

Growth Centres Biodiversity Certification

Assessment of Consistency between the Relevant Biodiversity Measures of the Biodiversity Certification Order and Stages 2 and 5 of the Leppington Precinct

May 2019

1. Introduction

In December 2007 an order conferring biodiversity certification on *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* was made by the Minister for the Environment under section 126G of the *Threatened Species Conservation Act 1995* (TSC Act).

In July 2008, the Minister's certification was validated by the *Threatened Species Conservation Amendment (Special Provisions) Act 2008* which was subsequently incorporated into Part 7 of Schedule 7 of the TSC Act. The amendment gives the Minister for the Environment the power to suspend or revoke the certification if any of its conditions, termed Relevant Biodiversity Measures (RBMs), are not complied with.

The RBMs applying to the certification have remained unaltered since gazettal of the original order and require (among other things) the permanent protection of 2000 hectares of high quality vegetation within the Growth Centres.

On 25 August 2017, the *Biodiversity Conservation Act 2016* (BC Act) came into force, replacing the TSC Act. However, section 35 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* provides that:

35 Biodiversity certification that was conferred on land under Part 7AA of the TSC Act and that was in force on the repeal of the TSC Act is taken to be biodiversity certification conferred on the land under Part 8 of the new BC Act.

This report has been prepared to fulfil the requirement of RBM 35 for an assessment of the consistency of proposed precinct plans with the biodiversity certification and the RBMs.

This report has been prepared in a table format and addresses all RBMs that are relevant to precinct planning. It is noted that many of the RBMs are not specific to precinct planning and have therefore not been included in the report.

A complete copy of the relevant biodiversity measures can be found on the Office of Environment and Heritage's website at <http://www.environment.nsw.gov.au/biocertification/notcert.htm>

Where the report indicates that precinct planning is inconsistent with the biodiversity certification, full justification for the inconsistency is provided as part of the ecological assessment for the precinct.

This report only covers Stages 2 and 5 of the Leppington Precinct. This area was released by the NSW Government in November 2011.

All calculations of vegetation areas (extents) listed in Table 1 below refer only to Stages 2 and 5 of the Leppington Precinct.

Definitions

Terms defined below appear in **bold** in the table. Where the terms are also defined in the Biodiversity Certification Order, the definitions provided are consistent with those in the Order. However, the Department of Planning and Environment (DPE) and Office of Environment and Heritage (OEH) are replaced in this report for the Growth Centres Commission and the Department of Environment and Climate Change respectively.

- Additional High Conservation Value Vegetation (*AHCVV*) means areas of vegetation which were found during ground-truthing which would otherwise meet the definition of Existing Native Vegetation but was not originally identified as “vegetation” on maps 4 and 5 of the draft Growth Centres Conservation Plan.
- *Biodiversity Certification Maps* means the maps marked “North West Growth Centre – Biodiversity Certification” and “South West Growth Centre – Biodiversity Certification” dated November 2007 and included in Schedule 2 of the Biodiversity Certification Order.
- *BC Act* means the *Biodiversity Conservation Act 2016* (replaces the *Threatened Species Conservation Act 1995*).
- *Certified Area* means an area marked as a certified area on a biodiversity certification map.
- *Clearing* of existing native vegetation means any one or more of the following:
 - a) cutting down, felling, thinning, logging or removing existing native vegetation in whole or in part,
 - b) killing, destroying, poisoning, ringbarking, uprooting or burning existing native vegetation in whole or in part.
- DPE means the Department of Planning and Environment.
- *Existing Native Vegetation (ENV)* means areas of indigenous trees (including any sapling) that:
 - a) had 10% or greater over storey canopy cover present,
 - b) were equal to or greater than 0.5 Ha in area, and
 - c) were identified as “vegetation” on maps 4 and 5 of the draft Growth Centres Conservation Plan.
- *Minister* means the Minister administering the TSC Act and/or the BC Act.
- *Non-certified Area* means an area marked as a non-certified area on a biodiversity certification map.
- *Protection or Protected* in relation to land means land that is protected by a land use zoning under an environmental planning instrument or public ownership arrangements that provide for the protection of biodiversity values as a priority, or another arrangement that provides in perpetuity security for biodiversity on the subject land.
- *Relevant Biodiversity Measures* means the conditions in Schedule 1 of the Biodiversity Certification Order.
- *TSC Act* means the *Threatened Species Conservation Act 1995*.

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

2. Assessment

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
General				
4	Copies of all final reports, maps, reviews, plans and monitoring data referred to in the conditions of biodiversity certification must be held by the DPE and made publicly available, either on request and/or by a mechanism that is broadly publicly accessible. This does not apply to material that is commercially sensitive or contains sensitive information regarding the location of threatened species, populations or ecological communities or their habitat.	All information required by the RBMs for the Leppington Precinct will be publicly available.	Yes	The following information will be publicly available: <ul style="list-style-type: none"> • this report in accordance with RBM 35 • information required by RBM 8 • information required by RBM 13.
Native vegetation to be retained within the Growth Centres				
6	A minimum of 2,000 hectares of existing native vegetation must be retained and protected within the Growth Centres, either within the certified areas and/or the non-certified areas , subject to conditions 7 to 13 below.	<p>There is no validated ENV as defined under the order to be protected and retained within certified areas as there are no non-certified areas within Stages 2 and 5 of the Leppington Precinct (Appendix B and C).</p> <p>A total of 0.24 hectares of vegetation within certified areas is proposed to be affected by the proposed plan for Stages 2 and 5 of the Leppington Precinct. This vegetation does not meet the definition of ENV as it is less than 0.5 hectares.</p>	Yes	No ENV is located in Stages 2 and 5. Land within Stages 3 and 4 of the Precinct is identified as non-certified areas. Protection of vegetation surrounding this corridor will support increased retention of growth of corridors for threatened species and population of ecological communities or their habitat.

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
Retention of existing native vegetation during precinct planning				
7	During the precinct planning process, the DPE may determine to make areas of existing native vegetation within the non-certified areas available for development if the clearance of such vegetation is considered necessary for either the provision of essential infrastructure and/or to meet the required Development Parameters specified in the Growth Centres Development Code.	There is no mapped non-certified ENV within Stages 2 and 5.	Yes	There is no validated non-certified ENV to be lost as part of any planned future development.
8	<p>In making a determination under condition 7, the DPE must demonstrate by way of information provided during the public exhibition of the precinct plan (where that exhibition occurs after this order takes effect) that the clearing of any existing native vegetation in the non-certified areas will be offset by:</p> <p>(a) the protection of an equal or greater area of existing native vegetation elsewhere in the Growth Centres; and/or</p> <p>(b) the revegetation and/or restoration of an area of land elsewhere in the Growth Centres, subject to satisfying the following,</p> <ul style="list-style-type: none"> (i) that the clearance of existing native vegetation in the non-certified areas will not affect the capacity to achieve overall improvement or maintenance of biodiversity values for threatened species, populations and ecological communities and their habitats, (ii) the revegetated and/or restored areas will be protected, (iii) the extent of revegetation and/or restoration compared to clearing of existing native vegetation must be undertaken at a ratio of at least 3:1 (to reflect the greater ecological risks relative to retaining existing native vegetation), (iv) areas subject to revegetation and/or restoration must be of a suitable boundary configuration and design to support long-term management, (v) revegetation and/or restoration of the proposed areas would not be undertaken under another scheme or regulatory requirement already in operation at the time that the clearing is approved (this includes but is not limited to any approvals, 	There is no validated ENV in non-certified area as defined under the order to be protected and retained under the Leppington Precinct Plan (Stages 2 and 5).	Yes	There is no validated ENV in non-certified area as defined under the order to be protected and retained under the Leppington Precinct Plan (Stages 2 and 5).

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	<p>and associated conditions of such approvals, that may be required under the <i>Rivers and Foreshores Improvement Act 1948</i> and <i>Water Management Act 2000</i>),</p> <p>(vi) revegetation and/or restoration will be undertaken by suitably qualified and experienced persons using indigenous plant stock, and</p> <p>(vii) sufficient resources will be made available to undertake the revegetation and/or restoration and any necessary follow-up maintenance and monitoring for a minimum period of 5 years following the commencement of the revegetation and/or restoration.</p>			
9	<p>Revegetation and/or restoration may be partly counted towards meeting the overall requirement to protect 2,000 hectares of existing vegetation required in condition 6. The amount that may be counted shall be calculated by dividing the total area of revegetation and/or restoration required under condition 8b (iii) by 3.</p> <p>Note: for example, if 9 hectares of revegetation is undertaken then 3 hectares may be counted.</p>		Not Applicable	
Retention of existing native vegetation shown in areas marked with red hatching				
12	<p>Notwithstanding any other conditions of biodiversity certification, in the lands marked by a red hatching on the biodiversity certification maps existing native vegetation must not be cleared unless it is in accordance with a plan of management or unless such clearance has been agreed to by the OEH.</p>		Not Applicable	
Ground-truthing of existing native vegetation				
13	<p>If new information becomes available after the biodiversity certification order took effect that demonstrates that the vegetation within an area does not otherwise meet the definition of existing native vegetation, then for the purposes of conditions 7 to 8 and condition 11 to 12 only the area of confirmed existing native vegetation shall be considered.</p>	<p>Eco Logical Australia conducted ground-truthing of ENV and AHCVV within the Study Area.</p> <p>Since the Eco Logical Australia study, DPE</p>	Yes	Refer to item 6 for further discussion.

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
		<p>utilised up-to-date information to confirm the extent of vegetation in the Precinct.</p> <p>DPE data identifies only 0.24 hectares of vegetation within the Study Area. As this is less than the 0.5 hectare threshold, the area of validated ENV is 0.</p> <p>Refer to item 6 for further discussion.</p>		
Additional conservation actions within the Growth Centres – native vegetation				
14	During or before the preparation of the relevant precinct plan(s) under the Growth Centres Development Code, a further detailed assessment must be undertaken of the areas adjoining or proximate to the Shanes Park Air Services Australia site marked in blue hatching on the biodiversity certification maps .		Not Applicable	
15	The assessment referred to in condition 14 must examine whether the areas meet the criteria specified in Schedule 3.		Not Applicable	
16	Based on the outcomes of the assessment the OEH shall provide advice to the Minister on whether the areas should be included within the certified areas or the non-certified areas shown on the biodiversity certification maps .		Not Applicable	
Additional conservation actions within the Growth Centres – plants				
17	During or before the preparation of the relevant precinct plan(s) under the Growth Centres Development Code relating to the areas referred to in the table below, the following actions must be undertaken:		Not Applicable	Stages 2 and 5 of the Leppington Precinct are not located within the listed areas.
	Species			

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	<p><i>Acacia pubescens</i></p> <p>Required action</p> <p>Potential populations at Cross Street, Kemps Creek and Thirty-second Avenue, Austral – as shown in black hatching on the biodiversity certification maps:</p> <ul style="list-style-type: none"> • survey to confirm the presence of the species, and • if the species is present, provide for the protection of the area of suitable habitat for the species to the satisfaction of the OEH. 			
	<p><i>Pimelea spicata</i></p> <p>Potential populations at Denham Court Road - as shown in black hatching on the biodiversity certification maps:</p> <ul style="list-style-type: none"> • survey to confirm the presence of species, and • if the species is present, provide for the protection of the area of suitable habitat for the species to the satisfaction of the OEH. 			
	<p><i>Persoonia hirsuta</i></p> <p>Potential populations at North Kellyville – as shown in black hatching on the biodiversity certification maps:</p> <ul style="list-style-type: none"> • survey to confirm the presence of the species, and • if the species is present, provide for the protection of the area of suitable habitat for the species to the satisfaction of the OEH. 			
	<p><i>Leucopogon fletcheri</i></p> <p>Known population at North Kellyville - as shown in black hatching on the biodiversity certification maps:</p> <ul style="list-style-type: none"> • survey to confirm the extent of the population, and • provide for the protection of the population to the satisfaction of the OEH. 			
	<p><i>Darwinia biflora</i></p> <p><i>Hibbertia superans</i></p> <p><i>Epacris purpurascens</i> var <i>purpurascens</i></p> <p><i>Eucalyptus</i> sp “Cattai”</p>			

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification		
	<p>Known populations at North Kellyville - as shown in black hatching on the biodiversity certification maps:</p> <ul style="list-style-type: none">• survey to confirm the extent of the populations, and• provide for the protection of the population to the satisfaction of the OEH. <p>Note: On completion of the above actions the Minister may decide that it is appropriate to amend the boundaries of the area subject to biodiversity certification, in accordance with condition 3.</p>					
Additional conservation actions within the Growth Centres – animals						
18	<p>During or before the preparation of the relevant precinct plan(s) under the Growth Centres Development Code relating to the area referred to in the table below, the following actions must be undertaken:</p> <table><tr><td>Species Green and Golden Bell Frog</td><td>Required action Potential population at Riverstone – as shown in black hatching on the biodiversity certification maps: <i>Option 1</i><ul style="list-style-type: none">• survey to confirm the presence of the species, and• if the species is present, provide protection of the area of suitable habitat for the species to the satisfaction of the OEH.<i>Option 2</i><ul style="list-style-type: none">• if the species is present at Riverstone but cannot be adequately protected to the satisfaction of the OEH, then:<ul style="list-style-type: none">a) undertake targeted survey to confirm the presence of the species elsewhere in the Growth Centres, andb) if the species is present elsewhere in the Growth Centres, provide for the protection of an area(s) of suitable</td></tr></table>	Species Green and Golden Bell Frog	Required action Potential population at Riverstone – as shown in black hatching on the biodiversity certification maps : <i>Option 1</i> <ul style="list-style-type: none">• survey to confirm the presence of the species, and• if the species is present, provide protection of the area of suitable habitat for the species to the satisfaction of the OEH. <i>Option 2</i> <ul style="list-style-type: none">• if the species is present at Riverstone but cannot be adequately protected to the satisfaction of the OEH, then:<ul style="list-style-type: none">a) undertake targeted survey to confirm the presence of the species elsewhere in the Growth Centres, andb) if the species is present elsewhere in the Growth Centres, provide for the protection of an area(s) of suitable		Not Applicable	Stages 2 and 5 of the Leppington Precinct are not located within the listed areas.
Species Green and Golden Bell Frog	Required action Potential population at Riverstone – as shown in black hatching on the biodiversity certification maps : <i>Option 1</i> <ul style="list-style-type: none">• survey to confirm the presence of the species, and• if the species is present, provide protection of the area of suitable habitat for the species to the satisfaction of the OEH. <i>Option 2</i> <ul style="list-style-type: none">• if the species is present at Riverstone but cannot be adequately protected to the satisfaction of the OEH, then:<ul style="list-style-type: none">a) undertake targeted survey to confirm the presence of the species elsewhere in the Growth Centres, andb) if the species is present elsewhere in the Growth Centres, provide for the protection of an area(s) of suitable					

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	<p>habitat for the species to the satisfaction of the OEH.</p> <p>Note: On completion of the above actions the Minister may decide that it is appropriate to amend the boundaries of the area subject to biodiversity certification, in accordance with condition 3.</p>			
Additional conservation actions within the Growth Centres – development sites				
19	<p>Within twelve months of the biodiversity certification order taking effect, the DPE (in consultation with the OEH) must put in place procedures so that all future precinct plans (excluding any plans that were publicly exhibited before the biodiversity certification order took effect), where practicable, provide for the appropriate re-use of:</p> <p>(a) native plants (including but not limited to seed collection) and the re-location of native animals from development sites, prior to development commencing; and</p> <p>(b) top soil from development sites that contain known or potential native seed bank.</p> <p>For the purposes of condition 19a and 19b appropriate uses may include, but are not limited to, application in revegetation or restoration works and landscaping in the Growth Centres.</p>	These provisions have been incorporated into the DCP for the Camden Council Growth Centre Precincts.	Yes	Refer to clause 2.3.4 of the Camden Growth Centre Precincts DCP.
Future precinct plans				
35	During the preparation of future precinct plans (excluding any precinct plans already publicly exhibited before this order took effect) the DPE must undertake and make publicly available an assessment of the consistency of the proposed precinct plan with the conditions of biodiversity certification. This may occur during or before any public exhibition of future draft precinct plans.	This assessment of consistency has been prepared to satisfy this RBM. This report will be publicly exhibited with the full Precinct Planning package.	Yes	This assessment addresses all RBMs applicable to the planning for the Leppington Precinct (Stages 2 and 5).
Future threatened species listings or discoveries				

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

	Relevant Biodiversity Measure	Leppington Precinct Area - Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
36	<p>Where a preliminary determination is made under the Act to list a species, population or ecological community, and that species, population or ecological community may or is known to occur within the Growth Centres, then the DPE must (as soon as practicable) provide advice to the OEH on whether:</p> <ul style="list-style-type: none"> (a) the species, population or ecological community is known or likely to be present in the Growth Centres; (b) it was considered during the preparation of the draft Growth Centres Conservation Plan by the DPE; and (c) whether the SEPP, and related measures, provides adequate protection for the species, population or ecological community. 		Not Applicable	
37	<p>Based on the information provided in accordance with condition 36, and any other relevant matters, the OEH shall advise the Minister on whether to formally review, maintain, modify, suspend or revoke the biodiversity certification of the SEPP if the species, population or ecological community is listed under the Act.</p>		Not Applicable	

3. Conclusion

This report has undertaken an assessment of the consistency of Stages 2 and 5 of the Leppington Precinct with the biodiversity certification and the applicable relevant biodiversity measures.

As there is no non-certified ENV in Stages 2 and 5 of the Leppington Precinct, Stages 2 and 5 is consistent with the biodiversity certification of the Growth Centres SEPP (**Appendix A**).

To ensure the protection of vegetation that has the ability to re-grow and be classified as ENV, the SEPP amendment will provide a clause that prevents the **clearing** of vegetation in the proposed non-certified land as shown on the Native Vegetation Protection Map (**Appendix C**).

Proposed biodiversity certification map

To reflect the outcomes of the Precinct Plan and ensure the protection of future ENV, amendments are proposed to the boundaries of certified and non-certified land as shown on the biodiversity certification map (**see Appendix D**).

Appendix A

Calculation of ENV within Leppington Precinct (Stages 2 and 5)

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Calculations of ENV within the Leppington Precinct (Stages 2 and 5)

Results of field validation for Existing Native Vegetation & AHCVV (Stages 2 and 5)

Reference	Item	Area (ha)
A	Area of mapped ENV in non-certified areas (as per Conservation Plan)	0
B	Area of validated ENV in non-certified areas	0
C	Area of validated ENV in certified areas	0
D	Total area of validated ENV	0
E	Total area of validated AHCVV	0

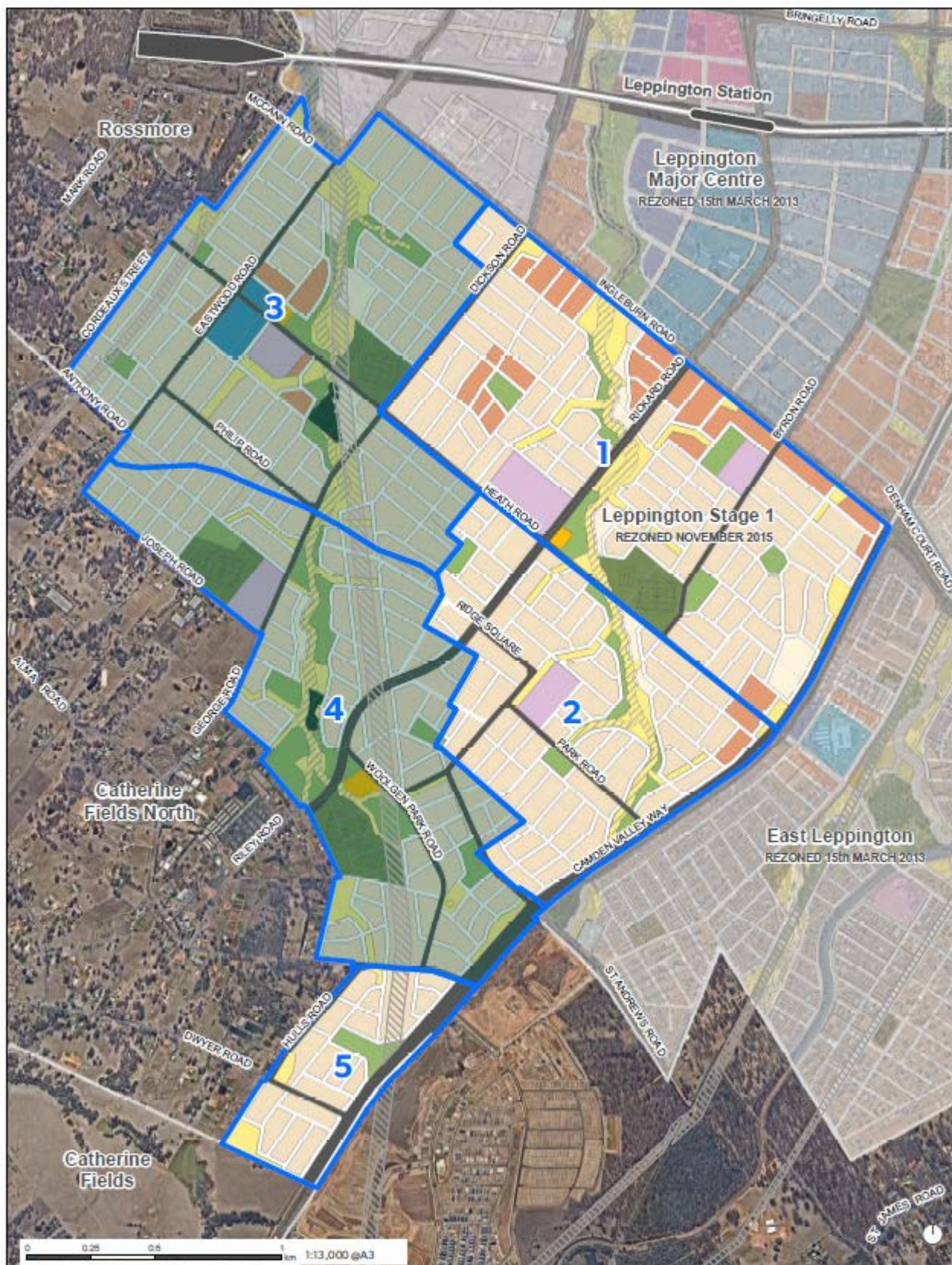
Summary of impacts, offsets and areas of ENV to be protected (Stages 2 and 5)

Reference	Item	Area (ha)
A	Area of mapped ENV in non-certified areas (as per Conservation Plan)	0
B	Area of validated ENV in non-certified areas	0
C	Impacts: Validated non-certified ENV to be cleared (area to become certified)	0
D	Offsets: Validated certified ENV to be used as offset (area to become non-certified)	0
E	Total area of ENV to be protected in non-certified areas (E = B-C+D)	0
F	Area of additional high conservation value vegetation (AHCVV) to be protected	0
H	Total area of ENV/AHCVV to be protected (H = F+E)	0

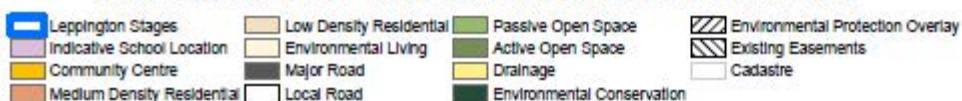
Appendix B

Final Indicative Layout Plan for Leppington Precinct (Stages 2 and 5)

Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)



LEPPINGTON PRECINCT - INDICATIVE LAYOUT PLAN - NOVEMBER 2018

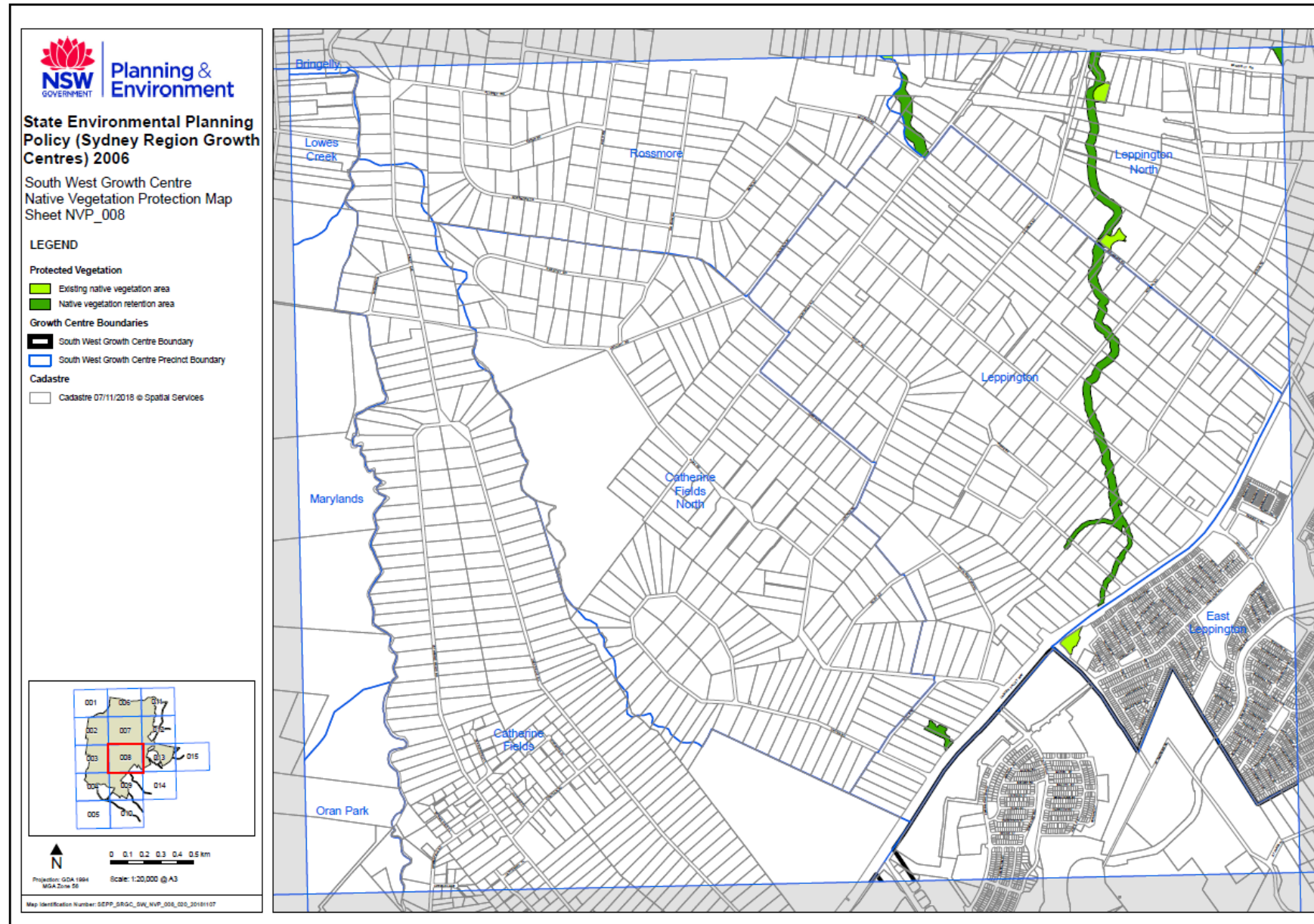


Appendix C

**Proposed Protection Measures for Leppington Precinct (Stages 2 and 5)
(including Native Vegetation Protection Map and Zoning Plan)**

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Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)

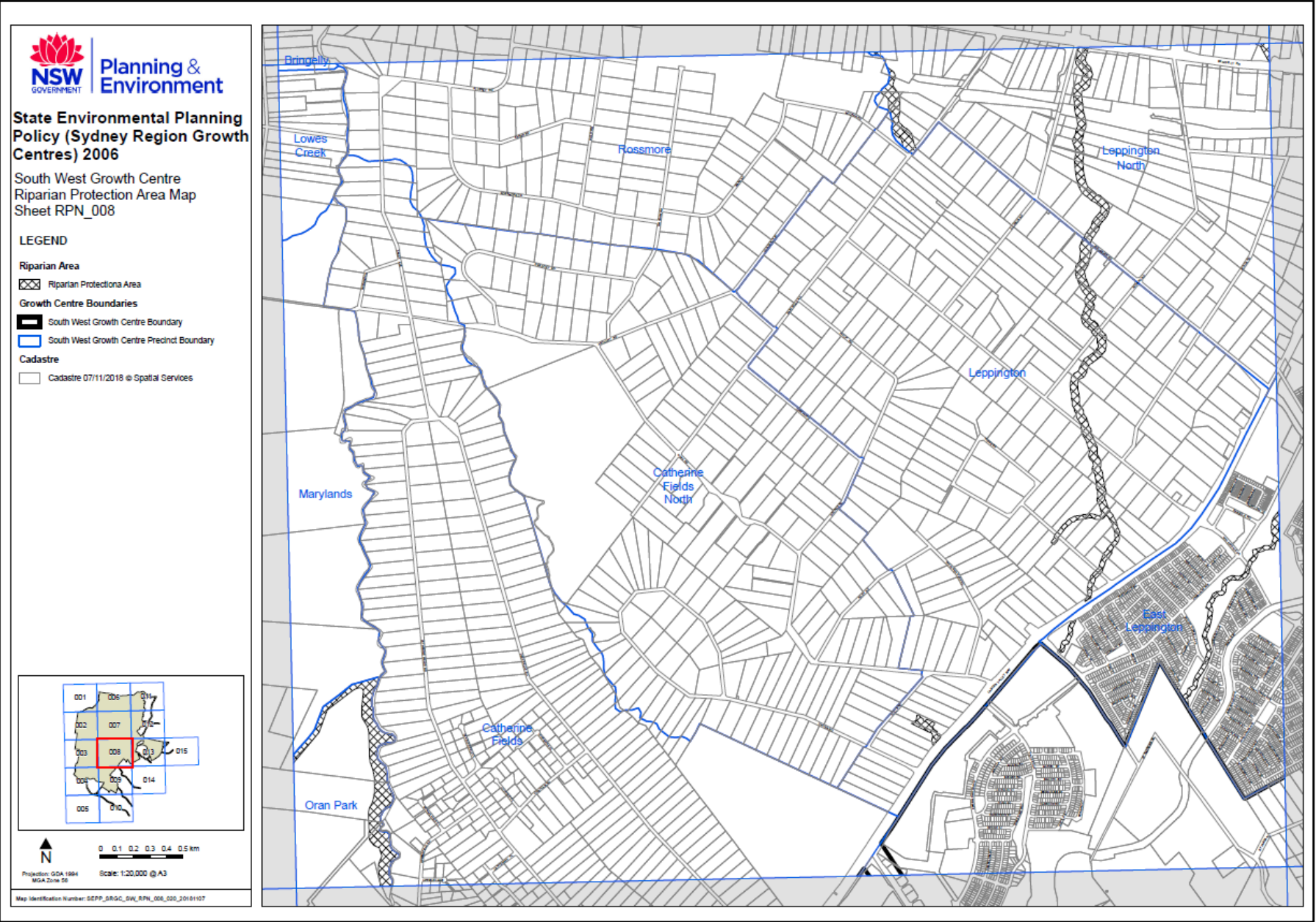


Appendix D

Proposed Amendments to Biodiversity Certification Map

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Assessment of consistency between Relevant Biodiversity Measures of the Biodiversity Certification Order and Leppington Precinct (Stages 2 and 5)



Comparison of existing and proposed certified/non-certified land

The following table outlines the current and proposed certified and non-certified areas in Stages 2 and 5 Leppington Precinct:

Land Type	Stages 2 and 5 Current Area (Ha)	Stages 2 and 5 Proposed Area (Ha)
Certified Land	187.60	181.40
Non Certified Land	0	6.20