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Reference: 004-23 JM

Biodiversity Conservation Act Review
Department of Planning and Environment
By email: biodiversity.review@environment.nsw.gov.au

Thursday, 20 April 2023

Re: Submission on Biodiversity Conservation Act 2016 5-year Statutory Review

To whom it may concern,

Thank you for the opportunity to make a submission on the statutory review of the *NSW Biodiversity Conservation Act 2016* (BC Act).

The Sydney Coastal Councils Group (SCCG) is a regional organisation of councils, established in 1989 to promote collaboration among member councils on environmental issues relating to the sustainable management of the urban coastal and estuarine environment. The group comprises nine councils in the Sydney region which together represents nearly 1.3 million residents. The [SCCG's 2019-2029 Strategic Plan](#) includes six goals, the following of which are highly relevant to the review of the Act.

- People and places adapt to a changing climate and future shocks and stressors
- Waterways and the foreshore are protected and healthier
- There is a collaborative, effective and consistent approach to coastal and estuarine management

Purpose of the review

The BC Act requires the Minister responsible for administering the Act to begin a review as soon as possible after 5 years from the commencement of the Act's provisions which occurred on 25 August 2017. The purpose of the review is to determine whether the policy objectives of the Act remain valid and whether the terms remain appropriate for securing those objectives. To effectively evaluate the terms, interdependent policy settings across other legislation will be considered to the extent relevant to the Act.

Terms of Reference set out the scope of the review. A Consultation Paper has been prepared which lists focus questions to guide feedback.

Our Comments

The SCCG has reviewed the Consultation Paper and participated in feedback sessions hosted by LGNSW and attended by various NSW councils.

We understand that LGNSW has developed a detailed submission which represents the views of Councils across NSW. We strongly support this submission and request that the issues be appropriately considered.



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COUNCIL



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WAVERLEY
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Bayside Council

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council



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Generally, the SCCG's considers that the BC Act is not achieving its objectives of no net loss of biodiversity, particularly in coastal and urban areas. The Act needs to do more to halt biodiversity decline and enable improved biodiversity and ecological outcomes. This could be achieved through better definition of restoration outcomes expected, greater transparency on the success of offsetting measures, and more stronger compliance and enforcement.

Our detailed comments and recommendations are summarised in the following table, in response to the key elements of the Act, as listed in the Consultation Paper.

I trust that our comments will be helpful in consideration of the review.

If you have any queries, please contact me on 0407 733 075 or by email at executiveofficer@sydneycoastalcouncils.com.au

Yours sincerely,



Sarah Penny Joyce
Executive Officer



Sutherland Shire
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No.	Issues	Recommendations
<i>Conserving threatened species and ecological communities</i>		
1.	<ul style="list-style-type: none"> Focus on biodiversity values of state importance with no recognition of locally important biodiversity which councils need to address. 	<ul style="list-style-type: none"> Section 1.3(a) of Act should be amended to make succinct its purpose "to conserve biodiversity at local, bioregional and State scales".
2.	<ul style="list-style-type: none"> Inadequate assessment of cumulative impacts on threatened species (TS) etc. Lack of the necessary ecological limits to prevent further extinctions e.g. there are no triggers in the Act to ban or restrict clearing of critically endangered ecological communities (CEECs). Need for stronger legislative effect to the Saving our Species (SoS) program and stronger requirements and commitment to take action on Key Threatening Processes. 	<ul style="list-style-type: none"> BOS assessment methodologies should take into account the cumulative impacts on biodiversity of multiple developments, as well as clearing permitted under other legislation. The feasibility of providing a publicly accessible map of biodiversity offset sites should be explored. Threatened species and ecological communities should be given greater protections during land use planning processes. Any clearing or impact on critically endangered species or communities should automatically count as a SAIL and be prohibited. The Act should explicitly support restoration of ecosystems and connectivity of the landscape.
<i>Embedding Aboriginal and indigenous knowledge</i>		
3.	<ul style="list-style-type: none"> Lack of integration of aboriginal knowledge and aspirations in biodiversity conservation. No systematic process for incorporating Aboriginal ecological knowledge into the Threatened Species Scientific Committee assessment process. Engagement with indigenous communities e.g. Local Aboriginal Land Councils (LALC) needs to be improved. Aboriginal knowledge of biodiversity is at the local and site scale whereas the Act is focused on state and bioregional biodiversity. The provisions of the Act 	<ul style="list-style-type: none"> The Act should recognise that biodiversity is part of Aboriginal cultural heritage and require this to be integrated in the Biodiversity Assessment Method (BAM) process. Council officers and bush regenerators should receive training to increase awareness and appreciation of sites and management.

No.	Issues	Recommendations
	do not provide for input of Aboriginal knowledge.	
<i>International obligations and climate change adaptation</i>		
4.	<ul style="list-style-type: none"> • Climate change adaptation is recognised in the Act's purposes but is not strongly applied in its terms. • Climate change considerations need to form a cumulative assessment, and this is often neglected under BARs/ BDARs/ REFs etc. 	<ul style="list-style-type: none"> • The Act review provides an opportunity to align NSW biodiversity directions with national and global targets. • Protection for climate refuges (e.g. mountains) and movement corridors to access these during extreme weather should be strengthened e.g. creation of AOBVs. • Climate change adaptation means strengthening ecosystems. The Act should encourage more restoration.
<i>Private land conservation and investment</i>		
5.	<ul style="list-style-type: none"> • Establishing PLC agreements is too onerous, complex and costly. • Poor communication between councils, DPE and LLS to support PLCs. 	<ul style="list-style-type: none"> • Better incentives should be created for private land holders to become involved with conservation of their existing bushland. • More resourcing is required from NSW government to actively approach landholders and help them through the land conservation process, especially in key areas with good biodiversity corridors that connect with larger intact bushland areas.
<i>Biodiversity offsets scheme</i>		
6.	<ul style="list-style-type: none"> • Inadequate offset scheme fundamentals when net loss is occurring, including for EECs. • This is contributed from insufficient focus on 'avoid and minimise', allowing 'offsetting', including non 'like for like' offsets rather than same species/communities. • Reporting on Act objectives for 'no net loss' from this scheme does not provide transparency on actual loss. • Poor understanding of the Scheme by proponents and wider community resulting in breaches. 	<ul style="list-style-type: none"> • Thresholds should be set in legislation for SAIi i.e. when impact is 'serious and irreversible' for TECs, EECs and CEECs. • Fines should be increased to provide a greater deterrent from non-compliance. • Higher penalties should be introduced for land clearing where it is on the BV map. • The onus of demonstrating that clearing has or hasn't impacted TECs should rest with the landowner, not the enforcer. • Consideration should be given to the feasibility of creating an independent body to provide certification that conditions are met and offsets established appropriately. • Incentives to increase uptake of biocertification should be explored e.g. subsidies to assist with costs of processes. • Training provided and expertise required of councils should be thoroughly reviewed.

No.	Issues	Recommendations
	<ul style="list-style-type: none"> No thresholds in legislation for SAIL i.e. when impact is 'serious and irreversible' for TECs, EECs and CEECs. Some councils don't have the expertise to review BDARs or the resources to train internal staff. 	
<i>Regulating impacts on and caring native animals and plants</i>		
7.	<ul style="list-style-type: none"> Significant impacts of both feral and domestic animals on biodiversity that are outside the scope in the Act. 	<ul style="list-style-type: none"> The Act should be better enabled to regulate cats and/or relevant pest management legislation reviewed to improve biodiversity outcomes, as a companion to the Act. Wildlife corridors should be identified as part of the requirements and be mandatory for new developments.
<i>Compliance and enforcement</i>		
8.	<ul style="list-style-type: none"> Penalties for land clearing do not align with land value; landholders are willing to risk penalties due to poor enforcement likelihood. 	<ul style="list-style-type: none"> Compliance and enforcement need to be more self-enforcing and restructured so that compliance is in the interest of the applicant or landowner. More resources should be provided from State Government to support councils with investigations of non-compliance.
<i>Data and mapping</i>		
9.	<ul style="list-style-type: none"> Need to improve environmental data and allow for greater accessibility to support decisions about biodiversity. Incomplete mapping or guidelines, e.g. not all TECs, EECs and CEECs correctly mapped on Biodiversity Values (BV) map. 	<ul style="list-style-type: none"> More resourcing should be afforded for DPE mapping and BioNet team. Data from licence collection should be uploaded into BioNet at a faster pace. All data, mapping, species, etc collected through BDARs should be incorporated in the Atlas and into regular revisions of the state mapping.