

Growth Centres Biodiversity Certification

Assessment of Consistency between the Relevant Biodiversity Measures of the Biodiversity Certification Order and the draft Pondicherry Precinct Plan

March 2021

1. Introduction

In December 2007 an order conferring biodiversity certification on *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) was made by the Minister for the Environment under section 126G of the then *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 highquality 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 [Threatened Species Conservation Act 1995](#) and that was in force on the repeal of that Act is taken to be biodiversity certification conferred on the land under Part 8 of the new 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 Department of Planning, Industry and Environment 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.

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, Industry and Environment (DPIE) is replaced in this report for the Growth Centres Commission and the Department of Environment and Climate Change.

- **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.
- **EPA Act** means the *Environmental Planning and Assessment Act, 1979*.
- **Existing Native Vegetation (ENV)** means areas of indigenous trees (including any sapling) that:
 - c) had 10% or greater over storey canopy cover present,
 - d) were equal to or greater than 0.5 Ha in area, and
 - e) 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*.

AHCVV was separately identified and mapped. It meets the conditions of ENV except that it was not mapped in the original base case in the draft conservation plan.

2. Assessment

Table 1: Assessment of consistency between the relevant biodiversity measures of the Biodiversity Certification Order and the draft Pondicherry Precinct Plan

	Relevant Biodiversity Measure	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 DPIE 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 Pondicherry Precinct will be publicly exhibited.	Yes	
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.	The draft Growth Centres Conservation Plan identifies 1.60 ha of ENV to be retained within the entire Precinct to maintain parity with the 2000 ha requirement.	Yes	1.60 ha of ENV will be protected in the draft Pondicherry Precinct Plan. This will be achieved by: <ul style="list-style-type: none"> E2 Environmental Conservation zoning under the SEPP Applying clause 6.4 Development Controls – Existing Native Vegetation as mapped on the proposed Native Vegetation Protection Map (Annex B) to validated ENV. Amending the Biodiversity Certification ‘subject land’ to the above areas.
Retention of existing native vegetation during precinct planning				
7	During the precinct planning process, the DPIE 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	N/A	Yes	No ENV is proposed to be impacted.

	Relevant Biodiversity Measure	Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	Development Parameters specified in the Growth Centres Development Code.			
8	<p>In making a determination under condition 7, the DPIE 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> <p>(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,</p> <p>(ii) the revegetated and/or restored areas will be protected,</p> <p>(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),</p> <p>(iv) areas subject to revegetation and/or restoration must be of a suitable boundary configuration and design to support long-term management,</p> <p>(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, 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>	N/A	Yes	

	Relevant Biodiversity Measure	Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	<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>	N/A	yes	

	Relevant Biodiversity Measure	Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
Retention of existing native vegetation shown in areas marked with red hatching				
12	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 DPIE .	There are no areas of red hatching on the biodiversity certification maps shown within the Pondicherry Precinct.	Yes	
Ground-truthing of existing native vegetation				
13	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.	Eco Logical Australia conducted ground truthing and aerial photo interpretation of ENV within the Precinct. 1.60 hectares of ENV was validated.	Yes	Validation of ENV was undertaken by Eco Logical Australia. The draft conservation plan maps 1.60 ha of ENV all of which falls within non-certified land areas. Field Survey validated 1.60 ha of ENV currently existing throughout the Precinct of which 1.60 ha is located in non-certified areas.
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 .	N/A		
15	The assessment referred to in condition 14 must examine whether the areas meet the criteria specified in Schedule 3.	N/A		
16	Based on the outcomes of the assessment the DPIE 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 .	N/A		

	Relevant Biodiversity Measure	Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
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:		Yes	
	Species	Required action		
	Acacia pubescens	Potential populations at Cross Street, Kemps Creek and Thirty-second Avenue, Austral – as shown in black hatching on the biodiversity certification maps: <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 DPIE.		
	Pimelea spicata	Potential populations at Denham Court Road - as shown in black hatching on the biodiversity certification maps: <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 DPIE.		
	Persoonia hirsuta	Potential populations at North Kellyville – as shown in black hatching on the biodiversity certification maps: <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 DPIE.		

	Relevant Biodiversity Measure		Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	<i>Leucopogon fletcheri</i>	Known population at North Kellyville - as shown in black hatching on the biodiversity certification maps : <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 DPIE .			
	<i>Darwinia biflora</i> <i>Hibbertia superans</i> <i>Epacris purpurascens</i> var <i>purpurascens</i> <i>Eucalyptus</i> sp “Cattai”	Known populations at North Kellyville - as shown in black hatching on the biodiversity certification maps : <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 DPIE .			
	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.				
Additional conservation actions within the Growth Centres – animals					
18	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:		These clauses do not apply to the Pondicherry Precinct	Yes	
	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			

	Relevant Biodiversity Measure	Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	<ul style="list-style-type: none"> if the species is present, provide protection of the area of suitable habitat for the species to the satisfaction of the DPIE. <p><i>Option 2</i></p> <ul style="list-style-type: none"> if the species is present at Riverstone but cannot be adequately protected to the satisfaction of the DPIE, then: <ol style="list-style-type: none"> undertake targeted survey to confirm the presence of the species elsewhere in the Growth Centres, and if the species is present elsewhere in the Growth Centres, provide for the protection of an area(s) of suitable habitat for the species to the satisfaction of the DPIE. <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 DPIE 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> <ol style="list-style-type: none"> native plants (including but not limited to seed collection) and the re-location of native animals from development sites, prior to development commencing; and top soil from development sites that contain known or potential native seed bank. 	These provisions are incorporated into the Camden Council Growth Centre Precinct Development Control Plan (see section 2.3.5).	Yes	

	Relevant Biodiversity Measure	Comment	Consistent with RBMs and Part 7 of Schedule 7 of the TSC Act	Justification
	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.			
Future precinct plans				
35	During the preparation of future precinct plans (excluding any precinct plans already publicly exhibited before this order took effect) the GCC (now DPIE) 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 report fulfils this condition.	Yes	
Future threatened species listings or discoveries				
36	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 DPIE must (as soon as practicable) provide advice on whether: <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 DPIE; and (c) whether the SEPP, and related measures, provides adequate protection for the species, population or ecological community. 	DPIE to confirm	Yes	
37	Based on the information provided in accordance with condition 36, and any other relevant matters, the DPIE 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.		Yes	

3. Conclusion

This report has undertaken an assessment of the consistency of the draft Pondicherry Precinct Plan, with the biodiversity certification and the applicable relevant biodiversity measures.

The precinct ENV retention target is 1.60 hectares.

It is concluded that the draft Pondicherry Precinct Plan is consistent with the biodiversity certification of the Growth Centres SEPP, as follows:

- The draft Pondicherry Precinct Plan will protect 1.60 ha of field validated ENV.
- The 1.60 ha of ENV will be protected by E2 zone as described below (Annex A and B).
- The Growth Centres SEPP amendment will provide a clause that prevents the clearing of ENV as shown on the Native Vegetation Protection Map (Annex B).
- Further 1.67 ha of land will be mapped Native Vegetation Retention and will be rehabilitated to native vegetation.

Land use zones have been selected based on advice from DPIE in relation to appropriate zoning of land containing ENV, and with consideration of other land use planning factors, including the future ownership, acquisition and use of land in accordance with the draft Precinct Plan and the EPA Act. In accordance with the hierarchy of land use zones preferred by DPIE, land use zones have been applied to ENV that is proposed to be protected as follows:

- All ENV to be protected will be located on land to be zoned E2.

Proposed biodiversity certification map

To reflect the outcomes of the draft Pondicherry Precinct Plan and ensure the protection of ENV, amendments are proposed to the boundaries of certified and non-certified land as shown on the biodiversity certification map (referred to as the subject lands map) (**see Annex C**). The new boundaries of the non-certified lands are proposed to reflect the boundaries of the:

- Protected ENV (as mapped as 'Existing Native Vegetation' on the Native Vegetation Protection Map – see Annex B) and Native Vegetation Retention.
- Development areas and essential infrastructure.

Annex A

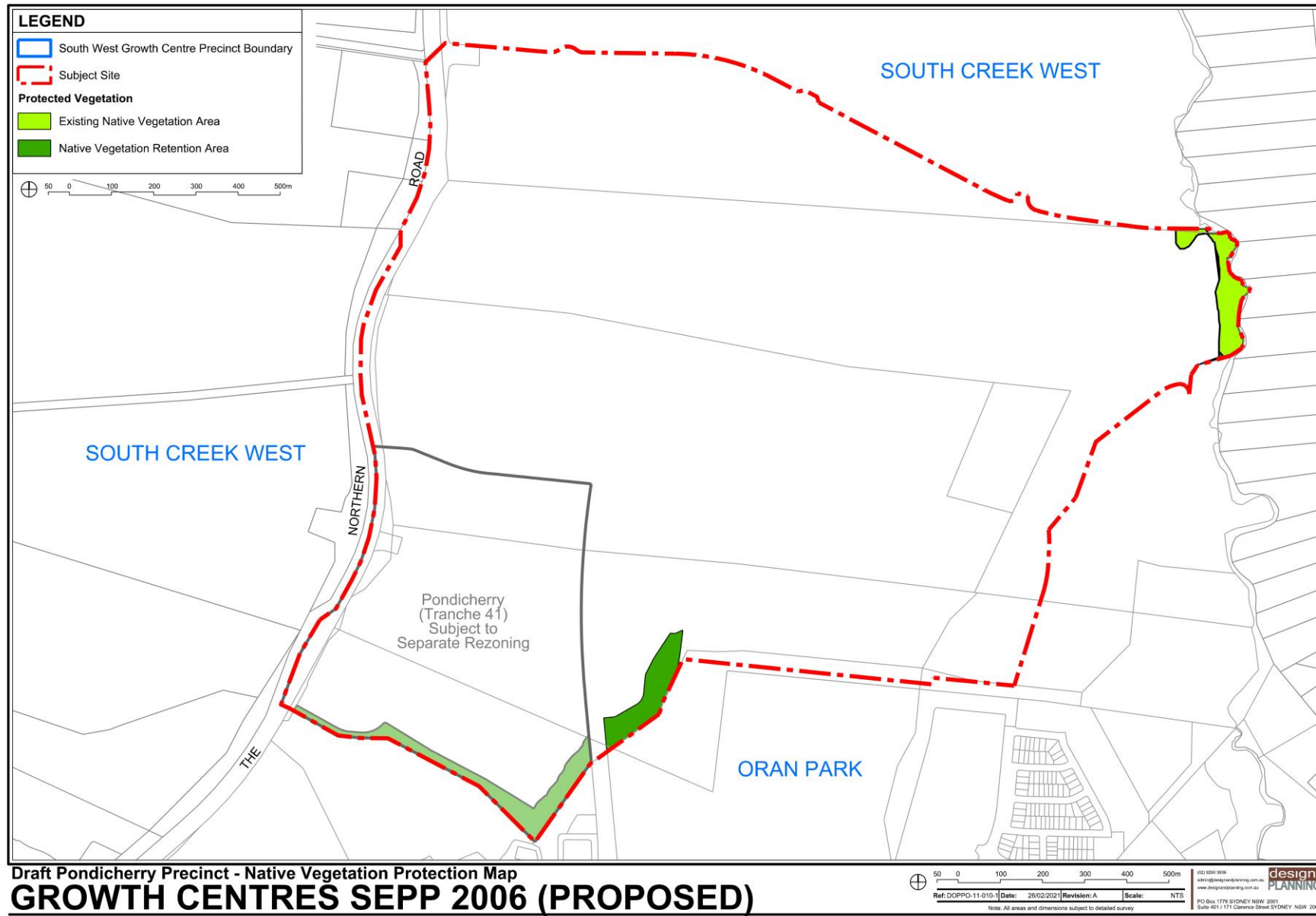
Current Biodiversity Certified Land with validated Existing Native Vegetation

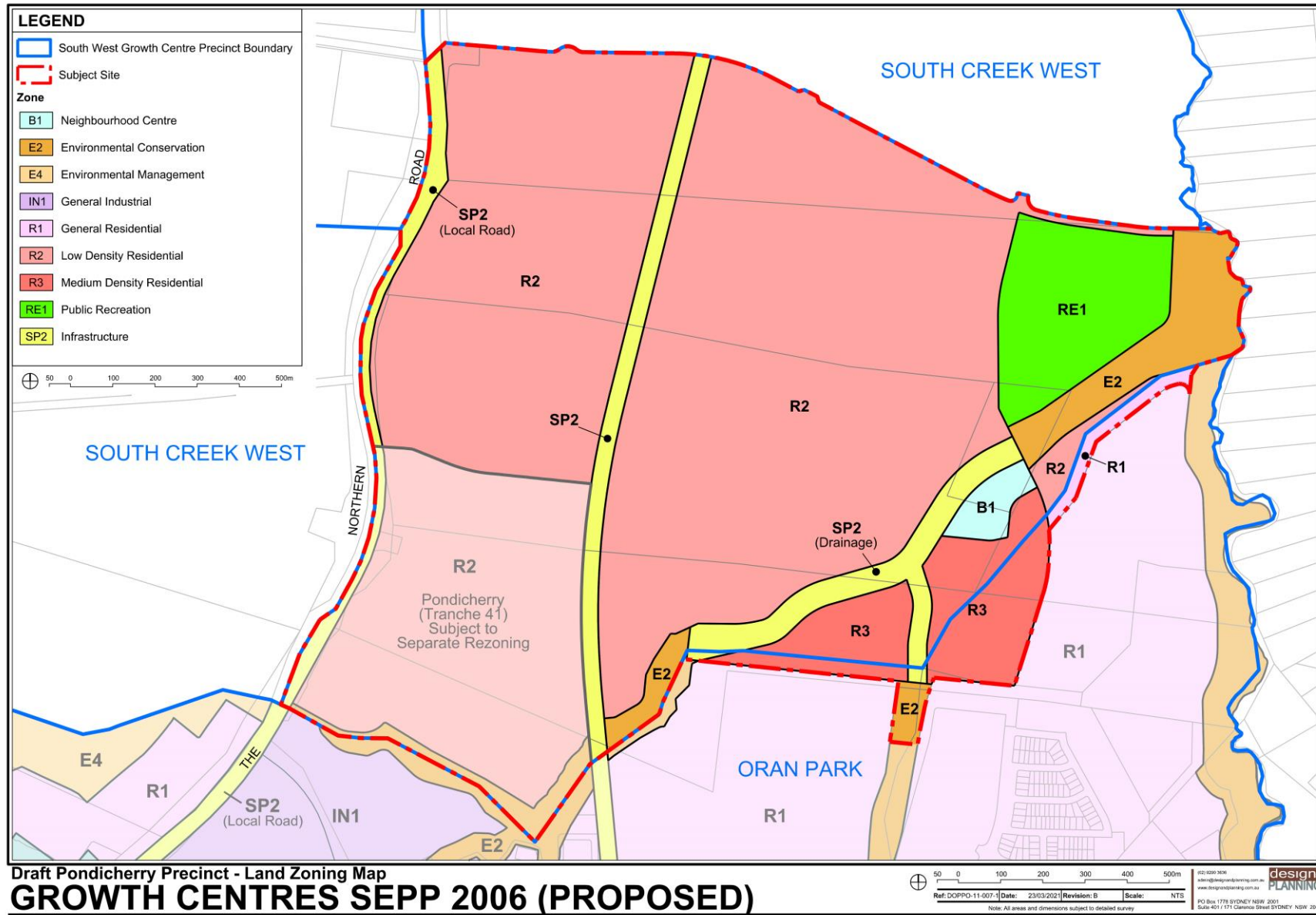
Certified Land and Existing Native Vegetation



Annex B

Proposed Protection Measures for the draft Pondicherry Precinct Plan





Calculations of ENV within the draft Pondicherry Precinct Plan

Results of field validation for ENV and AHCVV

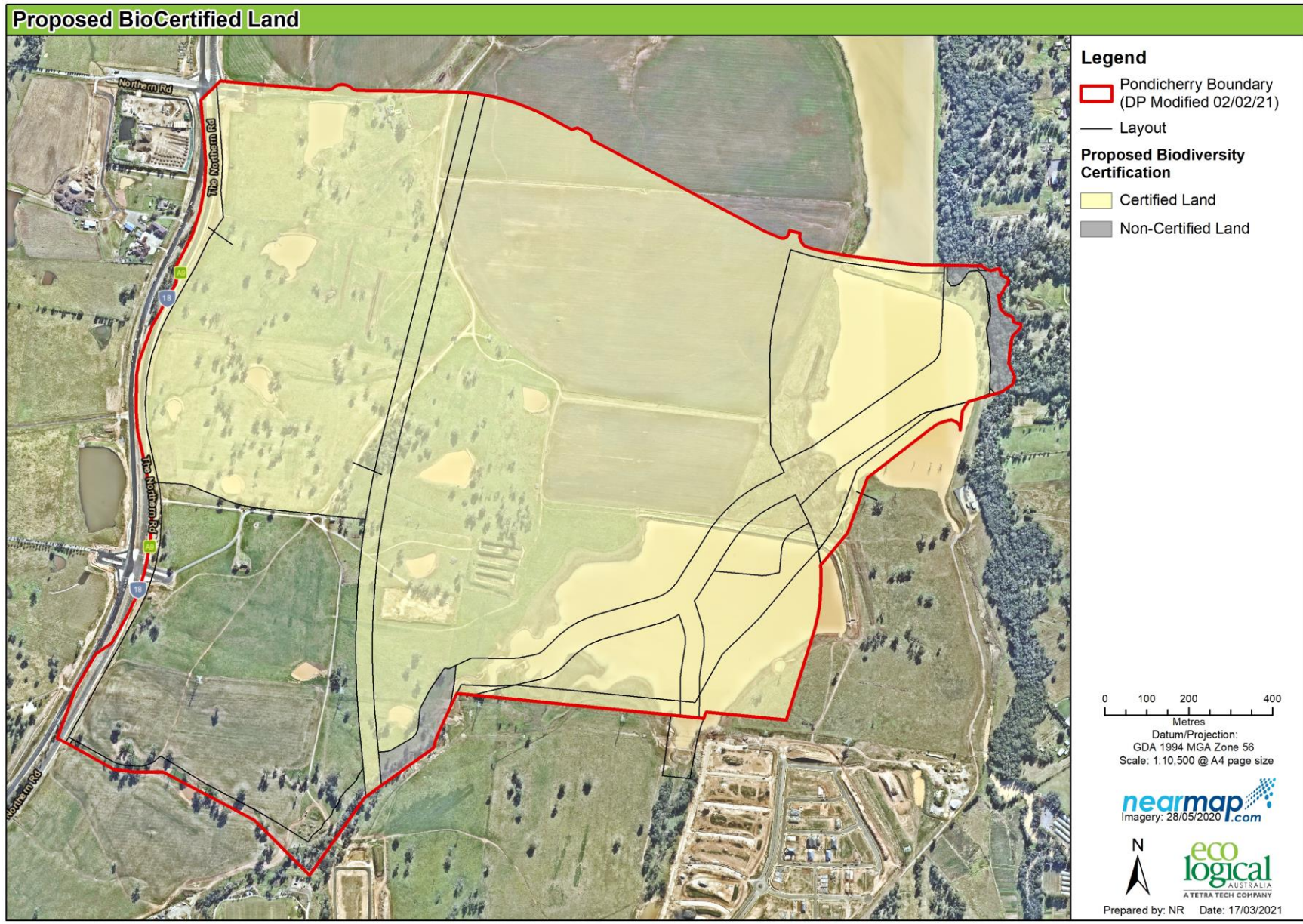
Reference	Item	Stage 1 Area (ha)
A	Area of mapped ENV in non-certified areas (as per Conservation Plan)	1.60
B	Area of validated ENV in non-certified areas	1.60
C	Area of validated ENV in certified areas	0
D	Total area of validated ENV in the Precinct	1.60
E	Total area of validated AHCVV in Precinct	9.67

Summary of impacts, offsets and areas of ENV to be protected

Reference	Item	Stage 1 Area (ha)
A	Area of mapped ENV in non-certified areas (as per Conservation Plan)	1.60
B	Area of validated ENV in non-certified areas	1.60
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)	1.60
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)	1.60

Annex C

Proposed Amendments to Biodiversity Certification Map



Comparison of existing and proposed certified/non-certified land

The following table outlines the current and proposed certified and non-certified areas.

Land Type	Pondicherry Current Area (Ha)	Pondicherry proposed Area (Ha)
Certified Land	195.97	210.59
Non Certified Land	17.89	3.27