



SYDNEY COASTAL COUNCILS GROUP INC.

councils **caring for the coastal environment**

SUBMISSION

NSW Biodiversity Conservation Reform Package

June 2016

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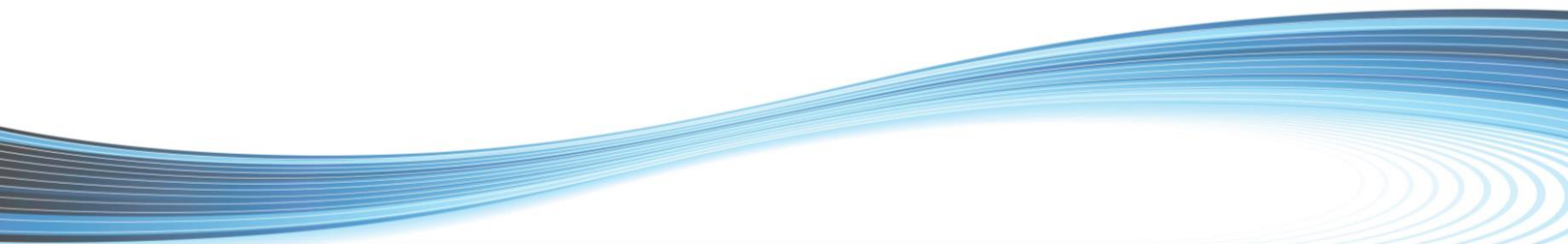
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To: Submission – NSW Biodiversity Conservation Reform Package

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

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Introduction

Established in 1989, the Sydney Coastal Councils Group (SCCG) is a co-operative organisation with over twenty-five years of experience in leading sustainable coastal management. The SCCG currently comprises twelve Member Councils who represent nearly 1.3 million Sydney residents.

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

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

The SCCG welcomes this opportunity to contribute to the NSW Biodiversity Reform Package. Where possible we have provided answers to the consultation questions suggested on the Have Your Say website, however where these questions are not applicable or too prescriptive we have provided comments in our own format.

This submission focuses mainly on issues of greatest concern to our Member Councils and is not a comprehensive review of all elements of the proposed Biodiversity Reform Package. Lack of comment on other elements of the proposed reforms does not imply SCCG support for those elements.

This submission includes:

1. **General comments**
2. **Ecologically sustainable development: native vegetation clearing in urban areas and the proposed biodiversity offsets scheme**
3. **Repeal of the *Native Vegetation Act 2003***
4. **Private land conservation and the Biodiversity Conservation Trust**
5. **Protecting native plants and animals: recovery planning**
6. **Framework for managing wildlife interactions: native wildlife licensing**
7. **Summary of questions and recommendations**

We formally request specific feedback on all questions and recommendations presented in this submission via a publicly available analysis report detailing all submissions received and the NSW Government's response to each point.

1. General comments

The SCCG is seriously concerned by the proposed package of biodiversity legislation reforms. 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 this state. Land clearing is the greatest threat to vegetation extent and condition in NSW (ibid) and habitat destruction is a key threatening process for almost every threatened species and ecological community.

The existing legislation has strong principles and procedures to protect biodiversity which have been developed over time and in consultation with multiple sectors of the community. The reforms constitute a severe weakening of environmental protections in NSW. While the funding that has been allocated for private land conservation and species conservation is welcomed, funding cannot compensate for inadequate legal protections.

According to the information on public exhibition, a key goal of the proposed reforms is to facilitate ecologically sustainable development (ESD). The SCCG questions whether the core principles of ESD can be achieved by the provisions of the draft *Local Land Services Amendment Bill* and the *Biodiversity Conservation Bill*. The proposed reforms do not take a precautionary approach; they do not treat biodiversity conservation as a fundamental consideration in decision-making; and they are very unlikely to achieve intergenerational equity.

The NSW Liberal and National Parties have stated that they are “committed to enhancing the State’s biodiversity for the benefit of current and future generations” (NSW Farmers, NSW Liberal Party and NSW National Party, 2015). The proposed reforms, as they currently stand, cannot possibly achieve ‘enhanced’ biodiversity. The proposed bills will, in all likelihood, lead to broadscale vegetation loss, local extinctions and accelerated pathways to total extinctions for many threatened species and communities across NSW. 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.

1.1. Insufficient Detail

Much of the detail of the proposed reforms is being left to codes, regulations and the proposed State Environmental Planning Policy (SEPP) for native vegetation clearing in urban areas, which are not yet available for review. It is difficult to give informed feedback without access to this detailed information and the SCCG regrets that it was not made available for comment with the draft legislation. The SCCG looks forward to an opportunity to comment on these additional elements of the reforms as soon as possible.

Recommendation 1: The Regulations to the Biodiversity Conservation Act, State Environmental Planning Policy and model Development Control Plan (DCP) must be made available for public comment prior to the finalisation and enactment of the two draft bills.

1.2. A Common, Minimum Standard for all Proponents

The stated aims for the reforms include “simplifying land management” but the proposed bills continue the current, extremely complex approach of applying a different set of rules to different types of development and hence to different sectors of society. For example:

- The Biodiversity Assessment Method (BAM) is being promoted as a “single tool” for assessing biodiversity impacts but there are multiple situations under which the BAM will not be applied, e.g. urban clearing under the area clearing threshold (to be determined), ‘Part 5’ activities in urban areas including local infrastructure or mining, where the ‘significant effect’ test will be used instead; and in rural areas, clearing covered under the list of ‘allowable activities’ and the self-assessable clearing codes (Management, Efficiency, Equity and Farm Plan codes).
- Mines and other ‘major projects’ are given greater leniency than smaller developments – the as-yet-undefined “serious and irreversible impacts” may prevent a smaller development but are not an automatic refusal for a major project.
- Urban areas are once again largely excluded from the *Local Land Services Amendment Bill 2016* as they are from the *Native Vegetation Act 2003*, but will instead be considered under a complex Biodiversity Assessment Method and an as-yet-undrafted SEPP.
- The proposed variations in offset rules to allow non-like-for-like offsets are likely to result in less constraint over coastal urban developments, with a concomitant loss of natural amenity for human populations in those coastal areas under high development pressure.

The requirement to ‘improve or maintain biodiversity values’ is a key component of the existing *Native Vegetation Act 2003* and Biodiversity Certification under the *Threatened Species Conservation Act 1995*. This requirement will be repealed under the two draft bills. It should be noted that the removal of the ‘improve or maintain’ requirement was not recommended by the Independent Panel.

The proposed reforms will therefore result in much more relaxed controls over rural land clearing. 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.

Recommendation 2: The SCCG recommends that 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 and environmental condition.

1.3. Targets

The proposed reforms are noticeably lacking in clearly defined targets for environmental protection, land clearing, carbon sequestration, threatened species or ecological community recovery, or any other positive environmental metric. It will

not be possible to evaluate whether the reforms have achieved improved outcomes for biodiversity conservation and ecologically sustainable development without targets to measure progress against.

Recommendation 3: The legislation and associated regulations should set clear, ambitious targets for vegetation conservation, soil management and recovery of threatened species and ecological communities in NSW. Progress towards meeting these targets should be regularly reviewed and publicly reported.

1.4. Climate Change

The *Biodiversity Conservation Bill* recognises Anthropogenic Climate Change as a key threatening process. Perversely, the reforms overall will lead to an increase in greenhouse gas emissions and directly contribute to this key threatening process.

Land clearing is a major contributor to Australia's greenhouse gas emissions (Department of Climate Change and Energy Efficiency, n.d.) 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 on biodiversity and humanity, including effects such as more frequent extreme weather events, sea level rise and increased temperatures.

Increased land clearing will also reduce the ability of species to migrate in response to climatic changes.

1.5. Minister Responsible

The SCCG believes that it is inappropriate for the Minister for Primary Industries to be nominated as the Minister responsible for approvals of vegetation clearing, given the potential for conflicts of interest in decision-making.

The Minister for the Environment currently has responsibility for the *Native Vegetation Act 2003*, however, the proposed *Local Land Services Amendment Bill 2016 (LLSA Bill)* allocates authority to approve land clearing in non-urban areas to the Minister for Primary Industries. The *LLSA Bill* and proposed SEPP also allocate authority to the Minister for Primary Industries to grant approvals in urban areas under certain circumstances "if the removal (of trees or other vegetation) is above the biodiversity offset scheme (or BAM)" (*LLSA Bill*, Part 5A, Div 1, clause 60A). This again is inappropriate and should revert to the Minister for the Environment.

Recommendation 4: The Minister for the Environment should be the Minister responsible for both the *Biodiversity Conservation Act* and the land clearing assessment divisions of the *Local Land Services Act*.

1.6. Compliance and Enforcement

Any piece of legislation is only as good as the enforcement it receives. The main failures of the existing legislation, in particular the *Native Vegetation Act 2003*, are

failures of compliance and enforcement, largely due to inadequate resourcing, rather than inadequacies in the legislation.

Native vegetation should be protected by an Act, not subordinate policy and planning documents. The proposed reforms rely heavily on self-assessable codes in non-urban areas, and a State Environmental Planning Policy (SEPP) and model Development Control Plan (DCP) in urban areas. This approach considerably reduces the enforceability of the proposed reforms. The provisions of a DCP or SEPP are less enforceable than is legislation.

Recommendation 5: Native vegetation must be adequately protected under an Act, such as the *Native Vegetation Act 2003*, rather than relying on subordinate and less enforceable codes and policy documents.

Recommendation 6: Compliance and enforcement of the legislation and associated regulations and policies must be adequately resourced.

2. Ecologically sustainable development: native vegetation clearing in urban areas and the proposed biodiversity offsets scheme

Comments and recommendations on how the proposed reforms will affect urban areas are provided below. However we reiterate that it is not possible to provide complete, informed comment on the extent of the likely impact on local councils without the additional detail that has been promised under the as-yet-unseen State Environmental Planning Policy, model Development Control Plan (DCP) and *Biodiversity Conservation Act* regulations.

2.1 Approval authority and state monitoring, reporting and oversight

2.1(a) Approval authority

The Biodiversity Reform Package consultation process sought input from stakeholders, including councils, on the most appropriate agencies to assess applications for clearing in urban areas under the proposed SEPP.

The SCCG submits that the approval authority for all native vegetation clearing on urban land should be the local council. Councils have better knowledge of the local landscape and community values and can be more responsive to local management issues.

All approval authorities need to be sufficiently resourced to implement these proposals. The SCCG is concerned about the resource availability for LLS agencies and local councils to provide their important regulatory roles in these proposed reforms.

Recommendation 7: the approval authority for all native vegetation on urban land should be the local council. All approval authorities should be adequately resourced to provide this important regulatory role.

2.1(b) Monitoring, reporting and oversight

The *LLS Amendment Bill* places the responsibility of monitoring an estimated rate of “allowable clearing” in regulated rural areas and reporting these, in aggregate, via public information registers. This is clearly inadequate, particularly if it will not gather any data on clearing in unregulated areas, illegal clearing in regulated areas, or allowable or illegal clearing in urban or other excluded areas.

As the state agency for the environment, the NSW Office of Environment and Heritage should be responsible for data custodianship, and for monitoring and publicly reporting on vegetation clearing and other biodiversity impacts resulting from vegetation clearing in both urban and non-urban areas. Local councils and Local Land Services agencies should be responsible for providing information on clearing applications (approved and otherwise), and any illegal clearing that has been detected, to OEH on a regular basis, e.g. quarterly or twice annually. This information should be searchable by local government area, LLS region and IBRA

region, and accessible to all approval authorities and to the general public for transparency and accountability.

Similarly, the purchase or 'retirement' of biodiversity offset credit sites and regular updates on their management status should also be tracked in a publicly accessible register. Local communities should be able to see where the offset sites for biodiversity lost in their local government area have been established, and what biodiversity benefits have actually transpired from the improved management of these sites over time. This register should also be used to rigorously assess both the time lag between impacts and biodiversity benefits, and the resulting net loss of biodiversity, figures that should be annually publicly reported.

OEH should also be responsible for regular auditing of local approval authorities to ensure that the BAM and other mechanisms are being implemented appropriately. Reporting and performance auditing provisions should be guaranteed by the Act (similar to Section 26 of the Coastal Management Act 2016).

Recommendation 8: A system for monitoring and annual public reporting on vegetation clearing, other biodiversity impacts, the 'retirement' of biodiversity offset credit sites and updates on their management status must be delivered by the NSW Office of Environment and Heritage and regularly updated by information supplied by all approval authorities. OEH should also be responsible for regular auditing of local approval authorities to ensure appropriate implementation. Reporting and performance auditing provisions should be guaranteed by the Act.

2.2 Replacement of Tree Preservation Orders with proposed SEPP

The SCCG and Member Councils do not support the proposal to replace council Tree Preservation Orders with a State Environmental Planning Policy for land where the Native Vegetation Regulation Map does not apply, including all Sydney and Newcastle local government areas.

TPOs are an effective tool for protecting urban trees and their associated biodiversity, amenity, heritage, shade and heat reduction values. No clear justification for the proposed replacement of TPOs with a SEPP and the purported benefits of this approach has been provided. The Final Report from the Independent Biodiversity Legislation Review Panel does not address Tree Preservation Orders at all.

Question 1: The SCCG requests that the NSW Government provides justification for the proposal to replace Tree Preservation Orders with a SEPP.

2.2(a) Multiple values of trees in urban landscapes

The remaining 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; but urban tree management is in fact very different to managing native vegetation and requires separate consideration.

Loss of Tree Preservation Orders and replacement with an unknown SEPP will remove existing council protections for both individual trees and native vegetation, and result in increased clearing, with corresponding significant impacts on urban biodiversity, human amenity and the urban heat effect. A precedent for this was set by the disastrous *10/50 Vegetation Clearing Code of Practice for New South Wales*, which resulted in considerable clearing of trees and native vegetation for non-fire-related purposes, including to allow development, reduce leaf-fall and improve access to views (Lee, 2014; Rapana, 2014).

2.2(b) Likely result of TPO repeal

The possible impact of replacing the TPOs can be indicated by the hundreds of tree removal applications assessed each year by councils. For example, Woollahra Municipal Council, the City of Sydney and Waverley Council each process between 400 – 550 tree removal or pruning applications each year, plus hundreds of additional development-related tree referrals. Whether the proposed SEPP can protect 500+ trees per local government area across NSW remains to be seen.

The repeal of TPOs may lead to a reduction in the number of tree removal applications, but is likely to result in an increase in time spent by councils on compliance activity such as site inspections, complaint management and investigating further legal action. A reduction in regulation thereby also changes the balance of the relationship between councils and the community from being predominantly a determining authority to spending far more time and resources as an enforcement authority. Again, a precedent for this was seen after the introduction of the *10/50 Vegetation Code*.

2.2(c) Flexible approach to urban tree management required

Managing trees in the urban landscape is highly specific to each local government area. TPOs and Tree Management Development Control Plans are usually developed based on extensive community consultation to reflect the balance of views of that community. For example, councils managing local government areas containing or adjacent to large areas of bushland may focus on the protection of native species; however the councils of highly urbanised areas (such as the City of Sydney) protect both native and exotic trees to achieve multiple objectives of urban forest diversity, resilience to the urban environment and climate change mitigation. In this case, it is neither necessary nor desirable to achieve consistency across NSW under a 'one size fits all' approach. A standardised yet flexible approach across NSW is therefore supported by the existing clauses 5.9, 5.9AA and 5.10 in the *Standard Instrument – Principal Local Environment Plan*. It is not clear whether a SEPP will achieve the same desired flexibility.

Recommendation 9: The SCCG does not support the replacement of Tree Preservation Orders with a State Environmental Planning Policy, and recommends that local councils retain the right to determine TPOs for each local government area. If a SEPP to guide vegetation management in urban areas is developed, local councils must be given the opportunity to meaningfully contribute to its development.

2.3 Biodiversity Assessment Method (BAM)

2.3(a) Training and resources

The proposed Biodiversity Assessment Method (BAM) and associated Biodiversity Development Assessment Report (BDAR) and Biodiversity Offsets calculator are complex tools and we have not attempted to provide detailed comment on the methodology. One specific item requested by Member Councils is that 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.

Approval authority staff will require training and ongoing support from the state government in the application of these tools.

Recommendation 10: Funding and resources be allocated for training and support of council officers in the use of the Biodiversity Assessment Method, Biodiversity Offset Scheme and any associated mechanisms as yet to be determined by the Biodiversity Conservation Act Regulations and State Environmental Planning Policy.

2.3(b) Clear objectives required

The Biodiversity Assessment Method should set clear objectives to 'improve or maintain' biodiversity values and environmental condition, and to achieve a net positive outcome for biodiversity.

2.3(c) Do you think that the proposed BAM thresholds are too high or too low? If so, why?

Area Clearing Threshold

If a project involves vegetation clearing over a certain area (depending on the minimum lot size of the suburb) it will trigger the area clearing threshold and require assessment under the BAM.

There are multiple problems with the proposed area clearing threshold approach:

- The area clearing threshold approach doesn't allow for the consideration of the proposed clearing as a proportion of remaining vegetation and ecological communities either on the site or in the local government area (or bioregion) as a whole. A project clearing less than 0.5 hectares (and thereby under the lowest proposed area clearing threshold) may be extremely significant in a suburb where very little native vegetation remains. For example, the highly urbanised Waverley Council local government area contains multiple sites considered to be of high environmental value, including Endangered Ecological Communities, which would not trigger this area threshold.
- The area clearing 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.

- Three options for minimum lot size / area clearing thresholds were presented at the technical workshops on the proposed biodiversity offsets scheme of which Option A sets the lowest area thresholds at 0.5 hectares of clearing for local government areas with a minimum lot size of less than 2 hectares. If an area clearing threshold approach is to be followed, this threshold is too high. With the exception of urban fringes, there are few urban councils that contain areas of 0.5 hectares or larger of vegetation, particularly on private land. Given the median lot size in Sydney is 430m² (UDIA, 2014), an area clearing threshold of 0.5ha is unrealistic in an urban context. If an area clearing threshold is implemented, we recommend consulting with individual councils to determine appropriate local thresholds that also take into account the points raised above.
- The area-based clearing threshold approach (at whatever size it is set) does not prevent cumulative clearing. Under Option A, a proponent could submit successive Development Applications (DAs) to sequentially clear multiple parcels of less than 0.5 hectares until all vegetation is gone. 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.
- 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 values threshold.

Recommendation 11: The area clearing threshold, if implemented, 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.

Sensitive Values Threshold Map

Proposals that do not trigger the area clearing threshold may still trigger the 'sensitive values threshold map', although it has not yet been decided what values will be included in this map.

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 12: Sensitive values maps should be created from state and regional data layers overlaid with local council biodiversity values mapping. Local

councils must be given the ability to determine what is mapped as additional 'sensitive values' for their local government area. Areas either *containing sensitive values, or adjacent or in close proximity* to areas with mapped sensitive values, should both trigger the sensitive values map threshold.

The values incorporated into a sensitive values map should include, but not be limited to:

- Any known population or individual of a threatened species of flora or fauna, of any level of threat status.
- Habitat known to be important for any threatened species of flora or fauna, where these species may be considered likely to occur.
- Any area of threatened ecological community at any level of threat status, and appropriate buffer zones for these threatened ecological communities.
- Any area of high biodiversity value, including but not limited to World Heritage sites, National Heritage sites, Ramsar-listed Wetlands of International Importance, and habitat for migratory species listed under the three international Migratory Birds Agreements (China, Japan and Republic of Korea Migratory Bird Agreements, or CAMBA, JAMBA and ROKAMBA).
- Important vegetation corridors and vegetation 'stepping stone' linkages between natural areas, as mapped by the Office of Environment and Heritage, local councils and regional groups. For example [Connected Corridors for Biodiversity](#), a collaborative SCCG project with the Southern Sydney Regional Organisation of Councils to re map biodiversity corridors across 23 local government areas.
- Important hydrological features such as rivers, wetlands, floodplains, lakes and lagoons.
- Riparian corridors as defined by the NSW Office of Water in *Controlled Activities on Waterfront Land: Guidelines for riparian corridors on waterfront land* (NSW Office of Water, 2012).
- Sensitive coastal locations as defined under the *Environmental Planning and Assessment Act 1979*.
- Marine vegetation protected under *NSW Fisheries Management Act 1994* i.e. mangroves, seagrasses or any other marine vegetation declared by the regulations to be marine vegetation.
- Environment Protection Zones (E1, E2, E3 and E4) and Waterway Zones (at least W1 and W2) as defined by the *Standard Instrument—Principal Local Environmental Plan*.
- Other protected areas including, but not limited to, State Conservation Areas, SEPP 19 Bushland areas and State Forest.
- Risk assessment for natural hazards including erosion, landslip, acid sulphate soils etc.
- Large areas of intact native vegetation should be mapped as a sensitive value that should be protected from fragmentation. Smaller areas of native vegetation adjacent or in close proximity to large intact areas may serve as extensions or buffers to the larger area and so should also trigger the sensitive values map.

- Areas of environmental restoration or rehabilitation funded by public money or undertaken by volunteers should be mapped as sensitive values. An investment of public funds or volunteer hours must be protected from further clearing or other damage.
- Areas as to be mapped as part of the forthcoming NSW Coastal Management SEPP including the 'Coastal management areas' for (i) Coastal Wetlands and Littoral Rainforest, (ii) Coastal Vulnerability Area and (iii) Coastal Environmental Area.

Threshold for Highly Degraded Vegetation

"It is intended that impacts on native vegetation that is in highly degraded condition are not required to be offset.... Consistent with the Framework for Biodiversity Assessment, the condition threshold is proposed as a vegetation integrity score of less than 17. The final threshold will be defined in the final BAM following further field trials of the BAM and feedback from the community. This may require setting a different condition threshold for non-woody vegetation such as grasslands and freshwater wetlands" – Draft Biodiversity Assessment Method (NSW Office of Environment & Heritage, 2016).

The fact that vegetation may be highly degraded should not automatically render it valueless under the Biodiversity Assessment Method.

Highly degraded vegetation in urban areas may still provide some or all of the following values:

- Important habitat or habitat linkages for flora and fauna species
- A bank of genetic material (e.g. seed or pollen) for restoration or maintenance of the biodiversity of other nearby areas
- Human amenity

Recommendation 13: Impacts on highly degraded vegetation must still be assessed for impacts on threatened or locally important flora or fauna species or ecological communities. Consideration must be given to the possible role the degraded area may play in providing genetic material or linkages between areas of vegetation in better condition.

2.4 Changes to the 'test for significance'

It is our understanding that a simplified version of the current '7-part' test for determining whether an activity is likely to significantly affect threatened species, ecological communities or their habitats will still apply for clearing proposals in urban areas that do not breach the area clearing threshold (*BC Bill, Part 7, Div 1, Section 7.3*).

The problems with the current test for significance include:

- It is very reliant on consent authority discretion and is not applied consistently.
- Many self-assessments incorrectly find in favour of the proposed action. This results in councils incurring additional costs to conduct their own assessments.

These problems are likely to be further promulgated by the proposed reforms, which increase the reliance on self-assessments and will very likely increase the number of incorrect assessments and/or additional increased costs for councils in attempting to correct these.

The simplified test for significance has the following additional problems:

- There is no longer a requirement to consider “*whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan*” (TSC Act, Part 6, Div 1, Section 94). If Recovery Plans are to be replaced by Priority Action Statements or Conservation Action Plans, whether the proposal is consistent with the replacement document should be given due consideration as part of the assessment process.
- There is no longer a requirement to consider “*whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process*” (ibid). If a proposed action is likely to contribute to a listed Key Threatening Process, this should be a critical consideration when assessing the application.

Recommendation 14: Key Threatening Processes and the objectives or actions of Recovery Plans or their replacements must be included for consideration as part of the revised Test for Significance.

2.5 Biodiversity Offset Scheme

2.5(a) What strengths or weaknesses do you see in the proposed offset rules? Do you think that different offset rules should be adopted? What rules would you prefer and why? Do you consider that the proposed offset rules will reasonably balance environmental, social and economic interests in land?

General concerns

The SCCG has strong reservations about the concept of biodiversity offsets in general and is not supportive of their application. We have particular concern that the application of offsets in urban and peri-urban areas will lead to loss of local biodiversity and amenity, and local extinctions of already threatened species and ecological communities.

There is substantial scientific concern about the extensive use of biodiversity offsets to allow development and clearing of terrestrial habitats across Australia (and worldwide), the extremely questionable resulting outcomes for biodiversity, and whether ‘no net loss’ or ‘net gain’ is ever achieved (e.g. Maron *et al.*, 2012; Moreno-Mateos *et al.* 2015; Spash, 2015).

We are aware that offsets are used extensively in NSW and at the national level to facilitate development. It is acknowledged that there is currently a lack of consistency in how offsets are applied across NSW, for agricultural, urban development or mining applications. An attempt to introduce a single offset tool across all forms of development in NSW is appreciated. However, the offset rules as they are proposed as part of the current reforms are extremely weak even

compared to the current models in NSW and elsewhere in Australia, and they will not achieve a balance for environmental, social and economic interests.

Multiple offset models have been applied in NSW, including the Environmental Outcomes Assessment Methodology (EOAM), the BioBanking scheme, Biocertification, the NSW Offsets Policy for Major Projects, and the Commonwealth Government's offset policy for actions likely to have a significant impact on matters of national environmental significance. Of these, the proposed reforms are most closely following the model set by the NSW Offsets Policy for Major Projects, which has been criticised as arguably the tool with the weakest offset standards (Walmsley, 2016).

Recommendation 15: If offsets are used, 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. Offsets should be applied consistently across the state, and discretion for approval authorities to 'discount' offsets should not be granted.

(More details on the SCCG's objections to the proposed variation rules are provided under specific headings and questions below.)

Time lag

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.

One of the key weaknesses of the proposed new offset rules is the ability for mines to receive biodiversity offset credits for rehabilitation actions undertaken at the end of the life of the mine, which may be thirty years or more in the future. This creates even longer time lags between the allowed impact and the uncertain benefit of the offset and is simply unacceptable. There is also the significant risk that either the regulatory regime around clearing and offsets may change again in that period; or that improved technology will enable the mine to continue to operate beyond its anticipated lifespan, and that either of these circumstances may lead to the offset never being realised. This is also clearly unacceptable.

Recommendation 16: Mining companies must be required to rehabilitate their mine sites at the end of the life of the mine *in addition* to securing offset sites for the impact caused by the mine.

Habitat creation and protection in perpetuity

Another key weakness of current and proposed offsets schemes is the acceptance of improved management of biodiversity credit sites as an adequate compensation for habitat destruction. Offsets should require new habitat creation, with large ratios of offset area to developed area to allow for the uncertain benefit of created habitat compared to the certain loss of habitat on the developed site.

Further, biodiversity offset credit sites must be protected in perpetuity. The establishment of a biodiversity offset credit site should exclude the possibility of all forms of development of that land. SCCG does not support allowing the “offsetting of an offset” as this will result in an even more accelerated decline for the species or communities involved. It is also inequitable to demand that a developer offset the biodiversity impacts of their project but then allow the destruction of that offset credit for other purposes.

In addition, credit sites should be insured against the possible impacts of fire, drought or other natural disaster. If the biodiversity value of a credit site is lost due to a natural disaster, the value must somehow be regained. The rehabilitation of the credit site must not then be offered as an additional offset credit.

Recommendation 17: 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.

Offset sites on public land

Current offset schemes have resulted in considerable perverse outcomes. For example, allowing offset credits on public land discourages public authority investment in managing public land.

Recommendation 18: Offset compensation sites should generally not be permitted on public land.

Discretion for approval authorities

The proposed reforms allow for the approval authority (the local council or LLS) to have discretion over discounting the offset requirements as determined by the calculator. There is no provision for state government review or audit, or third party appeal of discounting decisions. The only requirement for the approval authority is to publish their decision to discount the offsets in an unspecified location, not to justify the decision. This further erodes the equity and transparency of the proposed reforms. It also erodes the intention of the BAM to act as a ‘single tool’ to assess biodiversity impacts, if the BAM is allowed to be implemented differently (or effectively ignored) by different approval authorities. It would allow unscientific, indefensible reductions in offset requirements for individual developments with no consequences for the developer or the approving body. The SCCG therefore strongly objects to this provision.

Recommendation 19: approval authorities must not be given the discretion to discount the offset credit requirements set by the BAM calculator. The offset requirements decided by the calculator should be considered as the minimum requirements, and approval authorities given the discretion to require additional offsets or other conditions over and above the requirements of the calculator, but not to lower the standard set by the calculator.

2.5(b) Do you think the variation rules for vegetation should allow the offset site to be found anywhere in NSW? Or should the offset site be restricted to the same region as the impact, for example in the same IBRA region or IBRA sub-region?

Allowing compensation sites to be found anywhere in NSW and not in the local region is not supported by the SCCG. 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, increase risk of stochastic events such as fire or extreme weather, and even more vulnerable to the impacts of the proposed weakened controls over native vegetation clearing in non-urban areas.

Recommendation 20: Biodiversity offset sites must be located within the same IBRA subregion as the site of the impact.

2.5(c) Do you think the variation rules should require that an offset contains similar biodiversity to what is being impacted? Or do you think the rules should allow offsetting with anything that is more threatened, even if it is different to what was impacted?

All offsets must have a like-for-like requirement. The proposed variation rules are not acceptable.

To allow an impact on one species by securing a doubtful benefit for a different species either "*in the same order that uses similar habitat to the species impacted*" for fauna or "*with the same life-form (i.e. tree, shrub, orchid etc.)*" for flora (Submission Guide: Ecologically Sustainable Development), renders the whole concept of offsets null and void. Allowing this variation can only result in a net loss in biodiversity. This variation also shows a complete lack of regard for the ecological role that may be played by different species even with the same life-form (flora) or certainly within the same order (fauna).

If a like-for-like offset cannot be found, this should indicate that the proposed impact on the species, ecological community or other biodiversity value has reached a serious and irreversible state and should not be approved.

Recommendation 21: All biodiversity offsets must have a like-for-like requirement.

2.5(d) How might you be affected by the proposed offset rules?

The biodiversity of NSW is an asset that belongs to the entire population. The proposed Biodiversity Reform Package, including the proposed offset rules, will facilitate biodiversity loss and thereby negatively affect everyone in the state.

SCCG Member Councils expect to be responsible for assessing Development Applications and applying the BAM and proposed offset rules. The complexity of the proposed system will require ongoing training and support for council officers assessing applications using the BAM.

SCCG Member Councils are extremely concerned that the proposed reforms are likely to lead to an increase in vegetation clearing in urban and coastal areas, resulting in a loss of local biodiversity including local extinctions and, as a result, significant loss of human amenity.

2.5(e) Should the approval authority be responsible for determining whether a project has serious and irreversible impacts, or should the biodiversity development assessment report (BDAR) do this where feasible?

Recommendation 22: The requirement should be for assessing whether an action is likely to have serious or irreversible impacts, not whether the action will have serious and irreversible impacts, which is a weaker condition. The more precautionary approach should be adopted.

Recommendation 23: Clear, standardised guidelines for what constitutes a serious or irreversible impact must be developed by the Office of Environment and Heritage for approval authorities to follow across the state. Approval authorities should be given the discretion to set additional triggers for serious or irreversible impacts on local biodiversity as they deem necessary, but not to discount or ignore the minimum criteria for an action likely to have serious or irreversible impacts.

Items that should be classified as serious or irreversible impact across the state should include (though not be limited to):

- Any action likely to have a significant impact on an endangered or critically endangered species or ecological community
- Any action likely to have any negative impact, significant or otherwise, on a declared Area of Outstanding Biodiversity Value, or any area currently declared as Critical Habitat
- Any action likely to have a significant impact on a World Heritage site, National Heritage site or Ramsar-listed Wetland of International Importance
- Any action likely to have a significant impact on an area of vulnerable coastal habitat
- Any action that will fragment an area of contiguous native vegetation which is likely to have a significant impact on any of the values listed above.

2.5(f) Should serious and irreversible impacts remove the possibility of consent being provided for non-major projects only, or should it also apply to any class of major projects?

Any class of action that is likely to have serious and irreversible impacts on biodiversity should be considered a 'red flag' and should remove the possibility for consent for any class of major or non-major projects.

2.5(g) A new concept of Areas of Outstanding Biodiversity Value will replace the concept of critical habitat in the new Act. We would be interested in your feedback on whether these should be included as serious and irreversible impacts, or are adequately addressed in other aspects of these reforms.

Proposed actions that will impact on Areas of Outstanding Biodiversity Value should be considered as serious and irreversible impacts and should not be permissible.

Under the draft Biodiversity Conservation Bill 2016 (Part 2, Division 1, clause 2.3), "*A person who damages the biodiversity values of a declared area of outstanding biodiversity value is guilty of an offence*" with a maximum penalty of Tier 1 penalty or imprisonment for 2 years, or both. The SCCG supports this penalty for damaging the biodiversity values of a declared area of outstanding biodiversity value and suggests that it is incompatible with clause 2.3 if proposals affecting such declared areas are not also considered serious and irreversible.

2.5(h) Will the ability to source biodiversity credits directly from the Trust improve development and biodiversity conservation outcomes?

This approach is not supported by the SCCG. In theory, allowing the Trust to source biodiversity credits may appear to allow for greater, more strategic biodiversity 'gains' from offset sites. In practice, this approach is likely to:

- Result in even greater time delays between the impact of the development and the maturity of the offset resulting in any compensatory benefit to the organisms affected
- Create greater uncertainty that the offset obligations of the proponent will be fulfilled
- Remove any incentive to *avoid* impacts on native vegetation or species onsite. Under this approach, rather than having to source a suitable like-for-like offset credit and if it can't be found, re-design the proposal, a proponent may now essentially clear any vegetation type if they are prepared to pay enough for it. These additional costs will then be passed on to the consumer.

However the Trust could act as an advisory body to proponents when sourcing offset credits.

If proponents are given the option of sourcing biodiversity credits from the Trust, the requirement for the proponent to make additional payments to cover administrative

and other costs is supported, however, the Trust's operating expenses must not be dependent on these payments. There must not be an economic incentive for the Trust to actively promote this approach.

The Trust must also be bound by the same like-for-like requirements as individual proponents, without the proposed variation rules. As stated above, biodiversity offsets must be like-for-like and should be located within the same IBRA subregion as the impact site.

The Trust must be under the same obligation to demonstrate that the offset requirements of the proposed action can be met before the offset obligation of the proponent is considered to be fulfilled.

Recommendation 24: The ability for proponents to source biodiversity credits from the Trust is not supported. However if this approach is implemented, the Trust must be able to demonstrate the ability to meet like-for-like offset requirements within the same IBRA subregion of the proposed action prior to approval of the action.

2.5(i) Is it reasonable to increase the price of species credits where the species is endangered or critically endangered?

It is not appropriate for offsets to be used to facilitate impacts on, and thereby accelerate extinctions of, threatened species or ecological communities.

Recommendation 25: Offsetting should not be an allowable option for impacts to endangered or critically endangered species or ecological communities.

2.5(j) Should the calculator produce a fixed price in all circumstances or could there be some situations where it would be appropriate to allow a proponent to negotiate a price with the Trust?

Recommendation 26: It is not appropriate to allow a proponent to negotiate the price of offsets.

2.5(k) Should the Trust be able to set and update all aspects of the calculator? Are there any components that should be set and updated by the Minister or another party?

The offsets calculator should be created and updated using the best available scientific and economic information. The Trust is an appropriate body for making updates to the calculator but all updates should be subject to independent expert review. Significant updates or changes should be made available for public consultation. It is not appropriate to allow Ministerial discretion over updates to the calculator.

2.5(l) How often do you think the calculator should be updated to provide proponents with price certainty while improving the accuracy of the calculator as market conditions change?

The calculator should be updated as necessary as ecological conditions change. In particular, the calculator should be updated when new species or ecological communities are added to the threatened list, or the status of already threatened species or ecological communities changes; and as the habitat for threatened species and areas of ecological communities become even scarcer due to approvals and weakened vegetation clearing provisions.

2.6 Biodiversity Certification

In general the Biodiversity Certification approach is supported if it is used to reduce the cumulative impacts of assessing projects on a site-by-site basis. However, Biodiversity Certification should only be allowed over a consolidated site, not a collection of individual, non-contiguous sites. All SCCG recommendations relating to the BAM and/or Biodiversity Offsets Scheme also apply to Biodiversity Certification. In particular, actions likely to have serious or irreversible impacts on biodiversity values should not be allowable.

3. Repeal of the *Native Vegetation Act 2003*

In its 2014 Final Report, the Independent Biodiversity Legislation Review Panel recommended the repeal of the *Native Vegetation Act 2003* (NVA), stating that “The Act has not met expectations as a central pillar of biodiversity conservation in NSW” (page v), despite also stating that “there is no comprehensive evidence about the current condition (quality and extent) of native vegetation in NSW and the community is not able to understand whether the current native vegetation laws have been effective” (page 2). It is hard to see how the former statement is justified if the latter is accurate.

However, the latter statement is also somewhat disingenuous. The NVA has achieved, among other things, the following outcomes:

- Nearly a thousand Property Vegetation Plans protecting and/or improving management over 4.2 million hectares of native vegetation on farmland,
- A reduction in clearing for agriculture from an average of 17,575 hectares per year to an average of 10,540 hectares per year, following the commencement of the Act, and
- Preventing the death of approximately 116,000 native mammals per year as a result of land clearing (WWF-Australia, 2015).

These results could certainly be interpreted as the NVA being “effective” in meeting at least its stated objects:

“(a) to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State, and

(b) to prevent broadscale clearing unless it improves or maintains environmental outcomes, and

(c) to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation” – Native Vegetation Act 2003

The primary justification for repealing the NVA given by the Review Panel seems to be completely unsubstantiated. Nor is sufficient evidence or justification for replacing the largely successful NVA with the *LLS Amendment Bill* provided in any of the reform package documents.

Question 2: The SCCG requests a detailed comparison of the existing *Native Vegetation Act 2003* with the proposed *Local Land Services Amendment Bill*, capturing all clauses and provisions that will not be carried over to the *LLS Amendment Bill*.

The NVA was developed in consultation with farmers and conservationists in response to the failures of the previous regulatory regime to prevent inappropriate land clearing.

Unsustainable rates of land clearing do still continue across NSW, particularly in coastal areas (WWF-Australia, 2015). This is due to illegal clearing and legal exemptions to the NVA, such as clearing for infrastructure and clearing in urban areas (*ibid*). However the problems with the NVA are therefore too many exemptions and allowable activities, and insufficient enforcement. These issues should be addressed rather than replacing the NVA with the *LLS Amendment Bill*.

The proposed simplified land management framework under the draft *LLS Amendment Bill* is a much weaker system than the NVA and will result in greatly increased rates of land clearing in rural areas. The large areas of unregulated land, the expanded range of allowable activities and the system of self-assessable codes for clearing on regulated land allows for significant amounts of clearing, even potentially in endangered ecological communities. There are no requirements for assessing the possible implications of intended clearing on soil erosion, salinity, water quality, biodiversity or carbon sequestration. There is no requirement to “maintain or improve” environmental conditions on site.

Recommendation 27: The SCCG recommends that the *Native Vegetation Act 2003* be retained. To achieve consistent integrated assessment and reporting processes the *Native Vegetation Act* should be expanded to cover all vegetation clearing in NSW, including urban areas, regardless of the purpose or location of the clearing.

Some specific concerns about the proposed *LLS Amendment Bill* and recommendations for improvement are outlined below. This is not an exhaustive analysis and we stress again that lack of comment on other elements of the proposed reforms does not imply SCCG support for those elements.

3.1(a) Increased potential for human-wildlife conflict

The SCCG is concerned that increased land clearing in rural areas will further exacerbate the existing conflict between humans and mobile wildlife, for example flying-foxes, in urban areas.

The clearing of roosting habitat across Eastern Australia “has forced the Grey-headed Flying-fox to set up daytime roosts in suburban areas” (Australian Government Department of the Environment, 2016). In recent years, flying-foxes (of all species) have been establishing new roost sites and gathering in increased numbers in urban and peri-urban areas. There is growing evidence that these behavioural changes are consistent with behavioural responses to acute food shortages (Eby, et al., 2012). If foraging and roosting habitat for flying-foxes is not protected in rural areas, it is likely to result in even greater reliance by these species on habitat in urban areas where the potential for conflict with human residents is substantially greater.

3.1(b) Native Vegetation Regulatory Map

Land use is not always an appropriate proxy for assessing the extent, condition or conservation value of native vegetation. Current or historic land use alone should not be used to define vegetation as 'unregulated'.

Recommendation 28: All native vegetation should be subject to regulation, regardless of the current or historic land use.

3.1(c) Protection for publicly-funded revegetation and restoration works

It is not clear whether areas of replanting or other biodiversity conservation measures undertaken with public funding and/or volunteer resources will be protected from clearing under the proposed reforms.

Recommendation 29: all areas of revegetation, regrowth or other biodiversity conservation measures that have been undertaken or supported by previous or current public funds must be protected from clearing and mapped as such on the Native Vegetation Regulatory Map.

3.1(d) Land Management Codes of Practice

The SCCG is particularly concerned that the proposed self-assessed code-based approach to vegetation clearing will increase clearing on rural-zoned coastal land, thus facilitating later re-zoning, subdivision and development for non-agricultural purposes in coastal catchments.

The proposed Equity Code's cumulative use maximum limit is 500ha over three years. It is noted that the Equity Code is intended to allow clearing to expand an existing farming enterprise, and that it "cannot be applied to properties within 50km of the coast unless LLS is satisfied that the primary use of the land is agricultural" (NSW Government, 2016).

We note that the '50km' boundary seems subjective and no justification has been provided for this distance. More importantly, the SCCG is not satisfied that this will provide adequate protection from the likely speculative clearing that rural landholders may undertake in the hope of later seeking a re-zoning of that land for non-agricultural development purposes, a particular risk in coastal areas where population pressures are high. It is very easy to claim to an LLS that land is to be cleared to allow for expanded agricultural activity, to conduct that activity for a year or two and then seek re-zoning from the local council (a different approval authority and a different process) for that already cleared and now ecologically devalued land.

Recommendation 30: The Codes of Practice are a poor approach to regulating land clearing and should not be pursued. In particular, the Equity Code should not be applicable anywhere, but particularly not within coastal catchments or over areas of Threatened Ecological Communities.

Recommendation 31: Additional consideration must be given and additional controls over vegetation clearing should be required in coastal catchments, taking into account the additional population and development pressures in these areas.

4. Private land conservation and the Biodiversity Conservation Trust

The NSW Government's promised financial investment in private land conservation is welcomed. However funding availability is politically driven and therefore uncertain, and can never replace adequate legal protections.

It is understood that the Biodiversity Conservation Trust will replace the Nature Conservation Trust. However the reforms do not clarify what relationship, if any, the Trust will have with the Natural Resources Commission. The Commission is intended to be "*an independent body that helps the NSW Government improve efficiency, production, biodiversity and community well-being*". Its functions include, among other things, providing independent advice to government, delivering independent oversight by auditing, evaluating and reviewing plans, programs and organisational performance (for example, auditing performance of Local Land Services) and reviewing complex scientific and policy issues (NSW Natural Resources Commission, 2016).

Question 3: What relationship, if any, will the Biodiversity Conservation Trust have with the Natural Resources Commission? What role, if any, will the Natural Resources Commission play in the implementation, review or auditing of the proposed biodiversity conservation reforms?

5. Protecting native plants and animals: recovery planning

It is unclear whether threatened species and ecological communities will benefit or suffer as a result of moving away from formal Recovery Plans towards Priority Action Statements, Conservation Action Plans or other replacement documents. Recovery Plans are often accused of 'failing' to conserve or recover threatened species, however this is due to a serious lack of investment in resourcing existing plans, rather than inherent problems with the documents or processes themselves.

In addition to guiding government investment, Recovery Plans are useful for many other purposes. They are the repository of much of the known ecological and conservation information about a species or group of species. They can inform and guide community action to conserve species, with or without the support of government funding. Importantly, some councils refer to Recovery Plans when setting conditions on development approvals. If Recovery Plans are to be replaced, care should be taken to ensure that the replacement documents serve all the needs of all stakeholders who currently refer to Recovery Plans, not just the needs of state government to prioritise investment.

The current '7-part' test for whether a proposed action will have a significant effect on species, ecological communities or their habitats refers to "*whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan*" (TSC Act, Part 6, Div 1, Section 94). This provision has been removed in the proposed *Biodiversity Conservation Bill* and not replaced by any

reference to Priority Action Statements, Conservation Action Plans or other replacement documents.

Further, the current TSC Act also states:

“Ministers and public authorities (including the Chief Executive) are to take any appropriate action available to them to implement those measures included in a recovery plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a recovery plan” (TSC Act, Part 4, Division 2, Section 69).

Recommendation 32: If Recovery Plans are to be replaced, threatened species and communities must be given a similar level of protection by the replacement documentation, in that ministers and public authorities (including the Chief Executive) should be required to take appropriate action available to them to implement the measures of the replacement document(s); and they must not make decisions or undertake actions that are inconsistent with the provisions of the replacement document(s).

6. Framework for Managing Wildlife Interactions: native wildlife licensing

The framework banning activities that impact protected native animals and plants, threatened species and their habitat and threatened ecological communities is supported, however the SCCG has concerns about the proposed change from a licensing system to a risk-based exemption approach for native pest animal species.

These proposed changes will reduce the ability of the NSW Government to collect data on native pest animal control activities across the state and to monitor any changes to populations as a result. There are a number of historical precedents where, due to human persecution, fauna species have gone from what was considered ‘pest’ or even ‘plague’ populations to extinction in a comparatively short period of time, e.g. the Thylacine (*Thylacinus cynocephalus*) and the Passenger Pigeon (*Ectopistes migratorius*). As a bare minimum, data must be collected and made publicly available on species and number of individuals harmed and the locations. This is far better facilitated by a licensing system than the risk-based approach.

Recommendation 33: All activities that may harm native species that are not banned outright must be subject to licenses. Data on licenses to harm native species must be recorded and made publicly available.

7. Summary of Questions and Recommendations

Questions requiring clarification

Question 1: The SCCG requests that the NSW Government provides justification for the proposal to replace Tree Preservation Orders with a SEPP.

Question 2: The SCCG requests a detailed comparison of the existing *Native Vegetation Act 2003* with the proposed *Local Land Services Amendment Bill*, capturing all clauses and provisions that will not be carried over to the *LLS Amendment Bill*.

Question 3: What relationship, if any, will the Biodiversity Conservation Trust have with the Natural Resources Commission? What role, if any, will the Natural Resources Commission play in the implementation, review or auditing of the proposed biodiversity conservation reforms?

SCCG recommendations

Recommendation 1: The Regulations to the Biodiversity Conservation Act, State Environmental Planning Policy and model Development Control Plan (DCP) must be made available for public comment prior to the finalisation and enactment of the two draft bills.

Recommendation 2: The SCCG recommends that 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 and environmental condition.

Recommendation 3: The legislation and associated regulations should set clear, ambitious targets for vegetation conservation, soil management and recovery of threatened species and ecological communities in NSW. Progress towards meeting these targets should be regularly reviewed and publicly reported.

Recommendation 4: The Minister for the Environment should be the Minister responsible for both the *Biodiversity Conservation Act* and the land clearing assessment divisions of the *Local Land Services Act*.

Recommendation 5: Native vegetation must be adequately protected under an Act, such as the *Native Vegetation Act 2003*, rather than relying on subordinate and less enforceable codes and policy documents.

Recommendation 6: Compliance and enforcement of the legislation and associated regulations and policies must be adequately resourced.

Recommendation 7: the approval authority for all native vegetation on urban land should be the local council. All approval authorities should be adequately resourced to provide this important regulatory role.

Recommendation 8: A system for monitoring and annual public reporting on vegetation clearing, other biodiversity impacts, the 'retirement' of biodiversity offset

credit sites and updates on their management status must be delivered by the NSW Office of Environment and Heritage and regularly updated by information supplied by all approval authorities. OEH should also be responsible for periodic auditing of local approval authorities to ensure appropriate implementation. Reporting and performance auditing provisions should be guaranteed by the Act.

Recommendation 9: The SCCG does not support the replacement of Tree Preservation Orders with a State Environmental Planning Policy, and recommends that local councils retain the right to determine TPOs for each local government area. If a SEPP to guide vegetation management in urban areas is developed, local councils must be given the opportunity to meaningfully contribute to its development.

Recommendation 10: Funding and resources be allocated for training and support of council officers in the use of the Biodiversity Assessment Method, Biodiversity Offset Scheme and any associated mechanisms as yet to be determined by the Biodiversity Conservation Act Regulations and State Environmental Planning Policy.

Recommendation 11: The area clearing threshold, if implemented, 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 12: Sensitive values maps should be created from state and regional data layers overlaid with local council biodiversity values mapping. Local councils must be given the ability to determine what is mapped as additional 'sensitive values' for their local government area. Areas either *containing* sensitive values, or *adjacent or in close proximity* to areas with mapped sensitive values, should both trigger the sensitive values map threshold. A list of values that should be incorporated into the sensitive values map are provided in the body of the submission.

Recommendation 13: Impacts on highly degraded vegetation must still be assessed for impacts on threatened or locally important flora or fauna species or ecological communities. Consideration must be given to the possible role the degraded area may play in providing genetic material or linkages between areas of vegetation in better condition.

Recommendation 14: Key Threatening Processes and the objectives or actions of Recovery Plans or their replacements must be included for consideration as part of the revised Test for Significance.

Recommendation 15: *If* offsets are used, 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. Offsets should be applied consistently across the state, and discretion for approval authorities to 'discount' offsets should not be granted.

Recommendation 16: Mining companies must be required to rehabilitate their mine sites at the end of the life of the mine *in addition* to securing offset sites for the impact caused by the mine.

Recommendation 17: 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 18: Offset compensation sites should generally not be permitted on public land.

Recommendation 19: approval authorities must *not* be given the discretion to discount the offset credit requirements set by the BAM calculator. The offset requirements decided by the calculator should be considered as the minimum requirements, and approval authorities given the discretion to require *additional* offsets or other conditions over and above the requirements of the calculator, but not to lower the standard set by the calculator.

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Recommendation 24: The ability for proponents to source biodiversity credits from the Trust is not supported. However if this approach is implemented, the Trust must be able to demonstrate the ability to meet like-for-like offset requirements within the same IBRA subregion of the proposed action *prior to approval* of the action.

Recommendation 25: Offsetting should not be an allowable option for impacts to endangered or critically endangered species or ecological communities.

Recommendation 26: It is not appropriate to allow a proponent to negotiate the price of offsets.

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Recommendation 33: All activities that may harm native species that are not banned outright must be subject to licenses. Data on licenses to harm native species must be recorded and made publicly available.

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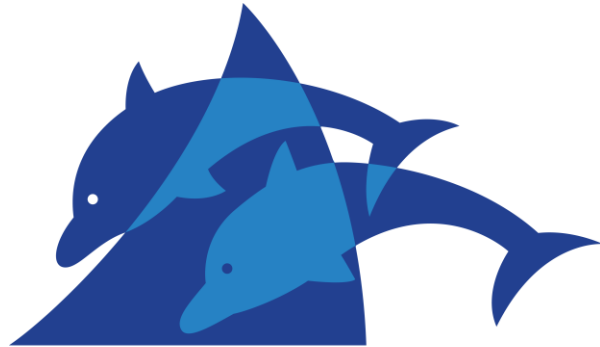
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