



SYDNEY COASTAL COUNCILS GROUP INC.

councils caring for the coastal environment

SUBMISSION

NSW Land Management and Biodiversity Conservation Reforms

June 2017

To: NSW Government: Land Management and Biodiversity Conservation Reforms

Submitted via
<https://www.landmanagement.nsw.gov.au/have-your-say/>

Prepared by: Sydney Coastal Councils Group Incorporated (SCCG)

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1. Introduction

Established in 1989, the Sydney Coastal Councils Group (SCCG) is a co-operative organisation with twenty-seven years of experience in leading sustainable coastal management. The SCCG currently comprises eleven Member Councils, representing nearly 1.5 million Sydney residents.

The *Sydney Coastal Councils Group Strategic Plan 2015 – 2019* sets out three guiding principles which encapsulate the core principles of the SCCG:

- Restore, protect and enhance the coastal environment, its associated ecosystems, ecological and physical processes and biodiversity.
- Facilitate the sustainable use of coastal resources, now and in the future.
- Promote adaptive, integrated and participatory management of the coast.

As land and natural resource managers of Sydney's biodiversity in an urban context, our Member Councils share an interest in the outcomes of the biodiversity legislation review. The SCCG is a strong advocate for working collaboratively and transparently to ensure positive conservation and biodiversity outcomes.

2. The Submission

The SCCG previously provided a comprehensive [submission](#) on the NSW Biodiversity Conservation Legislation Reforms Package in June 2016.

The SCCG welcomes the opportunity to provide a submission in relation to the next stage of the biodiversity legislation review, including both general and specific comments on the various regulatory and operational documentation included in the reform package.

This submission has been prepared with input and feedback from our member councils. Due to the relatively short timeframe for review and submission comparative to the complexity of the reforms and the number of documentation released for review, this submission primarily focusses on issues of greatest concern to our member councils and those documents pertinent to the urban context, and is not a comprehensive review of all elements of the biodiversity legislation review.

Lack of comment on other elements of the proposed reforms does not necessarily imply SCCG support for those elements.

This submission includes:

- General comments
- Specific Comments on Documentation

The SCCG formally requests that all issues, concerns and recommendations presented in this submission are considered and feedback provided through a publicly available submissions representation report.

3. General Comments

While 61% of the state remains under some form of native vegetation, only 9% is considered to be in "close to natural condition" (EPA NSW, 2015). There are 999 species of plants, animals and fungi listed as threatened in NSW. Land clearing is the greatest threat to vegetation extent and condition in NSW and habitat destruction is a key threatening process for almost every threatened species and ecological community (EPA NSW, 2015).

SCCG is concerned that the biodiversity reforms constitute a severe weakening of environmental protections in NSW. The SCCG questions whether the core principles of ESD can be achieved by the proposed biodiversity regulations. The proposed reforms do not take a precautionary approach and they do not treat biodiversity conservation as a fundamental consideration in decision-making.

The proposed reforms, as they currently stand, cannot possibly achieve 'enhanced' biodiversity, or the proposed 'no net loss', and in all likelihood will lead to broadscale vegetation loss, local extinctions and accelerated pathways to uplisting or total extinctions for many threatened species and communities across NSW.

Not only will this be a fundamental loss to environmental values, this will have an associated loss of human amenity and impacts on the economy through, for example, lost tourism potential and increased soil erosion and salinity. There is also a real risk that developers will simply pay the proposed offset price and add the cost to the development which may result in an increased cost of housing.

3.1 Insufficient Detail Released for Public Exhibition

Much of the detail of the proposed reforms is being left to codes, regulations (Vegetation SEPP), and mapping of sensitive values, that have either not yet been developed or have not been released for review.

- The Vegetation SEPP will not be publicly exhibited. The lack of a public exhibition period, and the upfront provision of a commencement date for the SEPP differs from the process followed for recently exhibited SEPPs and Codes (e.g. Coastal Management SEPP, Infrastructure SEPP, Medium Density Housing Code). No justification for this change in direction and process regarding public consultation has been provided.
- The Native Vegetation Regulatory Map commences in 2018. OEH plans to undertake an annual review of the mapping and may recategorise land. There are currently no details of what this map will include and what criteria will be used to recategorise land.
- The Biodiversity Conservation Investment strategy to be exhibited late in 2017.
- The Sensitive Biodiversity Values Land Map as exhibited is a draft example only which does not provide sufficient detail to adequately assess what land has been nominated as a sensitive value in each LGA.
- Maps/information on the areas of outstanding biodiversity values have not yet been released.
- Codes have not yet been developed - where is the guarantee that they will be developed? Codes cannot replace a licensing/permit system.

It is therefore difficult to fully comprehend the implications of the reforms and to give informed feedback without access to this detailed information.

SCCG values transparency, yet full transparency surrounding the reforms and outcomes of the reforms has been withheld. The fact that a commencement date for the reforms has already been slated as 25th August 2017 indicates that the process is largely already in place. It is doubtful that this timeframe will give sufficient time for the NSW government to adequately review and thoroughly consider all submissions and make the necessary changes to the regulations and operational documents, including the tools such as the BAM and offset calculator, as a result of the review.

Setting this deadline indicates that the consultation process is essentially a box-ticking exercise and that consideration of input/feedback provided during the public exhibition process will be limited, which calls into question the efficacy, integrity and sincerity of the consultation process. It is strongly recommended that the NSW Government reconsider the current consultation process and not repeat previous mistakes such as the 10/50 Vegetation Clearance Code consultation.

Recommendation: The State Environmental Planning Policy (Vegetation), Sensitive Biodiversity Values Land Map, and Codes of Practice should be made available for public consultation prior to the finalisation and enactment of the reforms.

3.2 A Common, Minimum Standard for all Proponents

- Whilst applications for development consent under Part 4 of the EP&A Act must be refused if there are 'serious and irreversible impacts' (SAII), State significant development, Part 5 activity or bio certification of land are allowable as long as SAII is 'taken into consideration'. If SAII are identified and determined for any type of proposal then the proposal must be refused.
- These reforms make it quite clear that biodiversity is to be considered second to economic gain, and that the Minister can approve any development with little consideration for biodiversity impact/loss, even where there are serious and irreversible impacts.
- Moving towards the IUCN system for identifying 'candidate species' is understandable. However, it should be made extremely clear what is being lost, if anything, by moving away from the *Threatened Species Conservation Act 1995* listings to IUCN. What species have been removed that were protected under the *Threatened Species Conservation Act*?
- If threatened species, ecological communities or habitat is not listed in Appendix 2 or 3 (*Draft guidance and criteria to assist a decision maker to determine a serious and irreversible impact Document*) it is unlikely to meet the serious and irreversible impact principles. Other species/communities/habitat not on that list should still be considered in terms of SAII and other impacts when determining a development proposal.
- Reforming the biodiversity and land clearing legislation in NSW should result in *raising* the bar of environmental assessments for all proponents. All proponents who wish to clear or modify native vegetation should have to meet the same standard of 'improving or maintaining' current biodiversity values and environmental condition. This requirement to 'improve or maintain biodiversity values' was a key component of the Native Vegetation Act 2003 and Biodiversity Certification under the *Threatened*

Species Conservation Act 1995, yet will not be retained under the Biodiversity Conservation Act/Regulation. It should be noted that the removal of the ‘improve or maintain’ requirement was not recommended by the Independent Panel, nor is it supported by the SCCG and its member Councils.

Recommendation: All developments and changes in land use involving land clearing must be held to the same minimum standard, i.e. to improve or maintain biodiversity values.

Recommendation: If SAI are identified and determined for any type of development proposal then the development must be refused.

3.3 Climate Change

The proposed legislative reforms will lead to an increase in vegetation clearing in NSW, with a concomitant increase in greenhouse gas emissions from the land use sector. This is a perverse outcome that will contribute to the impacts of climate change.

There is no indication that the biodiversity reforms have significantly considered the impact of climate change on biodiversity nor the adaptability/resilience of biodiversity. Individual ecological communities and threatened species may respond to climate change differently with some being more adaptive than others. This needs to be considered in light of the proposed ecological and species credits under the offset scheme rules.

Increased land clearing will reduce the ability of species to migrate in response to climatic changes, and impacts on the land in general from natural hazards such as flooding, drought, temperature will affect management actions taken over time.

3.4 Reporting, Compliance and Enforcement

It is essential that a comprehensive monitoring and reporting framework/process be put in place to evaluate the outcomes of the Biodiversity Conservation Regulation, the Biodiversity Assessment Method and the Biodiversity Offset Scheme.

The Biodiversity Conservation Trust must ensure it is accountable and transparent in its annual reporting, and all reports must be made publicly available. The Trust must ensure that all data is collected, recorded and updated for all biodiversity credits, nominated biodiversity stewardship sites, and conservation programs funded by the Trust, and that a stringent monitoring program is in place to monitor and evaluate the biodiversity / environmental outcomes associated with management of biodiversity stewardship sites.

The Biodiversity Conservation Trust and/or the Office of Environment and Heritage (OEH) should be responsible for compliance and enforcement of the regulation, the biodiversity assessment method, and the offset scheme, including the development and implementation of an auditing program to ensure appropriate implementation of the regulation, on-ground management of biodiversity stewardship sites, and the correct and ethical application of the biodiversity assessment method and reporting undertaken by accredited assessors.

Recommendation: Monitoring, performance auditing and stringent and transparent reporting provisions for; i) the Biodiversity Conservation Trust; ii) landowners / managers and iii) proponents; should be guaranteed by the Biodiversity Conservation Regulation.

4. Specific Comments

Specific comments are provided below for the following:

- Biodiversity Conservation Regulation
- Biodiversity Offset Scheme
- Biodiversity Assessment Method
- Sensitive Biodiversity Values Land Map
- Explanation of Intended Effects (Vegetation SEPP)
- Other Documentation

4.1 Biodiversity Conservation Regulation

It should be noted that this Regulation only focusses on listed threatened species, yet there is cause to protect all native vegetation, particularly in the urban context where native vegetation provides vital corridors, habitat and a food source for native fauna. Greater protection for threatened species and all native vegetation needs to be afforded through this Regulation.

It is questioned whether key threatening processes will continue to be identified and recognised under the new Act and Biodiversity Conservation Regulation? Indeed, massive land clearing that may occur under this Regulation should be identified as a key threatening process in itself.

Comments on the Biodiversity Conservation Regulation are provided in the table below.

Biodiversity Conservation Regulation		
Page	Section of Document	Comments/Recommendations
Pg.14	2.5 Operation of vessels that are not prohibited vessels <i>(6) If a whale (other than a calf) approaches a vessel that is not a prohibited vessel or comes within the limits specified in subclause (2) (b), the person operating the vessel must: (a) disengage the vessel's gears and let the whale approach, or (b) reduce the speed of the vessel and continue on a course away from the whale.</i>	Providing two options of what to do in this scenario adds to confusion, and you may have vessels together applying the two different methods. One direction should be applied which should be (b).
Pg. 17	2.21 Harm to swamphens, raven, crow, cockatoo or galah <i>It is a defence to a prosecution for an offence under section 2.1 of the Act was causing harm to any of the following species of animal and was not for sporting or recreational purposes.....</i>	Harm of native animals should not be an allowable defence to the prosecution for any reason. This could have repercussions for animal welfare with potential for an increase in deliberate harm of native wildlife and instances of animal cruelty.
Pg. 18	Part 2 Protection of animals and plants 2.22 Exclusion of certain animals from offence	According to the Regulatory Impact Statement - <i>low risk wildlife activities will no longer require a licence and, instead will be covered by a Code of Practice.</i> 'There are estimated to be over 34,000

		<p>licences issued by the OEH related to wildlife activities. This includes 24,020 Native Animal Keeper Licences, 20,000 reptile licences, 3,067 Basic Bird licences, 877 Basic Amphibian licences, and 100 Basic Mammal licences'. It is proposed that licences for keeping 'low risk' wildlife will no longer be required, being replaced with a code of practice.</p> <p>The removal of the licencing system in favour of a code of practice is not supported. It is essential that all wildlife kept in captivity are recorded under a licencing system.</p> <p>The code of practice has yet to be developed and there is a risk that codes will not be developed in the future and that anyone can capture and/or keep native wildlife without any form of record or licence. This not only endangers native wildlife it also increases concern for animal welfare and human safety – all so that costs and time can be cut by 'reducing red tape'.</p> <p>Recommendation: Retain the licencing system for all native wildlife.</p>
Pg. 21 Pg. 39-40	<p>Division 2.3 Biodiversity Conservation Licences, 2.26 Persons eligible to hold a licence, (c) whether, in the opinion of the Environment Agency Head, the applicant is of good repute.....</p> <p>Section 5.1 Criteria for Determining... and Section 5.3 Fit and proper person requirements...(section (c), (d)</p>	The word 'opinion' should not be included within this regulation. Whether an applicant for licencing, or a person entering into a biodiversity stewardship agreement is of good repute with integrity should be based on actual evidence not opinion.
Pg. 21	<p>2.27 Standard application fee for licence (section 2.12) An application for a biodiversity conservation licence is to be accompanied by a standard fee [to be determined].</p>	All applicable fees should be determined and stated publicly before finalisation of the regulation/public exhibition period. It is not appropriate to state, 'to be determined'.
Pg. 24	<p>3.1 Criteria for declaring areas of outstanding biodiversity value (section 3.2) (1) This clause sets out the criteria to be applied by the Minister in determining whether an area should be declared an area of outstanding biodiversity value</p>	<p>The AOBV must be declared before legislation enactment? The lack of an AOBV map provides a lack of context in preparing submissions.</p> <p>Clearing/developments should not be permissible in an AOBV.</p> <p>The Minister of Environment has the power to declare, amend and revoke an AOBV. IF an AOBV is revoked how is the area to be compensated for/effects</p>

		<p>mitigated? What regulation surrounds the ability to revoke an AOBV? AOBV to be replaced by mining etc? The Minister's decision to nominate, revoke and/or allow development in an AOBV should be made public in a transparent process.</p> <p>The criteria for an area to be nominated as an AOBV is too high. These criteria should be scalable for any bushland site/native vegetation not just threatened species. Increased value of small parcels of land in Sydney – must be taken into account.</p> <p>There must be a process for councils to submit an application/evidence for the nomination of AOBV. Whilst it is assumed these areas will be of value on a regional, statewide scale, there should be a process for identifying localised AOBV. The lack of recognition of such valuable local areas could forfeit the objective of 'no net loss' of biodiversity.</p>
Pg. 26	<p>3.2 Minister to publish map of area and reasons area eligible to be declared</p> <p>(2) Subclause (1) does not apply if the Environment Agency Head is authorised by section 9.10 of the Act to restrict access to information about the area concerned.</p> <p>(3) If the Environment Agency Head would be authorised by section 9.10 of the Act to restrict access to information about a declared AOBV, the EAH may also restrict access to that information during public consultation.....</p>	Transparency should be a priority of the NSW Government. It is inappropriate for the Environment Agency Head to withhold information about a declared area of outstanding biodiversity value, particularly during public consultation.
Pg. 39	Part 5 Provisions relating to private land conservation agreements	<p>Biodiversity Stewardship Agreements are designed to be in perpetuity, but what are the limitations and thresholds surrounding this? The 20-year timeframe for agreements / management plans is not acceptable when it is supposed to be in perpetuity.</p> <p>Biodiversity stewardship sites should be noted as a restriction on the title under the NSW Conveyancing Act 1919 to ensure perpetuity.</p>

Pg. 41-42	<p>5.6 Minor variations of biodiversity stewardship agreements without required consents or consultation</p> <p>(section 5.11 (8)) A biodiversity stewardship agreement may be varied without any consent or consultation otherwise required by section 5.11 of the Act if the Minister is satisfied that:(a) the variation makes a minor change to the management actions or plans, or the timing of payments relating to management actions, under the agreement, or...</p>	<p>What is defined as a minor change to management plans or actions? (5.6 a)</p> <p>There would still need to be some form of assessment to determine the implications of these so called minor changes to management actions/plans - how will this be recorded and monitored if consent is not required?</p> <p>Recommendation: that (a) be removed from 5.6 with only (b) and (c) considered as a minor variation.</p>
Pg.42	<p>5.8 Reimbursement of site establishment costs of owner or Minister by holder of mining or petroleum authority on termination or variation of biodiversity stewardship agreement</p> <p>(1) This clause applies when a biodiversity stewardship agreement: (a) is terminated by the Minister under section 5.18 (1) of the Act, or by the owner under section 5.18 (9)</p>	<p>A land owner/the Minister should not be able to vary or revoke a Biodiversity Stewardship Agreement for mining purposes, or any other purpose unless there is strong evidence/justification as to why. Once a Biodiversity Stewardship Agreement is in place it should remain so and be managed as such. The same applies to section 5.9 (conservation agreements).</p>
Pg. 44	<p>Part 6 Biodiversity Offsets Scheme</p> <p>6.2 Offset rules under biodiversity offsets scheme</p> <p>(1) This clause relates to the offset rules that apply to the determination under the biodiversity offsets scheme of the biodiversity conservation measures to offset or compensate for the impacts on biodiversity values after the steps taken to avoid or minimise those impacts.</p> <p>6.2 (2) The measures to offset or compensate for those impacts are (subject to the Act and any other applicable Act) any one or a combination of the following options:</p> <p>(a) The retirement of the required number and class of like-for-like biodiversity credits.</p> <p>(b)The retirement of the required biodiversity credits in accordance with the variation rules.</p> <p>(c) The funding of a biodiversity conservation action that would benefit the relevant threatened species or ecological community and</p>	<p>6.2 (1) notes that offset rules apply after the steps taken to avoid or minimise those impacts'. The premise of 'avoid, minimise before offsetting' is supported as a hierarchy. However, the regulation only makes mention of this in passing.</p> <p>Recommendation: There needs to be a clear and concise section in the Biodiversity Conservation Regulation prior to 'Part 6 Biodiversity Offset Scheme' that states this hierarchy and provides detail of the requirements for avoiding and minimising prior to commencing the offset scheme.</p> <p>The inclusion of endangered species/endangered ecological communities in the offset scheme is not supported.</p> <p>Where the biodiversity offset scheme will apply a like for like credit, these must always be retired at a localised site or within the same subregion.</p> <p>Variation rules are not supported. They weaken the like for like offset rule which is fundamental to biodiversity integrity.</p>

	<p>that is equivalent to the cost of acquiring the required like-for-like biodiversity credits as determined by the offsets payment calculator referred to in section 6.32 of the Act.</p> <p>(d) In the case of State significant development or infrastructure under the Environmental Planning and Assessment Act 1979 that is mining under a mining lease—an obligation to rehabilitate the impacted site that has the same credit value as the retirement of like-for-like biodiversity credits.....</p>	<p>One of the key weaknesses of the proposed new offset rules (6.2 d) is the ability for mines to receive biodiversity offset credits for rehabilitation of the mine. Rehabilitation of mining sites is an expected outcome as a mandatory condition of development consent. It is unacceptable to allow mining companies to obtain biodiversity credits for a rehabilitation site – this is allowing the mining industry to shirk its obligation and responsibility to rehabilitate whilst also gaining additional economic benefits from the loss of biodiversity.</p> <p>Recommendation: Offsetting of Endangered ecological communities /Endangered species must not be allowable under the offset scheme.</p> <p>Recommendation: Biodiversity credits for mining rehabilitation sites must not be allowed.</p>
Pg. 45	<p>6.3 Like-for-like biodiversity credits (section 6.4) (1) This clause applies to the determination of like-for-like biodiversity credits for the purposes of the application of the offset rules or variation rules.</p>	<p>Like for Like credits are supported, first in the same local area and then in the same subregion. If like for like cannot be found the development should be refused, otherwise there must be strong evidence presented as to why the development should be approved, considering all ESD principles.</p> <p>Supportive of 6.3 2 (b), and 6.3 3 (c) - like for like credits must contain hollow bearing trees. This clause needs to be more specific regarding the number of hollow bearing trees required for the type of credit and size plot of the credit.</p>
Pg. 46	<p>6.4 Variation rules under biodiversity offsets scheme</p> <p>(b) In the case of impacts on threatened ecological communities or on the habitat of threatened species that are ecosystem credit species or other native vegetation—the biodiversity credits to be retired need not represent the same threatened ecological community or the same class of vegetation or represent a location in the same or adjoining IBRA subregion so long as:</p> <p>(i) they represent the same vegetation</p>	<p>These variation rules 6.4 (1b) are unacceptable.</p> <p>To suggest that ecosystem credit species can be offset for the same vegetation formation, trading group or subregion within 100km of the impacted site does not achieve the aim of conserving and protecting biodiversity. One threatened ecological community or habitat for a threatened species does not necessarily function in the same way as another. This variation rule will undoubtedly lead to a</p>

	<p>formation, and (ii) they are in the same or a higher offset trading group, and (iii) they represent a location that is in: (A) the same IBRA.....</p> <p>(c) In the case of impacts on threatened species that are species credit species—the biodiversity credits to be retired need not represent the same threatened species, so long as: (i) if the impacted species is a plant—they represent a plant, and (ii) if the impacted species is an animal—they represent an animal, and (iii) they represent a species that has the same or a higher category of listing under Part 4 of the Act as a threatened species, and.....</p>	<p>loss in biodiversity and specific threatened species and ecological communities.</p> <p>Allowing a threatened species to be offset for another plant or animal of the same or higher category listing is unacceptable.</p> <p>Each threatened species plays a role in the functioning of the ecosystem – just because the listing is the same or higher does not equate to the same ecosystem role/function and the impacts caused by the loss of that species. This is a recipe for exponentially increasing the loss of specific threatened species, and/or the uplisting of threatened species with the real threat of pushing them to the brink of endangered/critically endangered; locally extinct or total extinction.</p> <p>Once breached, ecological thresholds cannot be reversed without significant investment and even then, there is no guarantee of recovery. Abandoning the precautionary principle – which is an underlying and engrained feature of this legislation, will lead to biodiversity loss and unsustainable threatened species populations.</p> <p>Recommendation: Variation rules are not supported and should be removed from the offset scheme.</p>
Pg.48	6.7 Serious and irreversible impacts	<p>How will these impacts be measured objectively to ensure adequate protection?</p> <p>State significant developments can still go ahead even if there is evidence of SAI. This identifies that for these reforms economic benefits outweigh environmental impact. This directly conflicts with the purpose of the Act “to maintain a healthy, productive and resilient environment...consistent with the principles of ESD”. Where is the ESD balance in this decision and again this does not meet the ‘no net loss’ criteria.</p>

Pg. 56	7.2 Clearing of area of land that exceeds threshold	<p>The area of clearing for a minimum lot size of land 'less than 1 hectare' is stated as '0.25 ha or more'. What is defined as 'or more'. Does this infer that the whole site can be cleared? This needs to be reworded and clarified.</p> <p>Recommendation: The thresholds applying to urban areas are too high and need to be reconsidered.</p>
Pg. 57	<p>7.3 Clearing within sensitive biodiversity values land map exceeds threshold.</p> <p>(l) land that, in the opinion of the council of the local government area concerned, contains vegetation connectivity features or threatened species habitat and whose inclusion in the Map will, in the opinion of the Minister, conserve biodiversity at a bioregional or State scale, (m) any other land that, in the opinion of the Environment Agency Head, is of sufficient biodiversity value to be included in the Map.</p>	<p>Setting the minimum benchmark for inclusion in the sensitive biodiversity values land map at a state or bioregional scale is fundamentally flawed. This approach assumes the integrity of species, populations and communities is currently satisfactory when in reality it is not, and the Government's objective ought to be strengthening biodiversity and enhancing connectivity.</p> <p>A clear and concise process for councils to provide mapping and/or information for inclusion in the SBVL map is required.</p> <p>Recommendation: Councils mapping information must be utilised in the finalisation of the sensitive biodiversity values land map.</p>
Pg. 60	Part 8 Biodiversity certification of land	<p>It is inappropriate to allow private developers to take part in bio certification, unless stringent criteria are put in place, with the requirement for annual public reporting.</p> <p>Bio certification switches off the requirement for further NSW Biodiversity assessment – this is inappropriate. Bio certification should be a process open to continued biodiversity assessment.</p> <p>This certification provides a lower environmental standard, no longer requiring 'maintain or improve' environmental outcomes, which is not acceptable.</p> <p>Strategic biodiversity certification allows for additional offset options which may not be appropriate or acceptable. Stringent criteria / standards and a</p>

		transparent process is required for any declared strategic biodiversity certification.
Pg. 62	Division 9.2 Public registers 9.2Public register of biodiversity conservation licences (sections 9.7 (1) (a) and 9.11)	Recommendation: All biodiversity conservation licences, including existing licences should be included in the public register.
Pg. 66	Part 10 Biodiversity Conservation Trust	<p>The BCT is to be set up to administer the Scheme and funding, and yet this Trust under the regulation has still to develop a business plan which will set out its goals and plans of collecting and managing information, and the investment strategy. What is the confidence level in a Trust where the fundamentals guiding the operations and strategic direction of the Trust have not yet been formulated, or publicly exhibited.</p> <p>It is essential that the Trust is accountable and transparent and that they establish a comprehensive and stringent record management and monitoring system for all biodiversity credits/ sites. On-ground monitoring of all sites is essential to ensure that the sites exist and are being managed and maintained as required.</p> <p>It is noted that there is no requirement for the Trust to secure offsets and acquit obligations in a set time period. This is unacceptable. The Trust must abide by set criteria including time frame when allocating offsets. The Trust must also first and foremost allocate like for like within the same local area, or sub region if this is not possible. The Trust should also be required to ensure that a like for like credit is available locally or within the sub-region before accepting the payment option from a proponent. If this cannot be found then the proponent must be forced to avoid and minimise, and/or the development should not be approved.</p> <p>Recommendation: The BCT must adhere to a comprehensive and transparent monitoring, auditing and public reporting system.</p>

		<p>Recommendation: A set timeframe must be developed by which the BCT must adhere to in securing offsets and acquitting offset obligations.</p> <p>Recommendation: The BCT must not accept the option of an offset payment from a proponent if like for like credits cannot be secured within the local and/or neighbouring area.</p>
Pg. 68	<p>Part 12 Investigation powers</p> <p>Consultation note. At this stage, no regulations are proposed to be made in connection with Part 12 of the Act.</p>	<p>What is the reasoning behind not providing investigation powers to ensure compliance of the regulation?</p> <p>Investigation powers are necessary for compliance and enforcement.</p>
Pg. 74	<p>Schedule 2 Provisions relating to members and procedure of the Biodiversity Conservation Advisory Panel</p> <p>6 Removal from office of members The Minister may remove a member from office at any time for any reason and without notice.</p>	<p>For reasons of accountability and transparency, the Minister should provide justifiable reasons for removing a member of the panel from office. Furthermore, the Minister should provide justification for any other person appointed to the panel.</p>

4.2 Biodiversity Offset Scheme

It is stated in the regulation that the hierarchy for vegetation clearing is to avoid, minimise and then offset, and yet the regulations/operational documents all appear to lean towards offsetting as the primary method for 'supposed biodiversity protection' from development. The regulation, the offset scheme and the BAM all need to show a clear hierarchy of avoid and minimise before offsetting is allowed, and developers must provide this information in any DA.

The approval authority must account for the actions to avoid and minimise before allowing to offset. If there is evidence that the development cannot avoid SAll or other impacts as deemed not acceptable by the authorising body then the development should clearly be refused.

One of the key weaknesses of offsets in general is the time lag between the impact being allowed and the uncertain benefit of 'improved' biodiversity in the offset credit site being achieved. The impact of habitat clearing is felt by a species or ecological community immediately, whereas possible increases in habitat or, more commonly, improvements in condition of existing habitat, are not experienced for many years after the impact is felt.

Offsetting is a means by which developers can extensively clear native vegetation with 'legal' approval. Offsetting does not protect threatened species or threatened ecological communities, but rather exploits it, and should not be considered as the primary means of protecting and conserving biodiversity. The fact that offsetting is the key method introduced by these biodiversity reforms indicates that protecting and conserving the biodiversity of NSW is not a serious consideration for the NSW Government.

Specific comments on the offsetting rules/scheme are provided below.

- All allowable biodiversity offset credits should be like for like. Allowing offset credits that are not like for like cannot achieve biodiversity protection and will not meet the proposed 'no net loss of biodiversity' outcome proposed.
- Criteria set for the offset rules should be more stringent for threatened species/ecological communities. If a like for like offset cannot be found for these communities/species within the local area or sub region then the offset should not be allowable. E.g. a threatened orchid community cannot be replaced by a different type of threatened plant community as they play different roles in the ecosystem. This could potentially lead to loss of biodiversity, loss of specific species/communities or uplisting their status more rapidly.
- If a like for like offset cannot be found, a variation can see payment go to conservation programs. Are these programs that the Trust and OEH have already identified in their conservation program, plans and or saving our species program? If so these programs are existing projects that the government should already be providing funding for. Any conservation programs that the Trust puts money towards on behalf of a proponent should be a new conservation program identified, within the same local area as the development, where possible.
- Under the offset rules a proponent can choose to make an equivalent payment to the Biodiversity Conservation Trust rather than offset the development themselves. This rule takes away the responsibility of the proponent in considering the value of biodiversity and the impacts that the development will have on biodiversity values, and their obligation to find an offset arrangement. The proponent will simply pay the fee which will likely be built into the cost of the development. The option to pay funds to the BCT should only be available if the proponent can prove that all necessary steps were taken to find a like for like offset and that they were unable to find a suitable site on their own. The BCT should only accept payment from a proponent if a like for like offset site can be found within the local area or subregion (if a local area cannot be found).
- Allowing offset sites to be applied anywhere in NSW and not in the local region is not supported. It is very likely that this will facilitate the destruction of the last remaining habitat for threatened plants and animals in urban areas, as it will be considered "too expensive" to maintain those biodiversity values in situ. This will reduce biodiversity values in urban areas, significantly curtail the ability of the bulk of NSW's population to access nature (thereby also lowering their opportunity to value these species), and reduce the amenity of local natural areas in cities. It will also leave multiple species at increased risk of extinction due to reduced ranges, lack of habitat corridors, and events such as fire or extreme weather.
- It is noted that severely fragmented communities (geographically) are included in the offset scheme. It is essential that small pockets/remnant bushland and communities remain particularly in the urban context. These areas are increasingly important in providing habitat for native fauna species, as well as drought refugia.
- With variation rules – offsets can be expanded from the same vegetation class to the same formation (99 to 16), and in terms of species credits one species can be offset for another as long as it is a plant for a plant or animal for an animal. These variation rules are contemptible, and again highlights that the regulations/offset scheme do not

consider the ecological value; intrinsic value or importance of particular species, to the detriment of biodiversity values locally, regionally, state-wide and nationally. These variation rules will lead to a net loss of biodiversity, and are not supported.

- Under the offset rules hollow bearing trees can be offset with artificial hollows. Replacing hollow bearing trees with artificial nest boxes as an allowed offset and/or management action is not always appropriate. Evidence shows that artificial hollows such as nestboxes do not work in providing replacement habitat for all native fauna, meaning a loss of habitat for native species. There are threatened species such as the Superb Parrot that have been shown not to utilise nestboxes and would therefore be displaced from the area if all hollow bearing trees were cleared. For example, a *four-year monitoring program was undertaken to evaluate the program to offset the widening of the Hume highway. One nestbox was installed for every hollow lost (600 nest boxes) designed for three specific threatened species. Results showed all the three species were found in remaining or nearby hollow trees, the Superb Parrot was not found to use the nest boxes at all (over 4 years only 9 records of uses of the nestboxes by two of the threatened species). Nest boxes were used by non-native species or pests and 10% collapsed were stolen or rendered ineffective. No nestboxes were replaced over time although this initial number was the agreed condition under the offsetting scheme* (Lindenmayer et al, 2017).

'Complying with an offset scheme does not equal effectiveness or positive biodiversity outcomes' (Lindenmayer et al 2017). Yet this action re: nest boxes is a suitable action noted for managing biodiversity stewardship sites, even though studies show these do not necessarily work. Offsetting is allowing vegetation clearing of old hollow bearing trees without a workable solution in place. This will contribute to not only the loss of valuable native vegetation, but also the loss of habitat and the loss of fauna species that rely on that habitat. How is this achieving 'no net biodiversity loss'?

- The BOS threshold of 1 hectare or less (with the ability to clear 0.25 ha or more) is too high for urban areas. In smaller LGA's most parcels of land are under 1ha. This could significantly reduce remnant vegetation areas or habitat corridors within LGA's, particularly if you consider a cumulative effect from vegetation clearing under the threshold. There is a need to provide a much smaller threshold in the urban context.
- Offsets can be decreased as a condition of consent with evidence as to why. The offset scheme must not allow the decrease in offset credits.
- Under the current and proposed offsetting scheme, natural areas that are owned and/or managed by public authorities for the purpose of conservation can be credit recipient sites. This does not represent an offset to development-induced loss of biodiversity elsewhere as this land has already been "conserved". If National Parks are not eligible to become offset sites (as they ought not to be) then other publicly owned/managed natural areas must also be excluded from any form of participation in the offset scheme.
- Are all ecosystem functions being taken into account regarding the offset scheme? For example, soils, insects, micro fauna and existing symbiotic relationships that may exist at a particular site that cannot be found or replicated elsewhere. Site studies need to identify these factors and if these relationships exist, and ecosystem function could be disrupted than an offset should be refused.

Recommendation: It is recommended that endangered ecologically communities and endangered species be excluded from the offset scheme as they should be afforded a greater level of protection.

Recommendation: The BOS threshold, must be revised to a much smaller area more appropriate to the urban context. Other factors that must be taken into consideration include the context of the proposed clearing as a proportion of the remaining vegetation in an area; cumulative clearing; and the valuable role that small remnants may play as part of a biodiversity or riparian corridor.

Recommendation: Biodiversity offset sites must be located within the same local government area or, only if this is not possible, the same IBRA subregion as the site of the impact.

Recommendation: The hierarchy of avoid, minimise, offset must be strictly applied; as must the concept of like-for-like. The proposed variation rules are not acceptable. Clear objectives of improving or maintaining biodiversity values, and achieving 'no net loss' of biodiversity must be set.

Recommendation: Biodiversity offset credit sites must be protected in perpetuity from all forms of development and the biodiversity credits insured against the possible impact of future natural disasters.

Recommendation: Mining companies must be required to rehabilitate their mine sites at the end of the life of the mine as part of the development consent. Biodiversity credits must not be allowable for mine rehabilitation.

Recommendation: Offset recipient sites cannot include natural areas under public ownership/management. Where land is to be cleared for development under the regulation / scheme, the offset recipient site must be privately owned and/or managed by a non-government organisation.

4.3 Biodiversity Assessment Method

Specific comments regarding the Biodiversity Assessment Method (BAM) are below.

- There is a concern that there will be an insufficient number of accredited assessors upon commencement of the BAM on 25th August. There will be a trial and error period in which proponents, assessors and council officers become familiar with the BAM and BAM assessment reports – it is extremely important that monitoring and auditing of the system is put in place during this time to ensure the accuracy and sufficiency of BAM reports.
- Accreditation Scheme for the Application of the BAM Order 2017, Part 2 (4) Accreditation may be conditional, (1) Accreditation may be granted unconditionally or subject to conditions (pg. 4). Accreditation must always be granted subject to conditions.

The criteria for accredited assessors must be stringent as should be the enforcement and compliance for those that are unethical. It is inappropriate for the Minister to be able to select an assessor for accreditation unless they prove they fit all of these stringent criteria. It is also inappropriate for the Minister to nominate a term for the assessor either above or below the set timeframe of three years. This could potentially provide a loophole for a less than suitable person to be nominated as an assessor for the sole purpose of pushing through a development supported by the government regardless of environmental

impacts / concerns. OEH must ensure that all accredited assessors are audited on an annual basis as a minimum with random audits conducted at other times throughout the year.'

- Accreditation Scheme for the Application of the BAM Order 2017, Part 5 (21) Accredited person may seek variation, (1) An accredited person may, by way of written notice, request a variation of an accreditation (pg. 11). This point needs to be clarified and well defined - what is allowable as a variation request of accreditation?
- The majority of local councils would not have trained staff /experts in BAM/Bio certification systems. The development of a free capacity building program, offered by OEH, for Council officers is supported. It should be noted that training in the BAM must be ongoing to upskill all council officers required to assess BAM reports. It is essential that Council officers be trained in the use of the BAM tool so that they can ensure that the information provided by the accredited assessor is accurate.
- Section 2.2.3 (pg. 3 BAM document) – where good, accurate local data exists on local biodiversity values, this data must be used by the BAM assessor in preparing the BAM development assessment reports. It is essential that OEH consult with local councils so that existing local biodiversity data can be included within the BAM assessment and reporting process.
- Section 2.3.1.1 (pg. 3 BAM Document) - *biodiversity values not assessed under the BAM include marine mammals and wandering seabirds*. These should not be excluded under the BAM assessment if: i) the development will impact on pollution levels/water quality of the marine environment which may impact on marine mammals/seabirds; ii) the development is likely to result in an increase in tourism which will impact on marine mammals/seabirds; and/or the development is likely to impact on existing or available breeding/nesting land of seabirds.
- Section 3.1, Table 1(pg. 4, BAM document) – when assessing ‘small areas’ the minimum lot size is less than 2 ha and the proposed limit for the small area development threshold is less than or equal to 2 ha. Whilst defined as a small area, a site of less than 2 ha may contain remnant bushland and be of high biodiversity value. The development threshold of less than or equal to 2 ha, which could encompass the entire site, is not acceptable. The small area development threshold does not allow for the consideration of the value that a small remnant of vegetation may play as part of a biodiversity corridor or vegetated ‘stepping stones’. Nor does it allow for considering the value a small or narrow area of vegetation in a riparian zone may have in contributing to the healthy function of the waterway.
- There is a considerable risk that landholders wishing to clear vegetation will focus solely on whether they trigger the area clearing threshold, and ignore any additional assessment requirements such as the proposed sensitive biodiversity values. If an area clearing threshold is set, it should be required that all DAs are assessed against a centralised database of all previous DAs. A successive DA that, when considered in concert with a previous DA, tips the proposed clearing over the area threshold, should then trigger the BAM.
- Section 3.2-3.4 (pg. 5 BAM document) - When a proponent submits a BDAR for assessment, they must be required to submit an electronic version of their BAM so that assessing officers can check for errors, inconsistencies or misinterpretation in the input data.

- Section 3.6.1.3 (pg. 7 BAM document) – under this section an assessor does not have to undertake a biodiversity values assessment of threatened species habitat or native vegetation beyond the calculation of a vegetation integrity score, if the vegetation zone does not contain native vegetation or is considered to have a lower vegetation integrity score, even where an endangered or critically endangered ecological community exists. Whilst vegetation condition may be considered to be low, the assumption should not be made that this vegetation zone has no biodiversity value; that it is of no value as a habitat to threatened species; or that associated ecosystem functions do not exist.

One of the fundamental principles of natural area management – is that vegetation condition cannot necessarily be judged by the presence/absence of above-ground vegetation. Resilience in the form of a soil-stored seed bank or adjoining propagule reservoir can be harnessed to achieve partial or full ecological recovery.

- Section 5.4.3.8, Table 4 (pg. 18 BAM) – this section states that an assessor must establish survey plots around a 50m transect, and provides standard plot sizes for a vegetation zone. Within Table 4, which provides the minimum number of plots/transects required for the vegetation area, a zone of less than 2 ha only requires a minimum of 1 plot/transect, with an area of 50-100ha requiring a minimum of 5 plots/transects. It must be clearly articulated in the BAM that Table 4 should be used as a minimum standard only and that additional plots/transects must be undertaken where appropriate and/or required.
- As per section 8 (pg. 37 BAM document), the BAM should first and foremost provide a set of comprehensive criteria for avoiding and minimising impacts on biodiversity.
- Section 9.2.2 (pg. 46 BAM document) - SCCG is supportive of the BAM assessment, as a requirement, assessing all environmental aspects/hazards e.g. soils, water table, hydrology, salinity, erosion, pollution sources, and other indirect impacts on biodiversity before, during and after the development construction phase.
- Section 10.4.1 (pg. 53 BAM document) – states that an assessor is not required to determine an offset for the impacts of development or clearing on a plant community type that has a low vegetation integrity score, even where an endangered or critically endangered ecological community is represented. A BAM assessment should be undertaken for all native vegetation impacted on by a proposed development.
- Section 10.5 (pg. 53 BAM document) – An assessor is not required to assess land without native vegetation, and yet non-native vegetation / weedy areas can still hold value as habitat for native fauna including threatened species e.g. Grey-headed Flying-fox. It is included as a note at the bottom of page 53 that '*areas of land that do not contain native vegetation must still be assessed for threatened species in accordance with Chapter 6*'. This statement is important and should not be a note at the bottom of the page – this should be clearly stated as clause 10.5.1.2.

If native vegetation of low condition and/or non-native vegetation does not require an assessment of impacts, then we are at risk of losing vital habitat within urban areas for native fauna, which may also increase animal/human conflict. It is a well-established fact that poor condition native vegetation can, and does provide habitat for a range of threatened and locally significant native fauna species.

- Section 10.4.2 (pg. 53 BAM document)– The BAM must consider carbon release (greenhouse gas emissions) in the cost and calculation of offsetting from the vegetation clearing.
- Section 11.1.1.1 (Pg. 54 BAM document)- *The BAM establishes the circumstances where offsetting the impacts of development, clearing or biodiversity certification will result in no net loss of biodiversity.* How can this statement of 'no net loss of biodiversity' be met? Will the BAM provide actual targets to be measured against? Otherwise how will 'no net loss' be monitored and measured for evaluation and reporting purposes locally, regionally and state-wide.
- Section 13.2 Preparation of a management plan for a biodiversity stewardship site (pg. 59 BAM document)- The development of a management plan for a biodiversity stewardship site is supported.

The biodiversity stewardship sites are 'in perpetuity' and yet the sites will only be managed for 20 years under a management plan, and may only be managed for another 20 years if the property owner puts in place a revised management plan. If a stewardship site owner chose not to renew the management plan and reassess their site, can this site be let go in terms of management, and can it subsequently be cleared after this 20-year timeframe? This needs to be clarified.

- Section 13.3.1.2 (pg. 59)- only being able to create biodiversity credits from required management actions is supported, as is the inclusion of performance measures and targets within the management plan for each action (S.13.3.1.4). It is also essential that the land owner be required to monitor and report on the implementation and performance of actions on an annual basis, as a minimum. A monitoring and compliance program must also be developed by the BCT / OEH to ensure confidence in site management of a biodiversity stewardship site over time.
- Consultation note (pg. 66) - "*The BAM estimates the ecological benefit of management actions over a 20-year timeframe. This management timeframe is chosen as it takes into account the period of time over which there is a high level of confidence that the predicted outcome will be achieved*". The timeframe for credits/biodiversity stewardship sites set at 20 years is unacceptable. This should be either based on the age of the vegetation that is being cleared; or 100 years minimum for sites with hollow bearing trees; or at a minimum the same as the lifespan of the development assuming the development's lifespan to be 50-100+ years.

Is it acceptable for new funds/credits to be provided for the same site for another 20 years when this site should be covered in-perpetuity?

- Section 13.13 (consultation note pg. 71) – the application of credit reductions is not supported. In addition, assessors and/or approval authorities must not be given the discretion to reduce or discount the offset credit requirements set by the BAM calculator. Assessors/approval authorities should be given the discretion to require additional offsets or other conditions over and above the requirements of the calculator, but not to lower the standard credits required.

Recommendation: A comprehensive monitoring, auditing and compliance system must be established for accredited assessors and their reporting requirements.

Recommendation: the small area development threshold of less than or equal to 2 ha must be reconsidered, as this threshold is too high in the urban context and may result in the loss of biodiversity values.

Recommendation: A comprehensive BAM assessment should be undertaken at all proposed development sites even if the vegetation integrity score is low, and/or the site contains non-native vegetation.

Recommendation: The BAM must consider carbon release (greenhouse gas emissions) from vegetation clearing at a development site in the offset calculation.

Recommendation: The BAM must not allow for credit reductions. But should allow for assessors/approval authorities to consent to additional offset credits where appropriate.

Recommendation: The 20-year timeframe for management plans and offset credits is insufficient and must be reconsidered. The management plans and credits for Biodiversity Stewardship sites must be perpetual.

4.4 Sensitive Biodiversity Values Land Map

Comments/recommendations on the Sensitive Biodiversity Values Map are provided below.

- It is noted that this map currently on public exhibition is an example map only, not the final map that will be enacted by 25 August 2017. The map is of poor resolution, and shows insufficient detail, which means councils are unable to fully understand the potential implications. A more useful version and resolution of the map should be provided for public consultation.
- Proposals that do not trigger the area clearing threshold may still trigger the 'sensitive biodiversity values land map'. What values will be included in this final map?
- Areas containing localised sensitive values, as determined by a local council, or land adjacent or in close proximity to areas with mapped sensitive values, should trigger the map threshold.
- The mapping must take into consideration existing mapping of local councils. Many councils already have similar layers mapped as part of their Local Environment Plan. Councils are appropriate agencies to provide this information as they have the most detailed on-ground knowledge of their local area.

Recommendation: A final draft version of the Sensitive Biodiversity Values Land map must be provided for public consultation prior to enactment of the regulations.

Recommendation: The Sensitive Biodiversity Values Land map must be created from state and regional data layers overlaid with local council biodiversity values mapping.

4.5 Explanation of Intended Effects (Vegetation SEPP)

Specific comments on the EIE (Vegetation SEPP) are provided below.

- Given the Vegetation SEPP will not be publicly exhibited, it is difficult for councils to gain a comprehensive understanding of what detail the SEPP will contain and the implications of new clauses in the SEPP that will replace the current Tree Preservation Orders (clauses 5.9 & 5.9AA in LEP) with a 'permit system'.

How will the LEP clauses be reproduced in the SEPP? Are the new clauses a watered-down version of the TPO clauses in terms of conditions and compliance?, and will the DCP still have legal powers with no LEP backing?

- Clarification is required on the definition of clearing under the SEPP. Does this include pruning, lopping branches etc as covered by clause 5.9 SILEP? Would clearing under this definition pertain to the grass and shrub layer?
- Having not seen the SEPP, it is questioned whether the proposed permit system will restrict the ability of councils to condition their existing criteria/conditions in their current DCP's. Councils must be able to go above and beyond to include their own conditions?
- It is noted that clearing below the BOS threshold that is not explicitly regulated in a DCP will be exempt from the permit requirements? This is unacceptable. Stated within the SEPP should be a transitional time period in which councils can amend their DCP's to include conditions on clearing below the BOS threshold if conditions are not already included in a DCP, and councils wish to do so. This will assist in closing any loopholes that will arise from clearing below the BOS threshold which in most cases will apply to a large percentage of clearing within the Sydney metropolitan area (urban areas).
- Page 18. Exempt from the SEPP is clearing of vegetation that poses a risk. This needs to be clarified regarding 'immediate' or 'unacceptable' risk.
- Clarification on enforcement is required. What legislative framework is attached to the SEPP regarding prosecution and enforcement? And who will be the authority to ensure compliance?
- The Vegetation SEPP will form part of the framework for vegetation clearing and will be the primary environmental planning instrument regulating native vegetation clearing in urban and other non-rural zones, including environmental protection zones.* Clearing in Environmental protection zones should be regulated with stringent conditions, and regularly monitored for compliance.
- Vegetation in urban centres has extremely high amenity value for residents, is critical in reducing the impact of urban heat islands, and often has high biodiversity values. In highly urbanised areas, individual trees become extremely valuable in terms of biodiversity habitat, heritage, amenity, shade and heat reduction. The focus of the proposed reforms is very much on managing native vegetation, however, urban tree management is very different to managing native vegetation and requires separate consideration.

- There is no explanation of the urban forest or the importance it provides (environmental, social, economic). It is being lost through state policies e.g. Codes SEPP, and the EIE Vegetation SEPP contains insufficient detail. Areas of mixed vegetation including non-native vegetation may provide extensive canopy in the urban forest, yet non-native vegetation that is not of heritage value does not appear to be considered in the SEPP.
- There are minimal/no provisions in the LEP for small areas of vegetation, and there is no certainty of protection through DCP's only, this could lead to the loss of small parcels of vegetation and an incremental loss. This needs to be considered under the SEPP.
- Clarification is required on how the vegetation mapping under the terrestrial biodiversity clause currently included in council LEP's will be affected by the SEPP.
- Clarification is required on the relationship between the vegetation SEPP and other SEPPs, as well as the relationship to the Medium Density Housing Code. It should be made clear as to why the Vegetation SEPP would be automatically overruled by the clearing controls within other SEPPS, and the consequences that this would have for vegetation clearing/biodiversity loss.

Recommendation: The Vegetation SEPP must be publicly exhibited for consultation prior to enactment.

Recommendation: The SEPP must include a clause that enables councils to apply all of their existing DCP conditions to the proposed permit system, as well as new stringent conditions / criteria that enhance biodiversity outcomes, where deemed relevant and appropriate by the individual council.

Recommendation: The SEPP must include and enable consideration of the Urban forest.

Recommendation: The SEPP must remove the clause 'that clearing below the BOS threshold not explicitly regulated in a DCP will be exempt from the permit requirements', and include a transitional time period in which councils can include clearing conditions not currently within their existing DCP.

4.5.1 Specific Questions for Response

Q1. Is the grant of development consent appropriate for clearing of heritage vegetation? Or would a permit be an equally effective mechanism for regulating heritage vegetation?

It is recommended that heritage vegetation be regulated through the development consent process.

Q2. Do you think that all clearing of native vegetation on land in urban areas land in environmental zones should require development consent if it exceeds the BAM thresholds?

Yes, all clearing of native vegetation in urban areas, particularly in environmental zones should require development consent if exceeding BAM thresholds. Where BAM thresholds are not met, stringent conditions are required to ensure protection and conservation of native vegetation in urban areas.

Q3. What involvement do you think councils should have in assessing clearing applications above the BOS threshold?

With regards to involvement of local councils in assessing clearing applications above the BOS threshold; i) the relevant council should always be notified of the DA; ii) the relevant council should always be invited to review and make a submission. Whether the relevant council chooses to make a submission will be up to that individual council on a case by case basis; iii) where the relevant council believes that they are the more appropriate consent authority because they have; local knowledge, history, records and sufficient staff to undertake the assessments, follow-up and compliance, then there should be a mechanism for this to be considered and delegation given where appropriate.

Q4. What guidance do councils require about the ways the Vegetation SEPP might change DCPs?

It is recommended that further guidance be provided to councils on the change from a tree preservation order to a permit system, what these permits will cover (e.g. native vegetation over 3 metres, pruning etc), and whether councils can retain and / or add their own conditions to the permits to ensure a higher level of protection/conservation.

Clarification is required on whether councils will need to amend their DCP's once the SEPP is finalised. It is also queried whether the SEPP will instigate the development of a standard DCP template, and if this is the case, will councils be able to retain their existing clauses under a standard template?

It would be useful for the State Government to provide some form of legal advice to councils on their requirements.

Query as to whether SEPP 19 will be retained and what relationship will SEPP 19 have to the Vegetation SEPP?

Q5. Do councils think that the Vegetation SEPP should provide mandatory exemptions for any other types of clearing?

This is not supported. There is a concern that mandatory exemptions could give rise to misuse and result in inappropriate clearing. 'Exemptions may also conflict with the objectives of environmental land use zones and would threaten bushland and coastal vegetation in urban areas' (EDO NSW, 2017).

All clearing of native vegetation, even if below the BAM threshold should at a minimum require a permit issued following an assessment by the responsible local council.

4.6 Other Documentation

4.6.1 Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation

Schedule 1 (5) Clause 63 Reasons for granting refusal of concurrence - The amendment will omit clause 63 (2) which states the following: (2) If the concurrence is one that is required under section 79B (3) of the Act, a copy of the reasons must be available for public inspection, during ordinary office hours: (a) at the head office of the National Parks and Wildlife Service, or (b) if the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation or their habitats, at the head office of NSW Fisheries.

Schedule 1 (6) Clause 100 Notice of determination - The amendment will omit clause 100 (6) which again states that the notice of determination must be given to the Chief Executive of the Office of Environment and Heritage, Secretary of the Department of Industry, and must be made available for public inspection during ordinary office hours. This proposed amendment will remove the availability of the determination for public inspection.

Recommendation: It is essential for a transparent and accountable process, that all information relating to granting refusal of concurrence and a notice of determination, continues to be made available for public inspection and consultation.

4.6.2 Land Management Native Vegetation Code and LLS Amendment Regulation

It is noted that the code will be required to i) provide better productivity outcomes and ii) provide improved environmental protections. Can these two objectives go hand in hand, and if not, which objective will prevail?

Recommendation: Codes are a poor approach to regulating land clearing and should not be pursued.

Specific comments are provided in the table below.

Land Management Native Vegetation code		
Pg.	Section of Document	Comment/Recommendation
3	<p>8 Clearing under authority of this Code not to harm threatened animal species</p> <p>'In the course of carrying out clearing that is authorised by this Code, the person who carries out the clearing must not harm an animal that is a threatened species if that person knew that the clearing was likely to harm the animal'.</p> <p>Note: Except for an act referred to in this clause, any act which harms a threatened species or its habitat does not constitute an offence under the Biodiversity Conservation Act 2016, if the act occurs in the course of clearing that is authorised by this Code.</p>	<p>This statement is ambiguous and creates a loophole, with property owners being able to deny all knowledge and claim ignorance of the likely harm to animals. The statement needs to be removed or changed.</p> <p>This statement 'if the act occurs in the course of clearing that is authorised by this code' is giving property owners leeway to harm threatened species. Clearing under the code should be undertaken with sufficient on-site management practices/procedures to ensure that harm to threatened/native species does not occur.</p>

4	<p>10 Notification of Intended clearing of native vegetation</p> <p>(9) 'A landholder who holds a voluntary code compliant certificate is exempt from the requirement to notify Local Land Services of the intended clearing of native vegetation that are specified in the certificate....'.</p>	<p>This is not supported. This code is assuming that all land owners that apply for a voluntary code compliant certificate will strictly adhere to this code. Regardless of whether a Code is in place, all land owners must be required to notify Local Land Services of intended vegetation clearing.</p> <p>Recommendation: LLS must develop and implement a frequent random monitoring / auditing and reporting program to ensure that land owners are complying with the code.</p>
6	<p>15 Buffer distances for wetlands and streams</p> <p>(3) If a watercourse is a first or second order stream and does not exhibit the features of a defined channel with bed and banks, LLS may determine that the watercourse is not a stream.....</p>	<p>This is not supported unless adequate justification is required to be provided by LLS, and the impacts of determining that a watercourse is not a stream are identified and mitigated.</p>
6	<p>16 Management of set aside areas</p> <p>(1) The landholder of land on which the set aside has been established must:(a) make reasonable efforts to manage the set aside area in a manner expected to promote vegetation integrity in the set aside area; (b) keep records of all management actions undertaken in the set aside area including the timing and location of management actions; and (c) on request by LLS, provide records of management actions undertaken in the set aside area.</p>	<p>16 (1) a – what is the definition of ‘make reasonable efforts’ – this needs to be properly defined to remove subjectivity. (c) providing records of management actions undertaken in set aside areas should not be ‘on request’. This needs to be at a minimum an annual reporting requirement.</p>
7	<p>16 Management of set aside areas</p> <p>(5)'Where there is evidence... in the course of LLS monitoring and evaluation program, that one or more of the management actions undertaken in respect of the set aside area is or are causing an adverse impact on the environment, LLS may vary the mandatory code compliant certificate to remove one or more management actions.....</p>	<p>The point is supported. However, the language should change from ‘may vary the mandatory code’ to ‘must’.</p> <p>Recommendation: Land owners should be required to undertake additional management on-site to rectify any adverse impacts that have or will potentially occur.</p>
7	<p>17 Identification of Threatened Ecological Communities</p> <p>(1) For the purposes of set aside area requirements in this Code, native vegetation is taken to be an instance of a Threatened Ecological Community where, in the opinion of Local Land Services, the vegetation forms a functioning ecological community that is likely to be viable over the long term.</p>	<p>There is a risk that this clause could result in the loss of threatened ecological communities if the condition is not determined to be optimal in the ‘opinion’ of LLS.</p> <p>Ecological communities / native vegetation can still provide vital habitat,</p>

		corridors, and ecosystem function even if the condition is poor. With appropriate management actions, the condition of ecological communities can be improved.
24	Division 2, 67 Method and clearing conditions <i>(1) This Division only authorises clearing of native vegetation that is substantially consistent with the specified rotational farming or vegetation management practice. However, this clause does not restrict the manner in which the clearing may be undertaken.</i>	This is not supported – the manner in which clearing is undertaken must be specified.
27	Part 6 Equity, Division 1, 76 Permitted clearing of native vegetation	Hollows are often found in paddock trees. There needs to be sufficient hollow bearing paddock trees retained to meet habitat requirements, as well as maturing trees to provide future replacement hollows (OEH, 1999).
29	Division 2 Removing native vegetation from small areas. 82 Permitted clearing of native vegetation <i>(2) On any landholding, native vegetation may be removed from small areas at a rate of one small area for each 250 hectares of landholding (or part thereof) in any 12-month period.</i>	Clause 82 (2) needs to take into account the cumulative impacts of clearing small areas in each subsequent 12-month period.
30	88 Set aside area requirement <i>2 (c) for each unit area of land comprising the small areas identified in the mandatory code compliant certificate that contains vegetation that forms part of an Endangered Ecological Community, 2 units must be established as a set aside area (2 unit set aside for each unit of EEC vegetation cleared)</i> Also 95 2 a iii, 95 2 b iii, 95 2 c iii	Whilst the premise of providing greater units set aside for each unit of native vegetation cleared is agreeable, clearing of EEC's in general is not supported. It is not acceptable to clear an EEC even if 2 -8 units of native vegetation are set aside for each unit of EEC. This will lead to the loss of valuable biodiversity. Recommendation: An Endangered Ecological Community must be excluded from vegetation clearing allowable under the Code.
30	88 Set aside area requirement <i>(3) However, the area of land to comprise the set aside area is reduced by 50% if the proposed set aside area will consist of vegetation which comprises an endangered or critically endangered ecological community.</i>	This is not supported. All land being cleared holds biodiversity value and vegetation cleared should be like for like. It is agreed that the set aside area should be larger than the cleared area in all circumstances. Therefore, a reduction in the area of the set aside of 50% if it already includes an EEC or CEEC is unacceptable.

		Recommendation: The area of land to comprise the set aside area must not be subject to a reduction for any reason.
Local Land Service Amendment Regulation 2017		
5	Division 2 Native vegetation regulatory map	<p>It is noted that the Native Vegetation Regulatory Map (NVRP) has not yet been developed. Once the draft map is published on the government website there needs to be sufficient time provided for public consultation.</p> <p>It is referenced in the Vegetation SEPP EIE page 11 that '<i>clearing of land identified by the NVRP is usually associated with extensive agriculture, which can be carried out without development consent in all rural use zones</i>'. All 'extensive' development even for agricultural purposes should require development consent.</p>
14	130 public register of set aside areas (4) Local Land Services may amend the public register: (a) to remove any area (or part of an area) that has ceased to be a set aside area...	<p>When and why would an area cease to be a set aside area?</p> <p>Is there a timeframe in which the management of a set aside area can cease, opening up the set aside area for clearing or development?</p> <p>Management of set aside areas must be in perpetuity.</p> <p>Recommendation: LLS must develop and implement a comprehensive monitoring, reporting, compliance and enforcement program under this regulation.</p>

References

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EPA NSW, 2015, *New South Wales State of the Environment 2015*, NSW Environment Protection Authority, Sydney: <http://www.epa.nsw.gov.au/soe/soe2015/13Native-Vegetation.htm#c13>, accessed on 31/05/17.

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