out by or on behalf of a public authority,
 - (b) clearing to remove vegetation that the council is satisfied is a risk to human life or property,
 - (c) bush fire hazard reduction work carried out in accordance with *State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 2.52(8).

Note—Development consent is not required for clearing for the construction and maintenance of certain fences and farm tracks—see section 13.18.

13.12 Development on land in strategic conservation area generally

- (1) The objectives of this section are as follows—
- (a) to minimise the impacts of development on areas with regionally significant biodiversity, including threatened ecological communities, threatened species and their habitats,
 - (b) to maintain and enhance ecological function,
 - (c) to protect and enhance koala habitat and corridors.
- (2) Development consent must not be granted to 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 following—
- (a) the biodiversity values of the land,
 - (b) threatened ecological communities, threatened species and their habitats, both on the site of the development and on adjoining land in a strategic conservation area,
 - (c) 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,
 - (d) 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,

- (e) matters of national environmental significance set out in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, Chapter 2, Part 3, Division 1.
- (3) 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—
 - (a) the matters referred to in subsection (2)(a)–(e),
 - (b) the potential for the ecological restoration of the land,
 - (c) adjoining land identified as a strategic conservation area.
- (4) Development consent must not be granted to development on land in a strategic conservation area unless the consent authority is satisfied that—
 - (a) the development is designed, sited and will be managed to avoid or minimise an adverse impact referred to in subsection (2) or (3) (an ***adverse impact***), and
 - (b) the height, bulk, scale, size and proposed use of the development avoids or minimises an adverse impact, and
 - (c) supporting infrastructure required for the development avoids or minimises an adverse impact.
- (5) Subsection (4) does not apply to land identified by this Chapter as avoided land and land in a strategic conservation area.

13.13 Subdivision of land in strategic conservation area

Development consent must not be granted for the subdivision of land in a strategic conservation area unless the consent authority is satisfied the subdivision—

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

13.14 Ecological restoration works

- (1) Development for the purposes of environmental protection works 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 Cumberland Plain Conservation Plan.
- (2) In this section—
environmental protection works has the same meaning as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

Part 13.5 Development on certified urban capable land

13.15 Asset protection zones

Development consent must not be granted to development involving an asset protection zone on certified urban capable land unless the asset protection zone is located wholly on certified urban capable land.

13.16 Mitigation measures

- (1) 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 Cumberland Plain Conservation Plan Mitigation Measures Guideline.
- (2) In this section—
Cumberland Plain Conservation Plan Mitigation Measures Guideline means the document titled “*Cumberland Plain Conservation Plan Mitigation Measures Guideline*” published by the Department on the commencement of this Chapter and available on the NSW planning portal.

Part 13.6 Miscellaneous

13.17 Relevant acquisition authority

- (1) The objective of this section is to identify, for the Act, section 3.15, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under the *Land Acquisition (Just Terms Compensation) Act 1991*, Part 2, Division 3 (*the owner-initiated acquisition provisions*).
Note— If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, the *Land Acquisition (Just Terms Compensation) Act 1991*, section 23 requires the authority to acquire the land.
- (2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions.

Type of land shown on Map	Authority of the State
National park or public reserve	Planning Ministerial Corporation

Note— When this Chapter commenced, no Land Reservation Acquisition Map was adopted because no national park or public reserve had been identified.

- (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

13.18 Clearing for construction and maintenance of fences and farm tracks

- (1) This section applies to the following land used for primary production within the meaning of the *Land Tax Management Act 1956*, section 10AA—
 - (a) avoided land,

- (b) land in a strategic conservation area.
- (2) Development consent is not required under section 13.7 or 13.11 if the clearing is for—
 - (a) the construction of a permanent boundary fence, or
 - (b) the maintenance of—
 - (i) an existing permanent boundary fence, or
 - (ii) an existing permanent internal fence, or
 - (iii) an existing farm track.
- (3) The maximum clearing distance is 6m.
- (4) The clearing must be carried out by or on behalf of the landholder.
- (5) The clearing must be carried out in a way that minimises the risk of soil erosion.
- (6) The clearing must be carried out only to the minimum extent necessary for the purpose for which the clearing is carried out.
- (7) This section does not authorise the clearing of native vegetation on land subject to an order under the *Biodiversity Conservation Act 2016*, Part 11.
- (8) In subsection (3), the maximum clearing distance is measured in the way specified in section 2.27.

13.19 Savings and transitional provision

A development application for development on land to which this Chapter applies that was made, and not finally determined, before the commencement of this Chapter must be determined as if this Chapter had not commenced.

Schedule 2 Amendment of other environmental planning instruments

2.1 State Environmental Planning Policy (Transport and Infrastructure) 2021

[1] Section 2.169 Ecological restoration works

Omit the section.

[2] Section 3.6 Relationship to other environmental planning instruments

Insert after section 3.6(4)—

- (5) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Chapter 13 prevails over this Policy, Chapter 3, other than section 3.20, to the extent of an inconsistency.

2.2 State Environmental Planning Policy (Precincts—Western Parkland City) 2021

[1] Section 4.25 Preservation of trees and vegetation in Environment and Recreation Zone and Cumberland Plain

Omit section 4.25(5). Insert instead—

- (5) Development for the following purposes is prohibited on land shown as “high biodiversity value” on the High Biodiversity Value Areas Map—
- (a) information and education facilities,
 - (b) kiosks,
 - (c) recreation areas other than a public park, reserve or garden,
 - (d) recreation facilities (outdoor).

[2] Section 4.51 Savings and transitional provisions

Insert after section 4.51(2)—

- (3) The amendments to this Chapter made by *State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022* do not apply to a development application made, and not finally determined, before the commencement of that Policy.

[3] Appendix 7 South East Wilton Precinct Plan

Omit the definition of *South East Wilton structure plans* from section 1.4. Insert instead—
South East Wilton structure plans means the following, published by the Department on 1 May 2022—

- (a) *Wilton 2040: A Plan for the Wilton Growth Area*,
- (b) the *South East Wilton Precinct Structure Plan*.

[4] Appendix 7, section 1.4

Omit the note.

[5] Appendix 7, section 1.8A(4)

Insert after section 1.8A(3)—

- (4) The amendments to this Appendix made by *State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022* do not apply to a development application made, and not finally determined, before the commencement of that Policy.

[6] Appendix 7, section 2.1

Omit the matter relating to **Environment Protection Zones**. Insert instead—

Conservation Zones

C2 Environmental Conservation

[7] Appendix 7, Land Use Table

Omit “E2”. Insert instead “C2”.

[8] Appendix 7, sections 4.6(6), 7.2 and 7.3

Omit “Zone E2” wherever occurring. Insert instead “Zone C2”.

[9] Appendix 8 North Wilton Precinct Plan

Omit the definition of *North Wilton structure plans* from section 1.4. Insert instead—

North Wilton structure plans means the following, published by the Department on 1 May 2022—

- (a) *Wilton 2040: A Plan for the Wilton Growth Area*,
(b) *the North Wilton Precinct Structure Plan*.

[10] Appendix 8, section 1.4

Omit the note.

[11] Appendix 8, section 1.8A(2)

Insert at the end of section 1.8A—

- (2) The amendments to this Appendix made by *State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022* do not apply to a development application made, and not finally determined, before the commencement of that Policy.

[12] Appendix 8, section 2.1

Omit the matter relating to **Environment Protection Zones**. Insert instead—

Conservation Zones

C2 Environmental Conservation

[13] Appendix 8, Land Use Table

Omit “E2”. Insert instead “C2”.

[14] Appendix 8, sections 4.6(6), 7.2 and 7.3

Omit “Zone E2” wherever occurring. Insert instead “Zone C2”.

2.3 State Environmental Planning Policy (Precincts—Western Parkland City) Amendment (Wilton Town Centre Precinct) 2022

[1] Schedule 1[4], section 2.1

Omit the matter relating to **Environmental Protection Zones**. Insert instead—

Conservation Zones

C2 Environmental Conservation

[2] Schedule 1[4], Land Use Table

Omit “E2”. Insert instead “C2”.

[3] Schedule 1[4], sections 4.6(6), 7.2 and 7.3

Omit “Zone E2” wherever occurring. Insert instead “Zone C2”.

2.4 State Environmental Planning Policy (Industry and Employment) 2021

[1] Section 2.33 Development near zone boundaries

Insert before section 2.33(3)(a)—

- (aa) land identified as avoided land under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Chapter 13, or

[2] Section 2.43 Consent for clearing native vegetation

Omit “E2” from section 2.43(1). Insert instead “C2”.

[3] Section 2.43(5)

Insert after section 2.43(4)—

- (5) Subsections (1) and (2) do not apply to land identified as avoided land under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Chapter 13.

[4] Section 2.45 Savings provisions

Insert after section 2.45(3)—

- (4) The amendments made to this Chapter by *State Environmental Planning Policy (Biodiversity and Conservation) Amendment (Strategic Conservation Planning) 2022* do not apply to a development application made, and not finally determined, before the commencement of that Policy.

2.5 Wollondilly Local Environmental Plan 2011

Clause 7.8 Concurrence of Planning Secretary

Omit clause 7.8(2) and (3). Insert instead—

- (2) Development consent must not be granted to development to which this clause applies unless the consent authority has considered the *Secretary’s Guidelines for development at Macquariedale Road, Appin*, December 2020, published by the Department.