



*Sustain.  
Invest.  
Protect.*

**NSW Land Management and Biodiversity  
Conservation Reforms**  
Summary of submissions report

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# About this report

## Purpose of this report

On 3 May 2016 the NSW Government released a draft package of land management and biodiversity conservation reforms in response to the Independent Biodiversity Legislation Review Panel's recommendations. This package included:

- » a draft Biodiversity Conservation Bill 2016
- » a draft Bill to amend the Local Land Services Act 2013
- » proposed Local Land Services (LLS) codes of practice (metrics)
- » the draft Native Vegetation Map Method Statement
- » the draft Biodiversity Assessment Method (BAM)
- » the draft Code of Practice for Commercial Kangaroo Harvesting in New South Wales.

The draft reform package was on public exhibition for eight weeks from 3 May to 28 June 2016 to allow stakeholders and the community to have their say.

The community were invited to make submissions via the reform website ([www.landmanagement.nsw.gov.au](http://www.landmanagement.nsw.gov.au)) or by post. Submissions were also received via NSW Government Ministers and the Office of Environment and Heritage (OEH) 'Environment Line' email address.

This report provides a summary of the issues raised in submissions.

This report does not provide the NSW Government's response to the issues raised in submissions.

## How many submissions were received?

A total of 7166 submissions were received, including approximately 6000 form submissions.

Some stakeholder groups ran campaigns or provided resources to support form submissions. For example, the largest of these campaigns, the 'Stand up for Nature' campaign, generated over 5000 submissions (more than 70% of all submissions).

All submissions have been analysed, including form submissions. Any additional or unique comments included in standard form submissions were also analysed.

## Overview of issues raised in the 'Stand Up for Nature' campaign submissions

'Stand Up for Nature' is an alliance of conservation groups dedicated to protecting nature in New South Wales. Members include: the Nature Conservation Council of NSW, World Wildlife Fund, NSW Wildlife Information Rescue and Education Service, Total Environment Centre, Humane Society, National Trust, National Parks Association of NSW, Sydney Wildlife, the Colong Foundation for Wilderness, Birdlife Australia and the Wilderness Society.

Over 5150 people lodged a submission through the Stand up for Nature website ([www.standupfornature.org.au](http://www.standupfornature.org.au)). An additional 200 campaign submissions were received via post or email.

The Stand up for Nature submissions were based on standard text that expressed opposition to the draft proposals and called for a commitment to stronger biodiversity laws. Submissions voiced concerns that the proposed changes would increase land clearing, carbon pollution, push wildlife closer to the brink of extinction and undermine the sustainability of farmland. These submissions also expressed concern that the proposed reforms would:

- » repeal the Native Vegetation Act 2003 and Threatened Species Conservation Act 1995
- » remove the requirement to maintain or improve biodiversity values
- » limit important safeguards, such as red flags for environmentally sensitive areas
- » expand the use of self-assessable codes
- » increase the use of biodiversity offsets, allow for variations to like-for-like offsetting and allow proponents to clear native vegetation in exchange for paying money into a fund.

About 20% of the Stand Up for Nature campaign letters included unique comments in addition to the standard text. The comments included the following issues:

- » about 40% of the additional text emphasised the environmental impacts that could result from increased clearing including increased extinction, harm to wildlife and habitat, loss of ecosystem services, increased carbon emissions and loss of farming sustainability
- » about 20% of the additional text emphasised the strength of the author's opposition to the proposed reforms
- » about 15% of the additional text described the proposed legislation as a backward step, or called for proper implementation of current laws, or called for stronger laws
- » about 15% of the authors who included additional text felt the reforms prioritised financial or economic gain over environmental health and did not support this prioritisation, indicating the reforms would fail to provide for the needs of future generations
- » about 3% of the additional text was critical of the Government's leadership on environmental issues or called for greater consultation on the reforms.

## Who made the submissions?

The 7166 submissions have been categorised as follows:

- » 6632 from individual members of the public
- » 67 from NSW Government advisory and representative bodies, including 46 from local government
- » 91 from business and industry groups (housing, property, development and mining industries, environmental consultants)
- » 48 from wildlife groups and wildlife commercial operators
- » 101 from environment groups
- » 150 from the farming sector (farmers, farming businesses, representative bodies)
- » 27 from scientists and researchers
- » 50 from community groups.

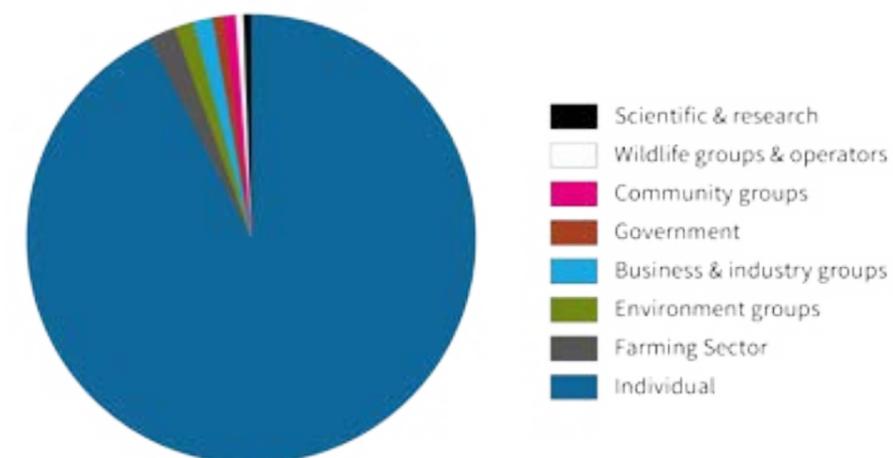


Figure 1: Chart showing proportion of submissions classified by stakeholder type

The large number of submissions received via the Stand up for Nature campaign makes it difficult to see the relative proportion of other stakeholder interest in the reforms. Therefore, the following chart has been included to show the proportion of submissions received classified by stakeholder type, excluding the form submissions received from the Stand up for Nature webpage.

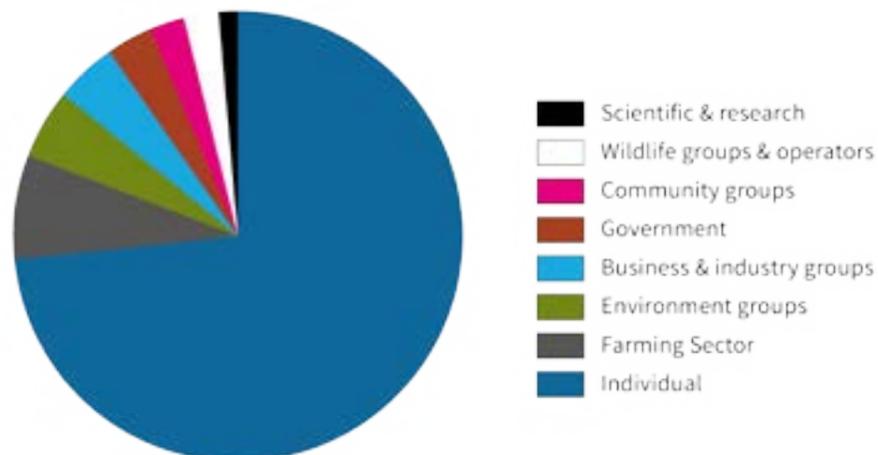


Figure 2: Chart showing proportion of submissions classified by stakeholder type (excluding Stand Up for Nature online campaign submissions)

## Publication of submissions

Individual submissions will be made available on the land management and biodiversity conservation reforms website: [www.landmanagement.nsw.gov.au](http://www.landmanagement.nsw.gov.au).

## How were submissions analysed?

The Office of Environment and Heritage, the Department of Primary Industries and the Department of Planning and Environment have reviewed and analysed all submissions received. This report identifies the key submission themes and summarises the level of interest and the key points raised by stakeholders under each theme.

The level of interest is represented by the percentage of submissions that comment on each theme. The following table puts these percentages into context to help interpret the level of interest for each of the themes.

Table 1: Relationship between percentages and number of submissions

Percentage	Approximate number of submissions
1%	70
5%	360
10%	720
25%	1790
50%	3580
75%	5380
90%	6450

All submissions have been analysed. Given the volume of feedback received, this report does not attempt to document every comment made on the reforms. The report focuses on the key points raised by stakeholders and highlights comments to show the range of opinion on the reform proposals.

Each section of this report includes a brief summary of the key policy proposals that were included in the exhibition materials.

The information from the submissions will be used by the NSW Government to finalise the biodiversity conservation reforms.

## Overview of the public exhibition engagement process

A series of stakeholder engagement activities was undertaken across the state to support the public exhibition.

Engagement included:

- » a reform website
- » 10 regional roundtables attended by peak stakeholders
- » 11 community information sessions at various locations across the state attended by interested stakeholders and members of the public
- » industry and other stakeholder briefings
- » 2 webinars (one for local government and one for Landcare)
- » 10 technical workshops for local government staff covering the biodiversity offsets scheme
- » 1 technical workshop for accredited assessors focusing on the proposed Biodiversity Assessment Method
- » social media.

## Background to the reforms

The new legislation aims to integrate and modernise laws governing biodiversity conservation and the management of threatened species. The reforms also aim to introduce more equitable and effective arrangements for managing the clearing of native vegetation in rural areas.

As part of these reforms, the government has announced investment of \$240 million over five years in a new Private Land Conservation Program and \$70 million each following year, subject to program performance reviews, to protect and enhance biodiversity at the bioregion and state scales. In addition, \$100 million over five years has already been dedicated to the Saving our Species program.

# 1. The proposed reforms – general comments

## Key points raised by stakeholders

### Stakeholders recognise the need for reform

There was broad agreement across submissions that there is a need for land management and biodiversity conservation reform.

The mining, property and farming sectors supported the need to modernise and streamline the native vegetation legislation but wanted elements of the reforms changed significantly.

Generally, environment groups, environmental consultants and scientists acknowledged the need for reform, but were keen to see a strengthening of the environmental protections that are provided under existing legislation.

### Stakeholders seek significant changes to the proposals

All stakeholder groups recommended significant changes to the proposals before they could support the new system.

While many acknowledged the need for reform in general, environment groups, scientists, community groups, wildlife groups and individuals did not support the proposed legislation. They were concerned that the reforms would result in significant increases in biodiversity loss, including extinctions, through increased vegetation clearing.

For example, the submission from the Environment Group Alliance<sup>1</sup> asks for the proposals to be rewritten.

*We urge the NSW Government to abandon the draft Biodiversity Conservation Bill 2016 and Local Land Services Administration Bill 2016 and develop strong biodiversity conservation laws that are scientifically robust and that will deliver improved environmental outcomes, now and for future generations. (Environment Group Alliance)*

*While some of the government's announced changes are most welcome, we believe that key elements will substantially weaken existing protections. These retrograde changes risk returning NSW to an era of unsustainable environmental damage by reinstating broadscale land clearing, resulting in more degraded land, more damage to river systems, increased carbon emissions and the loss of habitat critical to the survival of threatened species. (Wentworth Group of Concerned Scientists)*

NSW Farmers and many individual landholders wanted more flexibility in the system. For example, they sought the ability to extend allowable activity clearing distances through notification and less onerous codes of practice. In contrast, some farmers thought that the land-clearing reforms go too far and that they would lead to an increase in clearing, which they argued is not in line with sustainable agriculture. All farmers sought access to the maps before the reforms are finalised. NSW Farmers also wanted the government to commit to funding the Local Land Services (LLS) adequately to implement the reforms on the ground. Farming stakeholders also wanted to ensure that the cost of biodiversity assessment reflected the return on investment for farmers.

One of the property industry's main concerns was the scheme's impact on the planning system.

*The reforms require councils to refuse development if they form the opinion that there are likely serious and irreversible impacts on biodiversity values. The introduction of mandatory refusal at the discretion of a local council is a breach of established planning principles. (Property Council)*

The property, mining, timber and farming sectors all raised concerns about the costs of offsets. They are concerned that mandatory biodiversity offsets would increase development costs and impact on housing affordability.

*Expanding requirements to obtain specialist biodiversity reports and offsets for biodiversity conservation will add to the expense of development finance and increase the cost of housing. The problem will be compounded in regional areas. (Property Council)*

The timber and forestry industry were concerned that the role of private native forestry (PNF) has not been considered in the reforms.

*It is unacceptable that this reform package will not be informed by a PNF review, which would provide due insight into the significance and role of PNF in conserving biodiversity and providing socio-economic stability to regional communities. (Timber NSW)*

### Concern that the proposals are overly complex

The farming sector and local government felt that the proposals were overly complex and onerous and wanted many elements, including the codes of practice, simplified.

*This is an extremely complex, highly regulated piece of legislation that gives too much power to the ministers and authorised officers. (Farmer)*

*While Council support streamlining planning requirements for greater ease and certainty, the reforms appear to create a greater level of complexity and inconsistency through controls and assessment under the LLC Act, EP&A Act, BC Act, SEPPS, codes and development control plans. (Port Stephens Council)*

### General support for the additional private land conservation funding

There was general support across all stakeholder groups for the additional funding announced to expand private land conservation in New South Wales. Many stakeholders appreciated the funding announcements but felt more funding was required and that the funding should be guaranteed for the long-term.

### Concern that key details are yet to be finalised

A recurring message from stakeholders was that they were concerned many key details were yet to be finalised such as the Regulation, the Native Vegetation Regulatory Map, the offset pricing model, the Biodiversity Assessment Method (BAM) including the BAM threshold and matters of serious and irreversible harm.

Stakeholders felt that without the details of these elements they were not able to fully understand, nor provide informed comment on, the reforms.

### Ongoing consultation is required to finalise the reforms

Submissions from all stakeholder groups sought further engagement with the government before the package is finalised.

In general, stakeholders considered the consultation process for the reforms so far was inadequate in terms of the content provided and time allowed for comment.

<sup>1</sup> The Environment Group Alliance consists of the Nature Conservation Council of NSW (NCC), NSW Wildlife Information Rescue and Education Service (WIRES), Total Environment Centre (TEC), Humane Society International, National Trust, National Parks Association of NSW (NPA NSW), Sydney Wildlife, 202020 Vision and the Colong Foundation for Wilderness.

## 2. Biodiversity Conservation Bill

The Biodiversity Conservation Bill (BC Bill) outlines the NSW Government's commitment to conserving biodiversity and ecological integrity at bioregional and state scales.

This section of the report identifies comments and issues raised in submissions relating to the objects of the BC Bill. The remainder of the report summarises the comments received on the fuller reform package, including proposals outlined in the BC Bill.

64% of the submissions received commented on the Biodiversity Conservation Bill.

### 2.1 Objects

The proposed objects in Part 1 of the draft Bill reflect the policy objectives of the NSW Government to conserve biodiversity.

#### Level of interest

4% of the submissions received included specific comments on the proposed objects.

#### Key points raised by stakeholders

##### Concern that the objects do not aim to conserve or improve biodiversity

Environment and community groups, environmental consultants, local councils and many individuals felt that the purpose of the Bill should be amended to conserve or improve biodiversity. Many submissions from local councils, environment groups and individuals suggested that 'maintaining or improving biodiversity' should be an objective of the Bill.

*The Bill accepts the decline and therefore ultimate loss of native species. Its stated objective to slow the rate of biodiversity loss does not guarantee long-term revival of threatened species or communities. (Bathurst Regional Council)*

*The decision to remove the key objective of improving or maintaining biodiversity is a significant backward step. There is no equivalent overarching goal for biodiversity conservation within the proposed new legislation. (Environment Group Alliance)*

The farming sector was generally silent on the objects of the Bill. However, some individual farmers expressed concern that the aim of maintaining or improving native vegetation in New South Wales was not included in the objects of the Bill.

Local Government NSW (LGNSW) and many local councils recommended including the 'avoid, minimise, offset' principle in the purpose and objects. They would like to see a clear legislative intent to avoid and minimise biodiversity losses.

##### Objects should aim to conserve biodiversity at the local scale, not just regional scale

Stakeholders noted that the reforms focus on conserving biodiversity at the bioregional scale, particularly noting the role of the additional private land conservation funding in delivering regional biodiversity conservation. However, many stakeholders felt there would be biodiversity loss at the site scale.

For example, the Environment Institute Australia and New Zealand (EIANZ) felt that the objects of the Bill should be amended to ensure that biodiversity and ecological integrity are conserved at site, local, bioregional and state scales. LGNSW and local councils also recommended that the Bill include biodiversity conservation at a site and local scale.

##### Objects promote development ahead of biodiversity conservation

Many submissions from environment groups, scientists, environmental consultants and individuals were concerned that the proposed legislation puts development ahead of conservation. These submissions were concerned that the proposed reforms are inconsistent with the principles of ecologically sustainable development (ESD):

*... there is a recognisable shift away from genuine biodiversity conservation to managing biodiversity within a framework of facilitating development and agricultural activities. (Nature Conservation Council, NCC)*

*BC Act should have biodiversity conservation as its primary focus. If the environment competes for attention with social and economic factors it's likely to come third. (Ecosure Pty Ltd)*

In contrast, some farmers feel that there is inadequate emphasis on the socio-economic implications of the reforms:

*One of the aspects ... which most concerns us is that there is no requirement for the Minister for the Environment to consider the socio-economic implications of their decision [that] ... may have a significant impact on landowners, communities and industries. (Grazier)*

##### The Bill should focus on biodiversity conservation not only threatened species management

The scientific community, along with many individuals, felt that the Bill focused on threatened species and terrestrial environments and that it should be expanded to deal with threats that occur to all native species.

*The current list of non-threatened species comprises the vast bulk of the faunal biodiversity of NSW. These species need to be a central focus of the legislation... We believe that any substantive and robust changes to biodiversity conservation must address threats that: occur in all environments, not just terrestrial; across all habitats, including urban habitats; and include all native species, not just listed threatened species. (Royal Zoological Society of NSW)*

The Centre for Ecosystem Science (CES) at the University of New South Wales recommended that in the draft BC Bill:

*The objective to minimise the impacts of key threatening processes on biodiversity values should be changed to minimise the impacts of key threatening processes on biodiversity and ecological integrity. This would better reflect the object of the proposed legislation. (CES)*

## 3. Local Land Services Amendment Bill

A new land management framework under the Local Land Services Act 2013 (LLS Act) proposes ways New South Wales landholders can manage land with native vegetation.

This section of the report identifies comments and issues relating to the objects of the LLS Amendment Bill. The remainder of the report summarises the comments received on the fuller reform package, including proposals outlined in the LLS Amendment Bill.

### Level of interest

90% of the submissions received commented on the LLS Amendment Bill.

### Key points raised by stakeholders

#### Concern that the Bill will increase land clearing

Many environment groups, community groups, scientists, some farmers and other individuals felt that the LLS Amendment Bill would not ensure adequate protection of biodiversity.

*The LLS Bill is a backward step in ensuring the adequate protection of biodiversity. The lack of a 'maintain or improve biodiversity' standard; lack of right for public to legally challenge Government decisions; wide discretionary powers of Minister instead of firm standards; numerous avenues of appeal by developers/proponents; restrictions on public access to some important information and data on developments and offsetting proposals. (Cumberland Bird Observers Club)*

#### Concern about the absence of the 'improve or maintain' standard

Environment and community groups, councils and individuals were concerned that the LLS Amendment Bill did not include an 'improve or maintain' standard.

*The removal of the requirement to 'maintain or improve biodiversity values' will lead to a decline in biodiversity outcomes. The NSW Government must provide a clear objective for biodiversity conservation in NSW (e.g. 'improve or maintain', 'enhance', 'no net loss') and state this objective clearly in the legislation. (Blue Mountains Council)*

#### Contradiction between the Biodiversity Conservation Bill and LLS Amendment Bill

One of the most frequently raised comments on the objects of the LLS Amendment Bill was the tension between the objectives of the two Bills. For example, a number of submissions, including those from the National Trust, scientists, individuals and Friends of Grasslands (FOG), felt that the BC Bill identifies key threatening processes that should be managed, while the LLS Amendment Bill would increase the occurrence of some of these processes.

*The Bills are in direct conflict, for example the Biodiversity Conservation Bill lists 'loss of hollow bearing trees' as a key threatening process, while the Local Land Services Bill allows clearing of paddock trees without approval. (Nambucca Valley Conservation Association, NCVA)*

*The legislation has conflicting goals namely to decrease regulation, compliance and administrative burdens by freeing up land clearance, improving agricultural productivity and cutting red tape on land managers whilst simultaneously decreasing the loss of biodiversity. (Georges River Combined Councils Committee Inc)*

## 4. Simplifying land management

This element of the biodiversity reforms seeks to establish a simpler system that allows landowners to work, manage and protect their own land.

### 4.1 Land management framework

The aim of the proposed land management framework is to provide farmers with an efficient way to undertake legitimate land clearing and improve agricultural productivity.

#### Level of Interest

98% of all submissions commented on the land management framework.

#### Key points raised by stakeholders

##### Differing stakeholder views on the need to reform the land management framework

Some stakeholders felt that the proposed framework effectively integrates economic, social and environmental factors – the triple bottom-line approach. Other stakeholders were concerned that the framework puts too much emphasis on agricultural productivity at the expense of the environment.

Many submissions from the farming, mining and property development sectors stated that the reform package goes some way towards addressing the perceived inadequacy of the current framework and achieves a more balanced approach to the social, economic and environmental considerations that impact on land management. For example:

*We welcome the repeal of the Native Vegetation Act and the commitment of an unprecedented \$240 million to the private land conservation program. We recognise there appears to be some opportunity for improved agricultural land management in the proposed system ... However, significant amendments are required before this package could be considered workable for farmers. (NSW Farmers)*

The Timber industry questioned the reform's focus on regulation rather than best practice.

*Now and into the future, the clearing of woody native vegetation will have a very minor impact on biodiversity in NSW. While there is still a need to regulate the clearing and modification of native vegetation, the emphasis should be on incentivising best practice rather than imposing heavy penalties for minor non-compliance. (Timber NSW)*

In contrast, environment and community groups, some members of the farming sector and many individuals questioned the need for changing vegetation clearing legislation and whether the proposed reform would achieve sustainable triple bottom-line outcomes. There was concern that by relaxing requirements for formal approvals the reforms would result in an increase in land clearing.

The Environment Group Alliance's submission suggested that instead of changing the existing land clearing legislation, reform should focus on implementation and resourcing.

*Rather than repealing outright the laws that provide important protection for our native vegetation, soils, and water, we suggest that there should be increased efforts in properly implementing the laws, including increased funding for private land conservation under the existing laws and increased capacity for LLS to develop and approve Property Vegetation Plans. (Environment Group Alliance)*

Also, some environmental consultants noted that the case for reform was not based on empirical evidence.

### Concerns about harm to sustainability of farmland due to increased clearing

Some submissions from the farming sector recommended delivery of effective and progressive on-ground education to farmers to help them improve the quality of their soils, improve water retention in their soils, improve water-course management and develop and manage native vegetation on their farms. They stressed that more on-ground advisers were needed.

Some submissions was also concerned that there would be an upsurge in native vegetation clearing under the proposed Bills and codes and that this clearing would not benefit farm productivity and would lead to environmental degradation.

## 4.2 Allowable activities

Proposed allowable activities define low-risk native vegetation clearing activities that are part of routine land management. Allowable activities would not need formal approval or notification to Local Land Services (LLS).

### Level of interest

4% of submissions commented on the proposed allowable activities.

### Key points raised by stakeholders

#### Conflicting views about set vegetation clearing distances

Stakeholders held differing views about the maximum distances that low-risk vegetation can be cleared around infrastructure such as roads, fences and dams. In general, farmers welcomed the proposals. However, environment groups, many local councils and individuals questioned the adequacy of the distances and were concerned that the ability to seek increases to the maximum allowable distances was too flexible.

The farming sector welcomed the streamlining and simplification of the allowable activities. In particular they welcomed the ability for the landholder to apply to the LLS for an increase in low-risk clearing distances. However, NSW Farmers reported that some farmers had questioned the science and reasoning behind some of the native vegetation clearing distances. They are concerned that the distances required for clearing around infrastructure do not change with the location or size of the landholding.

In contrast, environment groups, many local councils, scientists and individuals stated that the expanded clearing distances were not justified.

*Clearing of up to a maximum width of 40 metres of vegetation for linear infrastructure such as roads and fences, as well as around fixed point infrastructure such as a shed or dam is listed as an 'allowable activity' which requires not even notification to the Local Land Services. Whilst some clearing around infrastructure may be required, forty metres is not justifiable. (University of Sydney academic)*

*We are particularly concerned that the LLS have the ability to increase maximum distances allowed under these activities. This introduces an unacceptable degree of discretion and lack of accountability. (Environment Group Alliance)*

#### Concern that allowable activities will increase cumulative impacts of clearing

Environment and wildlife groups, environmental consultants, local councils and many individuals were concerned about the cumulative impact of clearing under allowable activities. Many submissions recommended monitoring and reporting of clearing under allowable activities to control and manage cumulative impacts.

*The draft legislation provides no mechanism for tracking the cumulative effect of clearing under these allowable activities at a regional scale. (The Wilderness Society)*

#### Stakeholders have mixed views on allowable activities on vulnerable land

There were mixed views on what sort of activities should be allowed on vulnerable land. For example, NSW Farmers felt that allowable activities should also be allowed on vulnerable lands, using best practice guidelines in conjunction with local farming and soil conservation knowledge and in consultation with LLS officers.

In contrast, other stakeholders wanted to see stronger protections for vulnerable lands:

*While the Museum welcomes the identification of vulnerable protected lands and cautiously agrees with the concept of a list of tightly controlled activities (Schedule 5A) that receive automatic approval, AMRI strongly disagrees with the inclusion of 1) sustainable grazing, 2) firewood, or 3) construction timber in Schedule 5A as an allowable clearing activity in Category 2 – vulnerable protected lands. We believe the definition of these in the Schedule will make enforcement unrealistic in the field and there is literature to suggest all three represent activities likely to impact on a range of threatened species and ecological communities. (Australian Museum)*

## 4.3 Proposed Local Land Services codes of practice

Codes of practice allow landholders to undertake clearing that supports more productive farming methods and systems, while responding to environmental risks. The consultation material proposed four types of codes of practice, each one having varying requirements for notification to Local Land Services (LLS), certification or, in some cases, the establishment of permanent set-aside areas on the land to improve biodiversity.

### Level of interest

88% of the submissions received commented on the proposed metrics for the codes of practice

### Key points raised by stakeholders

#### Proposed codes are too complex and not finalised

The majority of submissions that commented on the proposed code metrics stated that fully drafted codes of practice and accompanying documentation should be made available and consulted upon before any codes are established.

NSW Farmers felt that the codes were overly complex and onerous. Some local councils also found the code metrics complex and felt that the current routine agricultural management activities (RAMA) system was simpler.

#### Clearing under codes should be limited to low-risk clearing

Environment groups, the scientific community, local councils and the majority of individual submissions wanted clearing allowed under codes to be limited to low-risk clearing and not used for broadscale clearing. There was widespread concern that self-assessable codes would lead to increased vegetation clearing with little oversight.

*Codes should facilitate farm management with respect to small-scale management actions, such as clearing to allow fencing or buildings, not enable broadscale clearing. Codes that facilitate broadscale clearing should be removed from the legislation. If broadscale clearing is to occur, it [should follow] the mitigation hierarchy – avoid, minimise and offset. (Wentworth Group of Concerned Scientists)*

*The Codes do not specify the frequency that a landowner can conduct a clearing activity within a certain distance of a previous clearing action. As the codes are currently written it would be legitimate for a landowner to clear each year a few hectares of a patch of category 2-regulated land and so within a short time completely eliminate that patch of vegetation. (Wagga Wagga Council)*

There was concern from environment groups and individuals that the 25% vegetation clearing allowance in the Farm Planning Code was not workable. It was suggested that it was not ecologically possible to redistribute remnant vegetation without a significant time lag.

#### Concern that some landowners lack expertise to identify environmental values

Local councils, environment and community groups, environmental consultants and many individuals stated that the self-assessment codes required significant ecological expertise to identify things such as tree species, vegetation density, grassland communities and habitats. They questioned whether landowners would have the necessary expertise and knowledge to identify environmental values.

*Many landowners would need to seek advice on matters such as tree species, vegetation density relative to benchmark or EEC definitions, defeating the purpose of self-assessment and making these reforms too onerous for the very people they should benefit. While the current two-tiered system of RAMAs and Property Vegetation Plans needs improvement, it remains a far simpler system than the proposed approach. (Eurobodalla Shire Council)*

*The Equity Code allows for [clearing] 25% up to a maximum of 500ha every 3 years. This is effectively broadscale clearing ... Codes require that landholders are aware of and capable of identifying environmental values. Few have that expertise. (Individual)*

#### **LLS codes should not apply to sensitive cultural and environmental lands**

Some local councils and environment and community groups recommended the exclusion of specific cultural, environmental and heritage values from the codes. These would include mangroves, saltmarshes, riparian zones (including lagoons and wetlands), ephemeral streams, trees of apicultural importance and places and items of Aboriginal heritage.

#### **Concerns about the clearing of paddock trees**

Many submissions from environment and wildlife groups, environmental consultants, a number of scientists and individuals, as well as some farmers expressed concern about the clearing of paddock trees, especially those with hollows, without approval. For example:

*If property owners can remove trees in paddocks without approval and smaller stands of trees this will surely lead to a reduction in old-growth, hollow bearing trees which provide significant habitat for parrots, owls, nightjars and many other bird species. ... Clearing of old growth trees cannot be compensated for as many tree hollows can take at least 50 but often closer to 100 years to form in order to be useful for many species of birds. (Illawarra Birders)*

*My worry is that landowners will self-assess paddock trees out of existence. Landholders have excellent knowledge on cropping and stock but are not experts on the benefits of trees to the landscape, nor are they completely aware of the ecosystem services trees provide. The clearing of scattered paddock trees that I have seen over the past 12 months has escalated as the drive for more cropping areas prevails. The impact is devastating. (Farmer)*

#### **Calls for the removal of some codes from the reforms**

Environment groups and some local councils were concerned about the codes and wanted them removed or significantly amended. The farming sector generally supported the code approach to low-risk clearing activities, with LLS administration, but sought replacement of the grazing code with certification and removal of the rate cap on the Equity Code.

The Environmental Defenders Office (EDO) submission stated that the proposed codes that allow significant clearing and cumulative impacts – they reference the Systems Efficiency (paddock tree) Code, the Equity Code and the Farm Planning Code – should not be established and that the Grazing Efficiency Code was unnecessary.

The Wilderness Society wanted the Equity Code and the Farm Planning Code removed from the reforms.

Wingecarribee Council stated that:

*Council does not support the Equity and Farm Planning Codes as they will introduce unacceptable levels of impact on remnant native vegetation and may be used when landowners have exhausted options under other codes. (Wingecarribee Council)*

One member of the farming sector expressed concern that:

*The Encroaching Native Vegetation Code allows clearing for 900ha in 1000ha and is self-assessable which can allow for dramatic land clearing rather than proper land management. (Brookfarm)*

NSW Farmers stated that the rate cap on the Equity Code undermined the equity concept and should not be adopted. NSW Farmers and some individual farmers questioned why the Grazing Code applied only to farms over 100 hectares. NSW Farmers recommended that the code should be replaced with LLS certification, stating that thinning is for primary production purposes.

#### **Concerns that Endangered Ecological Communities (EECs) could be cleared under codes**

Environment and community groups, scientists and individuals stated that code-based clearing should not include EECs:

*The draft land clearing codes allow clearing in environmentally sensitive areas. The self-assessable codes do not restrict clearing of threatened ecological communities. Permitting clearing of threatened ecological communities makes a mockery of the listing process. (Environment Group Alliance)*

*Clearing of threatened ecological communities can occur via codes, yet many woodland communities are protected under the EPBC Act. Clearing of threatened ecological communities should not be permitted under any circumstances. (Jervis Bay Regional Alliance)*

#### **Differing opinions on set-aside rules**

NSW Farmers would like to see more flexibility in the set-aside framework while other stakeholders, including environment and community groups, were keen to see stricter rules for set-asides.

The farming sector raised concerns about set-aside ratios. They stated that set-aside area ratios needed to be lower, or that there should be no enforceable set aside ratios. NSW Farmers would like to see set-aside areas provided for through regional conservation targets rather than at a site scale.

NSW Farmers also stated that there should be incentives for the rehabilitation of land. They suggested a 50% discount on set-asides where land is to be rehabilitated. They also recommended that more clearing should be permitted without set-asides and where they are imposed they should be reasonable and workable.

Environment and community groups and individuals stressed that set-asides need to be of equivalent quality of vegetation type as cleared land.

*The set-aside ratios in the codes (1:1 to 1:3) could mean that one hectare of high quality vegetation can be removed and replaced by three hectares of revegetation (i.e. lower quality habitat). Our reading of the codes is that wooded areas with mature trees can be replaced by revegetation areas, e.g. pasture with a few seedlings. (Friends of Grasslands)*

Environment groups, scientists, individuals, councils and Local Government NSW (LGNSW) requested that set-asides be protected in perpetuity.

*The use of set- asides as a mechanism to protect vegetation would be strengthened if set-asides were identified as excluded land under the legislation, providing them with appropriate levels of protection. (LGNSW)*

In contrast, NSW Farmers and individual farmers stated that set-asides should not be in perpetuity. They should be time-bound and not registered on title.

LGNSW also called for a 50% increase for set-asides to be applied to any clearing of over-cleared vegetation types.

## **4.4 LLS Act approval**

The draft LLS Amendment Bill provides for a process for landholders to seek approval to clear native vegetation (where clearing cannot be undertaken in accordance with allowable activities or a code). In these circumstances, the biodiversity impacts of the clearing will be assessed and offset following the same process as those used by other land developers.

### Level of interest

3% of the submissions received commented on approvals required under the LLS Act.

### Key points raised by stakeholders

The main issues raised about the LLS Act approval process related to proposed exemptions, the discounting of offset requirements and the costs associated with the approval.

NSW Farmers and Cotton Australia believed that the cost of biodiversity assessments and offsets would be a barrier to entry into the offsets scheme for farmers. Some individual farmers questioned the ability of LLS to provide support to farmers to implement the reforms and whether it had the expertise to deal with the diversity of farms across the state.

Some local councils, Ausgrid and other service providers (such as Sydney Water) requested exemptions for essential maintenance works.

The environment groups and environmental consultants were of the view that approval for clearing of native vegetation, even on rural lands, should be assessed under the Environmental Planning and Assessment Act 1979 framework not the LLS Act. They were also concerned about the Minister for Primary Industries approving land-clearing applications. These issues are discussed further under Section 7.

## 5. Native vegetation mapping

The exhibition material indicated that a native vegetation regulatory map is being developed to show rural land where:

- » native vegetation clearing can occur without approval
- » landholders need to comply with the Local Land Services Act 2013 (LLS Act)

The native vegetation regulatory map would be used by landholders, Local Land Services (LLS), local councils and other authorities to determine if native vegetation clearing is regulated.

### Level of interest

64% of the submissions received commented on native vegetation mapping.

### Key points raised by stakeholders

#### Widespread concern that final maps were not available

There were many submissions from a wide range of stakeholder groups and individuals that commented on the native vegetation mapping. The vast majority of these submissions, including farmers and local government, expressed concern about not being able to comment on final maps.

*The government cannot ask farmers to sign off on this package without access to the maps. It is not acceptable to release a reform package without the maps. Only the maps will allow landholders to understand how the reforms will actually affect them. (NSW Farmers)*

#### Agency responsibility for mapping

NSW Farmers and a number of individual farmers would prefer the Department of Primary Industries (DPI) and LLS, not the Office of Environment and Heritage (OEH), to develop and maintain the maps.

#### Questions raised about the quality of mapping data

The majority of submissions commenting on the map stressed that the Native Vegetation Regulatory Map needed to be based on accurate and robust data and many questioned whether this was the case.

NSW Farmers and individual farmers requested that an 'incorrect mapping' exemption should be included in the LLS Act to protect farmers when using inadequate maps.

#### Onsite surveys preferable to mapping

There was widespread concern amongst the environment and scientific sectors about the use of remote sensing to develop the maps. These stakeholders stressed that the maps should be based on real data collected by experienced ecologists, not on remote sensing.

*We have serious concerns about the approach of classifying land based on remote sensing data ... We believe that on-farm consultation with professional ecologists and the production of farm plans to guide clearing and restoration – as occurs under the Native Vegetation Act – is a more appropriate and supportive way of managing land ... We note that grasslands and wetlands are problematic for remote sensing mapping methods ... As a result of these inaccuracies, a reliance on segmentation mapping to identify ecological communities is likely to result in serious error, including both false positives and false negatives. (Environment Group Alliance)*

There was also concern that the maps were not suitable for fauna conservation.

*... the entire proposed fauna protection in NSW is dependent on a method that is not designed to detect fauna, let alone conserve it. Maps of Plant Community Types (PCT) and vegetation condition, for the most part, cannot lead to accurate predictions of the presence of faunal species ... these regulatory maps are not an adequate surrogate for fauna conservation. Fauna need their own procedures for survey, and decision-making.' (RZS NSW)*

## 5.1 Categories of land

The Native Vegetation Regulatory map will identify two categories of land in rural areas. Category 1 land will be exempt from the new land management framework, while native vegetation clearing on Category 2 land can occur in accordance with an allowable activity, code or approval under the LLS Act.

### Level of interest

4% of the submissions received commented on the categories of land.

### Key points raised by stakeholders

#### There is interest in a high-conservation area map category

Environment groups, scientists and local councils would like to see high-conservation areas excluded from the mapping. NSW Farmers do not support this option.

*There is a lack of mapping for areas of high-conservation value ... These 'Category 3' areas are supposed to be places where clearing is not allowed because of their high-conservation value, or for other reasons such as their national park status. This mapping improves clarity for land managers by identifying places where clearing would not be approved except under extreme circumstances. They are also areas where the government has a responsibility to invest in stewardship arrangements with those landowners. (The Wentworth Group of Concerned Scientists)*

NSW Farmers believed that an additional layer of 'vulnerable land mapping' would add uncertainty for farmers and suggested that landholders should be provided with best practice guidelines for the management of vegetation on vulnerable lands. Timber NSW suggested that any guidance should be in keeping with the Private Native Forestry guideline.

#### NSW Farmers is interested in an earlier re-growth date

NSW Farmers has concerns that the proposed map will not detect re-growth in regulated areas or non-woody vegetation on unregulated land. That is, NSW Farmers is concerned that the map will not detect some disturbance that has occurred since 1990. They would like landholders to have the ability to attest to an earlier re-growth date for the categorisation of the land.

#### Concern about the mapping of grasslands and wetlands

A broad range of stakeholders including environment groups and farmers were concerned that the mapping capability does not allow for the conservation value of grasslands to be classified.

NSW Farmers recommended that grasslands of unknown conservation value should default to Category 1 (blue) and incentives should be explored to encourage landholders to allow assessment of those grasslands.

Environment groups were also concerned about the process of mapping wetlands. The Environment Defenders Office (EDO) suggested that the mapping of grasslands and wetlands should be reviewed.

*Further consideration should be given to defining 'low conservation value grasslands' and demonstrating how the mapping process will accurately distinguish between high and low conservation value grasslands. (EDO)*

### Development on Category 1 land should not require the application of the Biodiversity Assessment Method (BAM)

The NSW Minerals Council (NSWMC) recommended that where government has made an upfront assessment of an area and found the land does not contain biodiversity values that require protection, that decision should flow through to all forms of development on that land. Specifically, NSWMC recommended that State Significant Development (SSD) mining applications that impact on land mapped as Category 1 land should not be required to apply the BAM in relation to that land.

### Cleared Category 2 land should not be remapped as Category 1

Several submissions raised the concern that Category 2 land, once cleared, could be remapped as Category 1 land, which would reduce protections on that land.

*Regulated land that is successfully cleared under the proposed Land Management Framework will then be re-categorised as Category 1. This will mean that the amount of land that can be cleared without any government oversight will increase markedly over time. (Greens NSW)*

Environment groups also stressed that a process was needed to ensure illegally cleared land was not mapped Category 1.

## 5.2 Mapping method

A detailed method statement describes how the native vegetation regulatory map is prepared. The method statement identifies the particular data sources used, including satellite and aerial imagery, and other mapped layers. The method describes how land is mapped as Category 1 or Category 2. This is based on the history of land use and relevant clearing history of the remaining vegetation cover.

### Level of interest

2% of the submissions received commented on the mapping method.

### Key points raised by stakeholders

#### Stakeholders seek additional clarification and detail on the mapping method

The majority of stakeholders who commented on the mapping method felt that the method document lacked specific detail needed to evaluate the effectiveness of the method. For example:

*... it does not explain how the seasonal cover disturbance image has been used to modify or augment the land use mapping ... it is apparent that some areas mapped as land use 3.2 grazing modified pastures, could include substantial areas of native vegetation which should be classified as Category 2 but is actually classified as Category 1. (ECA NSW)*

*The information provided in the Method document was insufficient to evaluate the efficacy of the scientific methods employed in its development or the adequacy of validation activities ... the assumption that Category 1 land has no conservation assets is flawed. (The Centre for Ecosystem Science, CES)*

#### Issues with map validation

Scientists, environment groups and environmental consultants were concerned that there was no testing of the mapping to validate the categories and that there was a lack of peer review of the mapping method.

The NSWMC and LGNSW suggested that OEHS should seek input from stakeholders (including councils) who hold vegetation mapping to validate and finalise the Native Vegetation Regulatory Map.

## 5.3 Landholder review of the map

Landholders will be able to request a review of the native vegetation regulatory map for their property to ensure land has been correctly categorised.

### Level of interest

1% of the submissions received commented on landholder review of the map.

### Key points raised by stakeholders

#### Extend the right of review to other sectors

Many of the submissions that commented on the landholder map-review provisions felt that the right of review should be extended to other sections of the community, not just the property landholder.

The Environment Group Alliance wanted provisions to allow the public to challenge the maps.

*Given that taxpayers are to subsidise private land conservation efforts to offset clearing, it is our view that taxpayers also receive the right to challenge maps. This is particularly important to ensure that set-asides and offsets funded by public money are afforded adequate protection. (Environment Group Alliance)*

The NSWMC felt that the right to request a review of the map should be extended to holders of mining authorities.

#### Stakeholders have suggestions on how the review process should work

Farmers recommend map reviews should occur at no cost to landowners and requested service guarantees for reviews of the map. Local councils and environment groups sought council input into any map changes and many stakeholders felt that appeals should not be through the Land and Environment Court. These viewpoints are demonstrated below.

NSW Farmers and the farming community wanted to include a service guarantee of 14 days for the processing of landholder map review requests. NSW Farmers would also like to ensure that map reviews should be at no cost to landowners. They also suggested that all re-categorisation of land should be certified by LLS.

Local councils and the environment groups wanted local councils to be involved in providing input to re-categorisation of land and reviewing mapping changes resulting from the review process:

*We recommend a requirement that bodies with local data (such as Councils) be consulted on mapping review processes. There must be controls to prevent pre-emptive clearing or degradation of yellow land before an application to re-categorise as blue is determined. (EDO)*

Environmental consultants, councils and the property industry felt that the ability to request amendments to the maps and appeal against determinations in the Land and Environment Court was problematic and would create uncertainty, conflict and potential inconsistency. They recommended that amendments should not be appealed through court processes, but by independent peer review.

## 6. Native vegetation clearing in urban areas

The Department of Planning and Environment will develop a State Environmental Planning Policy (SEPP) that will apply to land where the Native Vegetation Regulatory Map does not apply. This land will include all Sydney local government areas, the Newcastle local government area and land across the state in urban zones[1], E2, E3 and E4 zones (E zones)[2] and R5[3] zones under Local Environmental Plans.

The SEPP will:

- » require Local Land Services approval and offsets in relation to clearing of native vegetation that is permitted in urban zones without development consent, if the clearing is above the Biodiversity Assessment Method (BAM) thresholds established under the new BC Act
- » establish a new permit scheme for clearing of vegetation identified under Council Development Control Plans (DCPs).

### Level of interest

64% of the submissions received commented on the proposed SEPP.

### Key points raised by stakeholders

#### Further details and consultation required on the SEPP is needed

Many submissions from local councils, environmental consultants and environment groups stated that there was a lack of information on the proposals for clearing in urban areas and further details and consultation were required.

*IACA, the Local Government Tree Resources Association (LGTRA) and several councils with comprehensive urban forest strategies have significant expertise in the area of urban forest and trees planning and management. IACA recommends that these organisations are consulted during preparation of the draft SEPP. (The Institute of Australian Consulting Arboriculturists, IACA)*

#### The role of local councils under the SEPP

In general, councils supported taking on the responsibility of issuing permits in E zones and R5 zones provided that they are supported with adequate resources.

*The inclusion of E zones in the urban SEPP is supported as it excludes these lands from clearing under the codes and provides local government with the opportunity to ensure appropriate clearing controls are implemented. This approach is supported and is an improvement on previous legislation, which did not allow RAMAs to apply. (LGNSW)*

#### Concern about administrative complexity resulting from the proposed SEPP

Environmental consultants, several individuals and some local councils expressed concerns about the potential for the Minister for Primary Industries to regulate clearing of native vegetation in urban areas and about the regulatory complexity of the proposals. Some councils, and elements of the property development industry, did not support the introduction of a SEPP:

*It appears that the removal of trees and native vegetation in urban areas has been taken from the Minister of the Environment and it is proposed to now rest with the Minister for Primary Industries. The ECA strongly oppose this measure and question how urban bushland is related to the primary industries portfolio. (ECA)*

*It is unwise and unnecessarily complex to divide administration of native vegetation, biodiversity, bushland, urban trees and land use planning between three ministers and multiple agencies and numerous pieces of legislation and regulatory instruments. (EIANZ)*

Many local councils and some elements of the property industry did not support the introduction of a new SEPP:

*... a one size fits all approach will not work. Tree management should remain in Council's Local Environmental Plan (LEP) and be supported by its DCP. (City of Sydney Council)*

*The need for a state-based DCP is unprecedented and questioned. DCPs are the responsibility of local government and there is sufficient legislation and environmental planning instruments to guide the preparation of LEPs and the preparation, consideration and determination of DAs.' (JW Planning Ltd)*

### Stakeholders made suggestions for key elements of the SEPP

Environment groups, environmental consultants, local councils and individuals made suggestions for what should be included in a SEPP and/or DCP.

For example, the Environment Defenders Office (EDO) stressed that any new SEPP or DCP must include, and contribute to, state-wide and Local Land Services biodiversity objectives and priorities. Any SEPP should set minimum consultation requirements for local councils and other Part 5 activities that involve clearing trees.

Eurobodalla Shire Council stated that:

*The proposed SEPP must identify clearing that does not require approval, clearing that requires a permit and clearing that requires a Biodiversity Assessment Method assessment and approval under the Local Land Services Act. (Eurobodalla Shire Council)*

Local councils, environment groups and individuals commented on the proposals for Tree Preservation Orders. Some of environment groups and many individuals questioned why local government management of local trees needed to change or why the Local Land Service should be responsible for granting permits.

*WSROC is concerned that the removal of local controls (as proposed in the SEPP) will be destructive, as most urban councils develop policy and procedures for dealing with local matters, especially in relation to tree preservation. This control should remain with local government. (Western Sydney Organisation of Councils, WSROC)*

The EDO thought that the Government should consider standardising a best practice approach to significant tree protection.

## 7. Facilitating ecologically sustainable development

The reforms aim to help deliver ecologically sustainable development in New South Wales. They introduce a new biodiversity offset scheme, an expanded biodiversity certification program and a new Biodiversity Conservation Fund.

### 7.1 Biodiversity Assessment Method (BAM)

The BAM is a new scientific method that assesses the biodiversity impact of a development. It requires proponents to consider ways to avoid and minimise impacts from their development and then calculates an equivalent offset for any residual impacts.

#### Level of interest

8% of the submissions received commented specifically on the BAM.

#### Key points raised by stakeholders

##### General support for a single, consistent assessment method

There was general support for the concept of a single biodiversity assessment method. However stakeholders expressed interest in having a better understanding of the details of the proposed method, and some stakeholders made specific comments on the BAM tool.

*Since 2010 with the introduction of Biobanking, there has been constant churn of different methods and approaches to assessment and offsetting biodiversity impacts. It is vital that this process provides a stable, consistent approach from the Government. To do this the BAM and other elements of the offsets scheme need to be robust and thoroughly tested before being implemented. NSWMC and our members are confident that we can work with the Government to ensure that the process for assessment and offsetting the impacts of development can be made transparent, streamlined and appropriately consider both environmental and economic impacts. (NSW Minerals Council, NSWMC)*

Local councils generally supported the BAM, as did some industries. They welcomed the development of the BAM as a simpler, more transparent process. They supported having a consistent assessment approach, which gives clear offset obligations.

*CCAA expects that the new Biodiversity Assessment Method (BAM) will provide a simpler, more consistent and transparent means of assessing biodiversity and in turn offset obligations. This is preferred over the current approach, which utilises multiple methods for assessing biodiversity leading to inconsistent outcomes. (Cement Concrete and Aggregate Association, CCAA)*

Local Government NSW (LGNSW) wanted the detail behind the BAM calculator and attributes for assessment to be made available to consent authorities to assist them in the decision-making process and ensure that all relevant information has been considered.

##### Need for transparency and regular review of BAM

The mining and property industries and local government sought open and regular review of the BAM and transparency and open access to databases and benchmark data.

*OEH should publicise and commit to a transparent program for reviewing, updating, maintaining and notifying stakeholders in relation to the benchmarks database. Preliminary results should be exhibited and comments sought. (NSWMC)*

##### Concern about the lack of scientific rigour in BAM data sets

A number of scientists and environment groups voiced concern about the lack of scientific rigour in the BAM data sets.

*The BAM builds on existing mechanisms under the Native Vegetation Act 2003. However, the conservation value of native vegetation assessment made in this tool fails global best practice methodologies. For example, the proposed method for determining current risk to 'plant community types' (referred to as threat status groups in the submission guide) has serious omissions of risk factors, with % cleared the only basis for assessment based on different thresholds to the international standard. Global best practice (Keith et al. 2013, Bland et al. 2016) requires consideration of multiple indicators of risk, including decline, degree of restriction of geographic distribution, abiotic and biotic threats (extent and severity). (Centre for Ecosystem Science, CES)*

*Segmentation mapping will be used in the new legislation in the BAM as a first port of call for assessors. This is a serious concern due to the multiple independent validations that have found it to be extremely unreliable at accurately identifying vegetation communities. (National Parks Association of NSW, NPA)*

### Stakeholders want more information and testing on the BAM threshold

There was widespread concern about the clarity of the BAM threshold from all sectors. Local councils and environment groups generally wanted to maximise the environmental values captured by thresholds. Conversely, industry and development groups generally wanted to minimise the environmental values captured by any thresholds.

*The setting of the BAM threshold is one of the main causes of concern for the development industry and UDIA NSW. This issue must be carefully considered so as to avoid restricting development in NSW and further increasing the levels of housing unaffordability... Any clearing of more than 0.5ha of native vegetation will immediately require application of the BAM. This is not appropriate. Further consultation and justification of the rationale behind the use of minimum lot size is required. (Urban Development Institute of Australia, NSW, UDIA)*

*The activation of a threshold based on the size of a property is not biologically meaningful, as it fails to relate to the environmental features that may require protection. As such, EDO NSW does not support any of the BAM threshold criteria and believes that if it is to be used, it should be applied for any clearing above 0.5ha, or any clearing that will affect a threatened species or ecological community, or any clearing on land on the thresholds value map. (Environment Defenders Office, EDO)*

Options for the BAM threshold were part of the exhibition materials. Option A (smallest thresholds) was the most popular of the options. However, there was concern about the ability of any of the thresholds to account for cumulative impacts. Some stakeholders argued for more threshold categories and a greater range of threshold areas. Many local councils wanted input into threshold values maps for their local area. Many stakeholders sought more information and testing of proposed thresholds.

*Greater flexibility in developing and applying thresholds specific to local government areas or regional approaches to thresholds are more appropriate. (LGNSW)*

LGNSW proposed an alternative model to fixed-area thresholds. It would be based on the percentage vegetation cover to be cleared, capped at a maximum hectare size area to be cleared, and avoidance of mapped sensitive-value vegetation. LGNSW also suggested that any proposed thresholds should be tested across councils, or a sample of case studies from previous land-clearing developments should be reviewed to see if the thresholds are reasonable.

The NSW Minerals Council was keen to see a BAM threshold apply for state significant development (SSD) and state significant infrastructure (SSI) assessments. They also recommended more clarity for 'what if any assessment is required in the event that the BAM is not to be applied.' (NSWMC)

### Suggestions were made about the role and requirements of the 'test of significance'

Environment groups had concerns about proposed changes to the test of significance. Local government was concerned about a continued reliance on the test of significance and expressed concern that the test may not be an effective approach for identifying biodiversity impacts.

Environment and community groups, LGNSW and many individuals do not support the removal of the parts of the test of significance that relate to key threatening processes and endangered populations. These stakeholders felt removing key threatening processes would be inconsistent with the objects of the Bill.

*We believe that an assessment of Key Threatening Processes in relation to proposed developments and activities is a crucial component of the Four-part Test of Significance. (RZS NSW)*

EDO recommended that the test more explicitly require consideration of cumulative impacts and include vulnerable ecological communities. In contrast, UDIA felt that vulnerable species should not be considered as part of the test of significance.

The Australian Ecosystems Foundation Inc. wanted the assessment of significance reinstated to a seven-part test, not a four-part test.

### The BAM should assess a broader range of impacts

Environment groups, some local councils and individuals recommended that the BAM should assess a broader range of impacts. They are interested to see mandatory salinity, soil, and water assessment modules included. Environment Institute Australia and New Zealand (EIANZ) suggested that issues of habitat connectivity and corridors are not adequately provided for in the BAM and need to recognise the altitudinal and latitudinal shifts necessary for climate change adaptation.

## 7.2 Serious and irreversible impacts

The biodiversity offset scheme includes the concept of serious and irreversible impacts. These impacts must be avoided for non-major projects (i.e. part 4 development, non-state significant development). Serious and irreversible impacts will be defined in the Regulation. The aim is to prevent impacts that will significantly increase the risk of extinction or jeopardise the long-term viability of threatened species and ecosystems.

### Level of interest

76% of the submissions received commented on the concept of serious and irreversible impacts.

### Key points raised by stakeholders

#### Differing views on the discretion in determining serious and irreversible impacts

The property development industry tended to oppose the fact that development consent would not be granted where there would be a serious and irreversible impact. In contrast, environment and community groups, local councils and individuals were supportive of 'red flags' and wanted less discretion for local councils to determine 'serious and irreversible impacts'.

The property development industry was concerned about what it saw as fundamental changes to planning principles, including ecologically sustainable development and the undermining of strategic planning if serious and irreversible impacts were broadly defined.

*The application of 'serious and irreversible impacts' effectively has the potential to create a new class of 'prohibited development'. That is, even where development may be permitted under a local environmental plan, a consent authority may be stripped of the ability to assess the development proposal on its merits because of a state government regulation. (UDIA)*

*One of the major concerns with this draft bill is the requirement for automatic refusal of a DA under the Environmental Planning and Assessment Act (EP&A) for 'serious and irreversible' biodiversity impacts, without any consideration of the economic and social impacts of a proposal. This goes against the objectives of this Bill but also against the objectives of the current EP&A Act in NSW. (Planning Institute of Australia NSW Division, PIA)*

Environment and community groups, local councils and individuals do not support discretion in the granting of approval where there is serious and irreversible impact.

*The legislation fails to enshrine principles to avoid serious or irreversible impacts. Avoidance of such impacts is discretionary and does not apply to major projects. There are no red lights even where there is risk of extinction. (Kogarah Residents Association)*

*Concern about consent for projects which have serious and irreversible impacts. 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. (Sydney Coastal Councils Group)*

A key local government concern was that the concurrence of the Chief Executive of the Office of Environment and Heritage (OEH) was no longer required for impacts in red flag areas. Local government stakeholders thought that this was a major deficiency of the proposed BAM.

### Serious and irreversible impacts should be considered for all developments

Environment groups, the Royal Zoological Society NSW (RZS NSW), UDIA and many individuals stressed that serious and irreversible impacts should be considered when determining all SSD, SSI and part 5 developments, not just for Part 4 developments.

*An impact is either 'serious and irreversible'; or it is not. The nature of the development has no bearing on the imposition of the impact. (UDIA)*

*The application of the serious and irreversible impacts trigger must be mandatory for state significant development and state significant infrastructure. There must be a refusal to grant consent for SSD and SSI if there are serious and irreversible impacts on biodiversity value. (Individual comment)*

### Stakeholders interested in understanding how serious and irreversible impacts will be defined

Environmental consultants, the property industry, local councils and environment groups made suggestions for how to define 'serious and irreversible impacts'.

*... impacts on all threatened taxa for which habitat loss is a threatening process and all ecological communities for which Australia has yet to meet its Aichi Targets under the Convention on Biodiversity should be deemed as serious and irreversible. (Ecological Society of Australia, ESA)*

The EDO and Ku-ring-gai-Council felt that the term should be 'serious or irreversible impacts'.

The Sydney Coastal Councils Group suggested that the definition should be framed as 'likely to cause serious and irreversible impact' noting that this would be a more precautionary approach.

LGNSW made the following recommendations for defining serious and irreversible impacts, and stressed that the criteria for serious and irreversible impacts should be developed with consent authorities.

*Approval authorities should have discretion to set additional triggers for serious and irreversible impacts on local biodiversity as they see fit. The definition of serious and irreversible impact should include biodiversity values which are unable to be offset. (LGNSW)*

## 7.3 Offset rules

The biodiversity offsets scheme will include a set of rules that govern how biodiversity offsets must be secured to ensure they offset the biodiversity impacts.

### Level of interest

86% of the submissions received commented on the offset rules.

## Key points raised by stakeholders

### Diverse views on the flexibility of the offset rules

The mining and extractive industries and the farming sector welcomed the flexibility of the offset rules. However, they sought more flexibility with regard to the use of conservation actions and with the obligation to seek like-for-like offsets in the first instance. In contrast, environment and community groups and many individuals strongly opposed the extra flexibility in the rules, as they felt the rules would result in reduced environmental protections.

NSW Minerals Council (NSWMC) supported the new offset rules.

*The NSW mining industry is broadly supportive of the offset rules and variation rules set out in the BAM ... The like for like offset rules are appropriate and an improvement on the rules of the Framework for Biodiversity Assessment. (NSWMC)*

The mining and farming industry supported the use of variation rules that allow the offset site to be found anywhere in New South Wales, and NSW Farmers sought more flexibility by not requiring like-for-like offsets in the first instance.

*This will increase the likelihood of being able to locate appropriate offsets. For large scale projects like mining, which may go across IBRA subregions, this is an artificial restriction and can prevent an offset being located that might otherwise be an appropriate match. (NSWMC)*

The Cement Concrete and Aggregate Association (CCAA) was concerned that the offset system might not be flexible enough to ensure industry could meet offset obligations.

*Like-for-like offsets are preferred but not always able to be obtained. As proposed through the variation rules, CCAA considers that options should be available to a proponent, to obtain either another type of offset of similar status or through alternative conservation actions. This is important for the extractive industry because of geographic constraints. (CCAA)*

In contrast, environment groups – including the Nature Conservation Council (NCC), EDO and Total Environment Centre – community groups, local councils and many individuals were strongly opposed to extra flexibility, on environmental grounds.

*Broadening offsets to include similar vegetation types in the locality that have been more highly cleared, or by species that are under the same or greater level of threat, will result in a net loss of the impacted vegetation type or species. (NCC)*

LGNSW and local councils raised environmental and local amenity concerns with the proposed flexibility in the offset rules.

*Local government is cautious about flexibility being built into the offset rules, effectively creating a hierarchy of offsets through the use of variation rules. If biodiversity is to be lost then a high bar should be set regarding acceptable offsets. (LGNSW)*

There was also widespread concern from environment and community groups, environmental consultants, scientists and individuals that offsets and set-asides may be cleared and offset again rather than being protected. Environment groups and scientists also thought it unlikely that the NSW policy as proposed would meet federal legal obligations.

### Mixed support for the option to pay into the Biodiversity Conservation Fund to meet an offset obligation

Environment and community groups, as well as many individuals, had fundamental concerns about allowing proponents to pay money in lieu of directly securing offsets.

*We are extremely concerned that offset obligations can now be entirely discharged by paying into an offset fund or undertaking biodiversity conservation actions. The combination of these factors will lead to a significant reduction in the scale of on-ground offsets that are likely to be required for an individual development and therefore the level of protection afforded to biodiversity in NSW through the BAM. (EDO)*

*Payment into a fund in place of an offset will not compensate for the wildlife displaced and will result in a net loss of habitat. (Illawarra Birders)*

In contrast, the extractive and mining industries, including NSW Minerals Council, Coal and Allied and CCAA welcomed the opportunity to pay into the Fund.

*CCAA supports establishment of the Biodiversity Conservation Fund as a means for which a proponent can discharge their offset obligations. (CCAA)*

LGNSW and many local councils sought triggers in the system to prevent a timelag between a proponent making a payment into the Fund and the Biodiversity Conservation Trust (BCT) retiring an appropriate offset.

#### **Mixed views on using rehabilitated mine sites for offsets**

Environment and community groups, the National Trust and individuals did not want mine site rehabilitation used as an offset whereas the NSWMC welcomed this ability.

*Rehabilitation should be an accepted responsibility for mining companies. Ability to restore vegetation communities of biodiversity value is questionable. (National Trust)*

NSWMC supports the ability to use mine-site rehabilitation as an offset and would like to see the definition for mine rehabilitation extended to include ‘all opportunities to restore, enhance or rehabilitate mined land or mining related impacts directly or indirectly on biodiversity’.

The NSWMC was concerned about the inclusion of the impacts of subsidence in the reforms and wanted it explicitly stated that these impacts are not impacts to which the biodiversity offset scheme and the BAM apply.

## **7.4 General comments on the biodiversity offsets scheme**

The proposed biodiversity offset scheme introduces a consistent approach to assessing and offsetting the biodiversity impacts of development.

### **Level of interest**

98% of the submissions received commented the Biodiversity Offsets Scheme.

### **Key points raised by stakeholders**

#### **Concern the offset scheme will increase the cost of development**

The property, mining, timber and farming sectors all raised concerns about the costs of offsets.

The Housing Industry Association (HIA) stated that the offset rules would have a direct and significant impact on the cost of land development, which will result in increased housing costs. The Property Council stated that mandatory biodiversity offsets would exacerbate the ‘housing affordability crisis’. They recommended that biodiversity offset discounts should apply in locations identified for growth to ensure development can proceed in agreed expansion areas.

Many stakeholders, including NSWMC and UDIA were concerned about the additional costs associated with preparing assessments under the BAM:

*The additional cost burden of preparing a biodiversity assessment under the BAM is considerable. Without the final BAM and calculator this is difficult to assess exactly, but we estimate that a further 10–25% of effort will be required to apply the BAM and produce a Biodiversity Development Assessment Report (BDAR). This is on top of the additional effort that was imposed on industry through the Framework for Biodiversity Assessment (FBA). (NSWMC).*

NSW Farmers raised concerns around offset costs because of the proposal that like-for-like credits are sought in the first instance.

#### **The scheme needs clearer ‘avoid and minimise’ requirements**

Environment and community groups, local councils and individuals all wanted developments to avoid and minimise biodiversity impacts prior to offsetting.

LGNSW stated that offsets should only be used once all opportunities to avoid and minimise the impacts of a development on biodiversity were exhausted.

Environment groups agreed:

*We submit that offsets should be a measure of last resort, especially given the evidence that offsetting often fails to deliver its stated outcomes ... The BAM should therefore contain the ecologically necessary limits to prevent extinctions and allow like-for-like offsets only when opportunities to avoid and minimise impacts have been genuinely avoided. (EDO)*

The BC Bill requires that the biodiversity assessment report must set out the number and type of credits required to offset the residual impacts (i.e. after the design has considered avoid and minimise measures) of a development or clearing. NSWMC is concerned that the term ‘residual impact’ was not defined and their view was that only significant residual impacts should require offsetting. They stated that this was consistent with the Commonwealth Environmental Offsets Policy.

#### **The offsets scheme needs an environmental standard**

Environment, community and wildlife groups, scientists, environmental consultants and local councils voiced the need for the scheme to include a ‘no net loss or better’ environmental standard. Some examples of comments include:

*A legislative standard is needed to consistently apply the offset method, to be consistent irrespective of the purpose for which it is applied (e.g. use the existing ‘improve or maintain’ standard, or move to a ‘no net loss’ standard which is widely accepted around the world). (EIANZ)*

*The changes remove the principle that all land clearing must improve or maintain environmental outcomes. This establishes a dangerous situation for triple bottom line sustainability because it has significant impact on communities, on the economy beyond the farm gate, and on the environment. (Australian Association for Environmental Education, NSW Branch)*

*The reform package must apply a ‘maintain or improve environmental outcomes’ standard to all development. The Bill should include no-net loss provisions for biodiversity. (Ku-ring-gai Council)*

#### **Cumulative impacts need to be considered**

A number of submissions from local government and environment and community groups identified that the cumulative impacts of developments needed to be considered in the scheme.

*Cumulative impact needs to be worked into the mechanics of the BAM framework. (Western Sydney Regional Organisation of Councils)*

*Consideration of ‘high risk of extinction’ should not be judged on one application alone but cumulative applications. (Australian Association of Bush Regenerators).*

#### **Local government needs support to implement the offsets scheme**

LGNSW and many local councils stressed that local government will require assistance in building capacity to deliver the reform package. They identified that a suite of resources including training, guidelines and technical support from OEH, as well as other relevant tools and materials, are needed to assist councils.

Specifically, LGNSW was concerned that councils may require assistance from technical experts to make some complex assessments:

*Given the flexibility proposed in the approval system including the option of discounting offsets, interpreting serious and irreversible impact and applying conditions of consent, councils are seeking an avenue for independent review of a DA by an appropriate expert. Developments could be referred to an independent expert for instances of contentious development, or where councils have limited in-house skills and experience to undertake the assessment. This role would be best undertaken by the OEH. (LGNSW)*

Local councils also highlighted a need for OEH assistance in interpreting the application of the BAM, either informally or by legislating a formal review role for OEH.

UDIA also noted that council staff would require in-depth BAM training.

#### **Too much discretion within the offset scheme, including reducing offset obligations**

Stakeholders were generally concerned about the discretion available to ministers and approval authorities to discount offsets or approve developments with serious and irreversible impacts. However, the property industry welcomed discounting and made suggestions for further discretions.

Environment groups, community groups, the Law Society and many individuals were concerned about the increase in ministerial discretion:

*There is significant Ministerial discretion for both the Environment Minister and Primary Industries Minister under the new laws, including in relation to 'discounting' biodiversity offsetting credits, or approving major projects or biodiversity certificate applications that have serious or irreversible impacts on biodiversity. (Environment Group Alliance)*

Local councils were uncertain about the discretion for consent authorities to lower the offset obligations. Councils requested that if discounting remains there must be clear guidance and criteria for when offsets could be discounted. Councils would also like to understand the requirements and process for the consent authority to publish reasons if they lower the offset obligation.

*LLS or local councils in the position of consent authorities should not have discretion to discount offset obligations (with no requirement for public exhibition). This discretionary power places too much pressure on local consent authorities and could compromise biodiversity outcomes. (Ku-ring-gai Council)*

Shoalhaven City Council suggested that discounting offsets could be used as an incentive to keep offsets in the local area.

The EDO was critical of the process for discounting. Its submission stated that LLS officers did not have the necessary expertise to undertake accurate triple bottom line assessment of impacts.

The property development industry was supportive of discounting. UDIA felt that discounting should be available for matters other than a triple bottom line assessment – for example, restoration of degraded bushland. The Property Council suggested that offset discounts should apply in locations identified for growth to ensure development can proceed in the areas the NSW Government has earmarked for expansion.

#### **Lack of clear linkages to planning legislation**

There was widespread concern across all stakeholder groups that the reforms had not been clearly linked to the existing planning system.

*At present parts of the BC Bill appears to be inconsistent with long standing planning practices and changes mooted for planning legislation which aim to bring the planning system in NSW up to international best practice standards. We suggest that further discussion is required and details provided to ensure compatibility and consistency. (Planning Institute of Australia NSW Division, PIA)*

*The report of the Independent Biodiversity Review Panel highlighted land use planning as a key tool for facilitating effective decision-making for biodiversity and native vegetation. It recommended that biodiversity be integrated into regional strategic plans and proposed that clearing for land use*

*change be approved under the Environmental Planning and Assessment Act 1979. Unfortunately, these recommendations have not been followed in the draft bills and the problem of multiple and overlapping approval requirements will continue in the proposed legislation. (Lake Macquarie City Council)*

#### **Part 5 developments should not be excluded from the offset scheme**

Local councils, LGNSW, environment groups and individuals felt that the new system should not exclude Part 5 applications:

*Council is concerned that Part 5 approvals will be excluded from biodiversity impact assessment. Some Part 5 applications have significant environmental impacts and a similar development undertaken by a private proponent will be subject to a more rigorous assessment and possible offset obligation ... This places Council in a particularly compromised position in the approvals process where we are required to enforce one rule set on private development and another on ourselves as a public authority. (Coffs Harbour City Council)*

## **7.5 Accreditation of assessors**

All BAM assessments need to be carried out by people who are accredited to use the BAM. The accredited assessors will be responsible for assessing sites and generating the required assessment reports. The Minister for the Environment will be responsible for establishing the accreditation scheme.

#### **Level of interest**

1% of the submissions received commented on the accreditation of assessors.

#### **Key points raised by stakeholders**

##### **Suggestions were made about assessor eligibility requirements**

Environmental consultants, scientists, environment groups and local councils made a range of comments on accreditation eligibility requirements and the inclusion of ethical standards in an accreditation scheme.

CES recommended that:

*Only individuals should be eligible for accreditation ... appropriate scientific qualifications, evidence of scientific track record and the scientific integrity of authored biodiversity assessment reports should be a central principle in considering eligibility of persons for accreditation. (Centre for Ecosystem Science, CES)S*

EDO felt that the following skills were required:

*Appropriate implementation of the BAM will require skills in botany, ecology and mapping and any accreditation scheme must ensure that each BAM is completed by an individual or individuals with the appropriate range of skills. (EDO)*

Blue Mountains City Council suggested that assessors be state government employees and Leeton Shire Council suggested that council staff should be given the opportunity to upgrade their qualifications to become accredited assessors, particularly in rural areas where there will be a lack of expertise.

Lake Macquarie Council suggested a tiered approach to accreditation with field experts having the highest accreditation.

The Environment Institute of Australia and New Zealand (EIANZ) proposed that the scheme should include consideration of ethical standards as well as technical standards for the methodology. The Environment Group Alliance agreed that ethical standards should be included in accreditation.

##### **Stakeholders expressed views about who should administer the accreditation scheme**

Stakeholders had a range of views about who should administer the accreditation scheme. Options proposed included consultant groups, independent educational institutions, OEH, local councils and the Biodiversity Conservation Trust.

EIANZ stated that they would be interested in participating in the establishment of an accreditation scheme. They also suggested that the EIANZ certification scheme should be considered when developing the accreditation scheme.

The Ecological Consultants Association NSW (ECA) stated that certification should be delivered by an independent educational institution not an industry body.

EDO thought that OEH should appoint assessors to development projects:

*In order to increase objectivity, independent assessors should be allocated by OEH from a pool of accredited assessors to work on proposed projects. (EDO)*

LGNSW believed that councils should appoint assessors.

*A system could exist whereby the council employs the accredited assessor to undertake the BAM and provide their report to the council for consideration with the DA. All costs associated with such an approach would be recovered from the proponent. (LGNSW)*

Coffs Harbour Council suggested that BCT could act as a broker for accredited assessors.

#### Concern about lack of availability of assessors

Some local councils were concerned that there would not be enough assessors in the local area.

*Concern is raised in regard to the availability of consultants in the locality and potential impact on development if the consultants are not available to service this area. (Gunnedah Shire Council)*

#### Accreditation could be required for all ecological assessments

Stakeholders encouraged the government to support accreditation schemes for environmental consultants undertaking all ecological assessments, not just those following the Biodiversity Assessment Method. For example, Northern Beaches Council thought that accredited assessors should also be used to undertake tests of significance, species impact statements in addition to applying the BAM. There was also interest in accreditation for environmental consultants preparing environmental impact statements.

## 7.6 Biodiversity Conservation Fund

The Bill allows a proponent to satisfy an offset obligation by making a payment into the Biodiversity Conservation Fund, which will be managed by the Biodiversity Conservation Trust. When a proponent makes a payment into the Fund, the obligation to retire biodiversity credits is transferred to the Trust.

#### Level of interest

83% of the submissions received commented on the Biodiversity Conservation Fund.

#### Key points raised by stakeholders

##### Stakeholders are concerned about how the biodiversity credit market will operate

The mining, property development and farming industries expressed some concerns about how the biodiversity credit market will operate.

The NSWMC welcomed the creation of the Fund, provided the offset credit prices would be commercial viable. NSWMC felt that prices should reflect the cost of sourcing offsets and that administration expenses should be minimised.

NSW Farmers stated that the offset scheme, including the Fund and offsets payment calculator, require reform so that the biodiversity credit market is fair and efficient and agricultural development can proceed at a realistic cost.

The property development industry was also concerned about how the market will operate.

*There will need to be consideration of how credits are bought and traded. There is a real issue if a proactive mining company or other singular body can pay extremely large amounts of money for biodiversity sites and influence the 'market'. There needs to be some oversight of the process to ensure developers (including small developers) are able to access 'offsets' (be that land or monetary options), otherwise the affordability of housing may be affected in the longer term in NSW. (PIA)*

*The current scarcity of offsets on the Cumberland Plain and the rapidly escalating cost of offsets (\$2,500 in 2010 to \$17,000+ in 2016) has the potential to ultimately render the BAM unviable ... There needs to be an increase in supply of and a reduction in demand for biodiversity credits ... credits should be permitted from beyond the local bioregion ... no biodiversity credits should be required for low condition ecosystems. (UDIA)*

#### Concern that paying into the Fund will have limited biodiversity outcomes

Environment groups, community groups and many individuals did not support proponents discharging offset requirements by paying money into an offsets fund, without the offsets being identified and secured up-front.

*Payment of money into the offsets fund is inappropriate to the extent that adequate offsets have not already been identified prior to development commencing. (National Trust)*

*No payment should be made into the Offsets Fund until an appropriate 'like-for-like' offset can be identified and that details of all offset agreements be made publicly available. (Wilderness Society)*

LGNSW stressed that payment should be a last offset option:

*Discharging offset obligations through a payment to the BCT should be used as a final option. In these instances, offsets should still be 'like-for-like' where available and sourced locally as a preferred option. Disincentives such as adding a premium for proponents opting to cash in their offset obligations could be included in the offset framework. (LGNSW)*

Most property developers and the mining and extractive sector did support the proposal to allow payment to the Fund to meet an offset obligation.

*BCF provides flexibility in satisfying offset requirements. (Monteath and Powys Pty Ltd)*

LGNSW also thought that the Government should build triggers into the system to prevent a timelag between a proponent making a payment into the Fund and the BCT retiring an appropriate offset.

Some environmental stakeholders, as well as some councils recommended that the Biodiversity Conservation Trust should have the power of compulsory acquisition of land for biodiversity conservation purposes, in the event that no suitable biodiversity offset sites are available. For example, Lake Macquarie City Council recommended that:

*... appropriate legislative mechanisms (potentially including compulsory acquisition) must be available to the BC Trust to acquire adequate land for biodiversity conservation purposes and offsets in the event that suitable biodiversity offset sites are otherwise unavailable; and to ensure that strategically important land can be managed for biodiversity (e.g. land identified as strategic habitat corridors in local and regional plans). (Lake Macquarie City Council)*

## 7.7 Offsets payment calculator

The amount of money a proponent must pay into the Biodiversity Conservation Fund, to satisfy an offset obligation, will be determined by an offsets payment calculator. The Minister for the Environment will make the calculator.

#### Level of interest

1% of the submissions received commented on the offsets payment calculator.

## Key points raised by stakeholders

Submissions raised concerns about the offsets payment calculator including the lack of detailed information about the calculator, its expected complexity and the calculator's role in discounting offsets.

The property development industry noted they could not provide detailed comments due to a lack of information on the calculator.

Local councils were concerned about the lack of detail available in relation to the calculator and questioned its complexity. The NSWMC was also concerned about 'the paucity of information with regard to the calculator', and also noted:

*Calculating a price for every type of biodiversity credit is impractical, maintaining this system will be resource intensive – instead, there should be one species price and one ecosystem price adjusted for three levels of scarcity. (NSWMC)*

The EDO's comments on the calculator included:

*The offsets payment calculator should be adjusted to focus on a costs model in the short-term. The proposed cut off of five trades for ecosystems and one trade for species as an indicator of market price is not acceptable. A premium that reflects the net marginal damage caused by land clearance should be added. Otherwise the financial incentive to avoid clearing of high conservation value land will not exist. (EDO)*

## 7.8 Biodiversity Certification

The reforms aim to expand the existing biodiversity certification scheme and encourage its use to improve biodiversity assessment early in the planning process.

### Level of interest

2% of the submissions received commented on biodiversity certification.

### Key points raised by stakeholders

Councils recognised the potential for biodiversity certification to improve biodiversity outcomes

LGNSW and a range of councils acknowledged the potential for improved biodiversity outcomes through biodiversity certification and expressed support for mandatory use of biodiversity certification for certain planning proposals and developments.

*There is likely to be an increased use of the biocertification process. This has the potential to reduce the frequency of site-by-site biodiversity assessments considered by Council, shifting the focus to broader assessments undertaken earlier in the planning process. Landscape approaches such as biocertification are considered best placed to consider cumulative impacts, and allow impacts and offsets to be considered in a strategic manner. Therefore, increased use of such processes is supported, provided that they are based upon robust ecological data. (Liverpool City Council)*

LGNSW suggested that a formal requirement to consult with councils should be built into the process of non-strategic certification of land.

### Planners and developers support option for proponents to apply for biodiversity certification

Planners and developers supported the proposal to allow proponents to apply for biodiversity certification, however other stakeholders raised concerns about whether this was an appropriate option.

*HIA is extremely supportive of the retention of the biodiversity certification process for land. This approach aligns with HIA's position that there should be truth in zoning whereby land zoned for residential purposes is not subject to later re-assessment for environmental constraints that could have*

*been clearly identified prior to that zoning being granted ... land zoned for residential purposes should be free of limitations due to the existence of threatened species. (Housing Industry Association, HIA)*

The Law Society of NSW did not support landowners being able to apply for biodiversity certification. They suggested that the Bill should clarify and restrict the types and sizes of land to which biodiversity certification may be sought to retain the focus on regional and landscape scale certification.

Some local councils were concerned about the proposal to allow developers to apply for biodiversity certification directly.

### Complexity and upfront costs a barrier to biodiversity certification

Submissions from local councils suggested that upfront costs associated with the assessment and securing of offsets remain a barrier. Newcastle City Council and the Western Plains Regional Council both commented that they were supportive of strategic biocertification but noted that it remains a complex and expensive process.

### Stakeholders concerned biodiversity certification can access a broader range of conservation measures

Environment groups and local councils were concerned that biodiversity certification proposals do not need to meet the current 'improve or maintain' standard. They were also concerned about the broader range of conservation measures available under biodiversity certification to offset the impacts of development.

The EDO was of the view that biodiversity certification requires additional safeguards, including mandatory information standards, requirements for public participation, clear mechanisms to deal with adaptive management and monitoring, auditing and reporting requirements.

A submission from an academic at the University of NSW raised a concern about the assumption that biodiversity does not change once an area is certified:

*The need for a degree of certainty in the planning process is a justifiable reason for bio-certification. However, the nature of the real world is such that there are dangers if that certainty is viewed as being absolute and unchangeable. Bio-certification does not take into account the wider reasons for a holistic approach to biodiversity, but even in the context of the threatened it does not account for environmental change nor the presence of unknown species. (Academic)*

## 8. Conserving biodiversity on private land

The NSW Government has committed \$240 million over five years to invest in private land conservation (PLC), and \$70 million a year ongoing subject to performance reviews. A new Biodiversity Conservation Trust will deliver this investment on behalf of government by working with landholders to establish private land conservation agreements. A Biodiversity Conservation Investment Strategy made by the Minister for the Environment will guide the Trust.

### 8.1 Private land conservation agreements

The new approach to private land conservation collapses the existing seven different types of conservation agreements into three tiers of voluntary private land conservation agreements.

#### Level of interest

71% of the submissions received commented on the proposed private land conservation agreements.

#### Key points raised by stakeholders

##### Investment in private land conservation welcomed but funding is inadequate and not guaranteed

Most environment, community and wildlife groups, local councils, scientists and many individuals welcomed the investment in private land conservation but called for an ongoing funding commitment from the Government.

*While I applaud the establishment of funding for stewardship payments to manage land for biodiversity outcomes, it appears that the funding for this is not secure, but is subject to political whim. (Individual comment)*

The Wentworth Group welcomed the investment in private land conservation but was concerned that the money would be spent on compensating for broadscale clearing:

*While this program is a most welcome initiative, instead of providing financial support for landholders to restore degraded land and manage land with high conservation values where land clearing is not permitted, it will instead require NSW taxpayers to compensate for the additional land clearing that will result from the weakening of existing clearing controls. As such, it is a taxpayer subsidy to farmers to degrade land. (Wentworth Group of Concerned Scientists)*

NSW Farmers welcomed the funding for private land conservation but stressed that more funding would be required to ensure that all landholders who deliver biodiversity benefits are paid.

Timber NSW also believes that the funding for PLC is inadequate:

*Based on the government's [funding] commitment ... we estimate this could provide sufficient funds for the management of up to five per cent of the native vegetation in private ownership. A private land conservation network of this scale and type will never qualify as a comprehensive, adequate, and representative (CAR) reserve system. This expenditure sits within the context of an approach that does not explicitly counter major common threats to biodiversity, nor address native vegetation health and productivity issues. (Timber NSW)*

The Urban Development Institute of Australia, NSW (UDIA) raised the issue that organisations administering the agreements must be appropriately resourced:

*OEH needs to be sufficiently resourced and funded to reduce the time delays and additional costs associated with this process. (UDIA)*

The National Parks Association NSW (NPA NSW) stressed that:

*As much of the Trust's function is acting on behalf of developers to find offsets, this administration and establishment budget should be entirely separate to the announced funding for private land management. (NPA NSW)*

##### Concern about the reserve network based on small holdings

Some submissions were concerned that the proposed private land conservation program would lack overarching strategic outcomes due to the small and fragmented nature of the protected areas. For example, Timber NSW questioned the general policy approach to private land conservation:

*In principle, we endorse compensation of private landowners to reserve their otherwise productive land or undertake special land management services for conservation purposes, including active and adaptive management. In practice, we are concerned that the reform package may be overly focused on the creation of a network of protected reserves made up of a myriad of small holdings, each with its own management plan and publicly administered stewardship payment arrangements. We question the efficacy and workability of such an approach. (Timber NSW)*

##### Monitoring and reporting is important for all agreement sites

All stakeholder groups were keen to see strong monitoring and reporting for private land conservation.

The Environment Defenders Office (EDO) thought that Biodiversity Stewardship Agreements established to offset loss should be called Biodiversity Offset Agreements and that all agreements should include mandatory monitoring, reporting and auditing requirements. The scientific sector also stressed the need for monitoring and reporting for agreements.

*Monitoring of biodiversity is an important part of private land conservation, not just monitoring of biodiversity credit-generating actions. This key element is missing from the legislation and further evidence of the focus on development rather than conservation generating actions. (RZS NSW)*

##### Issues were raised about terminating conservation agreements

Environment groups, scientists and many individuals thought that any conservation agreement should be in perpetuity unless the agreement states otherwise or is terminated with the consent of all parties.

*AMRI strongly suggests reconsideration of the sections relating to biodiversity stewardship sites, conservation areas and wildlife refuges on the basis that they lack longevity and can be overturned on non-scientific grounds. Current wording of the Bill confers on the Minister the power to revoke any of these arrangements if they are required for mining. This effectively renders the sites as no more than temporary conservation zones. (Australian Museum)*

EDO felt that Biodiversity Stewardship Agreements should have effect in perpetuity. It does not support the concept of 'offsetting an offset site' and would prefer to see that Biodiversity Stewardship Agreements for an active offset site can never be terminated.

Local Government NSW (LGNSW) suggested that Biodiversity Stewardship Agreements should go on s149 certificates.

##### Transitional arrangements for existing agreements need to be developed

Some submissions were concerned about the lack of clarity on transitional arrangements for existing agreements. In particular, there was concern that existing conservation agreements could be upgraded to biodiversity stewardship agreements, to offset development impacts. Some stakeholders felt that this would result in a net negative outcome for the environment.

For example, the NSW Greens welcomed the additional funding but questioned whether the new regulations would allow the conversion of existing stronger private conservation agreements to offset development despite already being protected.

The Caldera Environment Centre was also concerned about the protection of current conservation agreement sites:

*The bill does not prohibit the potential conversion of a former covenant to a development offset (i.e. converting a Conservation Agreement to a Biodiversity Stewardship Agreement). This is currently prohibited under legislation. This loophole could allow a future owner of your covenant property to cash it in to offset land clearing elsewhere. (Caldera Environment Centre)*

#### Differing views about how Stewardship Agreements relate to the mining industry

Environment groups and the mining sector have opposing views about how Biodiversity Stewardship Agreements relate to mine developments.

The NSW Minerals Council (NSWMC) was keen to ensure that:

*... a Biodiversity Stewardship Agreement cannot be granted over land that is subject to any mining or prospecting authority, or a mining purpose (where a mining lease may not be held), without the consent of the authority holder or the person carrying out the activity. (NSWMC)*

NSWMC is also concerned that government has not attempted to address the mining industry's concerns about biobanking Agreements:

*... despite the fact that the mining industry is probably the largest owner of offsets in NSW, no attempts have been made to address the industry's concerns about Biobanking Agreements. The Government's proposed Biodiversity Stewardship Agreement (BSA) appears to be a facsimile of the Biobanking Agreement, repeating all of the industry's concerns about the additional costs for industry. (NSWMC)*

In contrast EDO believed that:

*Mining should not be undertaken on land subject to a Biodiversity Stewardship Agreement or a Conservation Agreement or on a Wildlife Refuge where the land includes declared AOBVs or threatened species, populations or ecological communities, or their habitats. (EDO)*

#### Differing opinions about rate rebates for biodiversity stewardship sites

NSWMC welcomed the exemption of lands subject to Biodiversity Stewardship Agreements from local land rates. However, LGNSW asks that agreements continue to be tenure blind:

*LGNSW does not support the provision of rate rebates for land subject to a conservation agreement unless councils are reimbursed for this loss of rating income. (LGNSW)*

#### Lack of consultation with existing private land conservation agreements landholders

Environment groups and some individuals stressed the importance of consulting with landholders with existing private land conservation agreements.

*The importance of consulting with landholders already engaged in private land conservation, particularly those who have done so in-perpetuity through a Conservation Agreement signed with the NSW Minister for the Environment, has been repeatedly expressed. We know that this consultation has not occurred, and as a result the views of those most affected by the proposed changes have been ignored. (Environment Group Alliance)*

## 8.2 Biodiversity Conservation Trust

Part 10 of the Biodiversity Conservation Bill (BC Bill) establishes a new Biodiversity Conservation Trust (BCT). The Trust will be a statutory body representing the Crown. The Trust's objective is to protect and enhance biodiversity. The functions of the Trust are to enter into private land conservation agreements and meet offset obligations where proponents make a payment into the Biodiversity Conservation Fund.

#### Level of interest

1% of the submissions received commented on the proposed Biodiversity Conservation Trust.

## Key points raised by stakeholders

### Widespread support for the establishment of the Biodiversity Conservation Trust

There was general support for the establishment of the Trust, provided there will be appropriate checks and balances.

EDO noted:

*We strongly support investment in private land conservation for biodiversity outcomes. The source and administration of such investment must be transparent, accountable and strategic. We therefore support the establishment of a BCT, but we have concerns about the rules that will govern how the money is spent for offsetting purposes, and how the BCT might finance 'strategic' bio-certification. (EDO)*

Local government also supported establishing the Trust:

Supports the expansion of the existing framework to form the BC Trust. (Lake Macquarie City Council)

*However, some stakeholders were less supportive. For example, the Environment Group Alliance was unconvinced that the proposed BCT would be able to facilitate private land conservation more effectively than a better-funded government department.*

## 8.3 Biodiversity Conservation Investment Strategy

A new Biodiversity Conservation Investment Strategy will guide investment in biodiversity conservation, and in particular guide the Government and the Biodiversity Conservation Trust in prioritising such investment.

The Strategy will contain principles that will help in identifying priority investment areas and investment in those areas. It will also contain a state-wide map of identified priority investment areas.

#### Level of interest

1% of the submissions received commented on the proposed Biodiversity Investment Strategy.

## Key points raised by stakeholders

### Support for the Biodiversity Conservation Investment Strategy

Local councils, environment and community groups were generally agreed that a Biodiversity Conservation Investment Strategy should be developed. They recommend that the strategy should build on existing local, regional and state-scale information with additional work to be undertaken to fill gaps.

*The Biodiversity Conservation Investment Strategy for identifying priority investment areas is critical for CAR [comprehensive, adequate and representative system of protected areas] principles particularly for over-cleared landscapes such as the Darling Riverine Plain. (Northern Inland Council for the Environment Inc.)*

Natural resource management stakeholders recommend that government should use the Investment Strategy to establish greater landscape connectivity. These stakeholders are interested to see government extending and expanding, with appropriate resource allocations, the current partnership between natural resource management organisations and Local Land Services.

### The strategy should be evidence-based

Environment groups, mining and timber industry stakeholders stressed that the Biodiversity Conservation Strategy needed to be based on strong scientific evidence.

*The Biodiversity Conservation Investment Strategy should be deferred until a comprehensive evidence base is available to inform its development. (Newells Creek Sawmilling Inc)*

*The new Act must ensure that adequate data will be used to prepare the investment strategies. (Ecological Consultants Association of NSW)*

## 9. Protecting native plants and animals

The draft Biodiversity Conservation Bill (BC Bill) proposes a modern way of identifying and protecting threatened plants and animals. It also proposes a new risk-based approach to managing wildlife interactions. These changes are proposed to protect native plants and animals, establish minimum standards of animal care, and maximise public safety.

### 9.1 Threatened species and ecological community listing processes

Under the reforms, threatened plants and animals will continue to be listed by an independent scientific committee. The Biodiversity Conservation Bill introduces some changes to the existing listing framework to make the process more efficient and to reflect international best practice standards.

#### Level of interest

2% of the submissions received commented on the proposed listing process.

#### Key points raised by stakeholders

##### Concern that a nationally harmonised listing process could reduce protection for NSW entities

Environment groups and scientists raised concerns about the proposal to harmonise state and federal listing processes. Harmonisation would use a common assessment method for listing threatened species and ecological communities. Stakeholders were concerned that this might reduce the level of protection provided to entities that are threatened within New South Wales.

The Environment Defenders Office (EDO) commented that any nationally harmonised listing process must ensure that NSW-listed species, populations and ecological communities do not receive less protection within New South Wales and the option to list a local population should be retained.

The Royal Zoological Society, NSW (RZS NSW) mirrored these concerns. RZS NSW wanted to ensure that the process would not result in a reduction of the number of species on the New South Wales lists or enable any outside influence on the listing process for the State.

The Australian Museum stated:

*There are sound scientific reasons for separately assessing the conservation status of a species at State level. (Australian Museum)*

Some community groups were concerned that changes to the listing process would reduce protection for endangered entities:

*In particular, we fear that the Blue Gum High Forests communities currently protected, will lose their status as threatened communities. (Friends of Berowra Valley Inc.)*

#### General comments on the listing process

EDO supported retaining the Scientific Committee to determine listings based on ecological grounds.

There was some concern that the BC Bill does not give vulnerable species and ecological communities the same level of protection as critically endangered and endangered categories.

Also, some environment, community and wildlife groups wanted to retain the option to list local populations.

## 9.2 Saving Our Species

Part 4 of the Biodiversity Conservation Bill allows for a conservation program for threatened plants and animals in New South Wales to be established, reflecting the approach taken by the government's Saving our Species (SoS) program. The government has committed an additional \$100 million over five years to support and expand SoS to deliver more on-ground actions.

#### Level of interest

1% of the submissions received commented on the SoS program.

#### Key points raised by stakeholders

Environment groups, scientists, wildlife groups and community groups were generally supportive of legislating the SoS program but had suggestions for improvements. Some groups indicated concerns with the SoS program.

#### Examples of stakeholder suggestions for improving the SoS program

EDO wanted responsibilities imposed on developers and development decision-makers to act consistently with SoS conservation priorities. It also recommended that SoS sites outside national parks and reserves be declared Areas of Outstanding Biodiversity Value (AOBV).

RZS NSW stated that the SoS and other similar programs needed to be exposed to independent review and have input outside the NSW Office of Environment and Heritage. They suggested that SoS was but one way of allocating funds for conservation. They felt the adequacy of the SoS program and the information it contains have yet to be tested.

The Law Society wanted the legislation to include an obligation for the SoS to maintain and improve the security of threatened species and endangered ecological communities and an obligation to consider and plan for projected climate-change impacts.

#### Examples of stakeholder concerns with the SoS program

The Friends of the Bush-Stoned Curlew stated that they had no confidence in the SoS program and what it can achieve for the species.

Tamworth Regional Landcare Association stated that SoS is the wrong vehicle to fund small projects and the inaccessible nature of the SoS funding may result in poor uptake of funding.

## 9.3 Risk-based framework for managing wildlife interactions

The Biodiversity Conservation Bill proposes a new risk-based approach to managing wildlife interactions that will protect native plants and animals, establish minimum standards of animal care and maximise public safety.

#### Level of interest

2% of the submissions received commented on the proposed framework for managing wildlife interactions.

#### Key points raised by stakeholders

##### Concerns about a risk-based approach to regulating wildlife interactions

Most submissions on this issue were concerned about the proposed move from a wildlife licensing system to a risk-based framework. Stakeholders were concerned that there would be less oversight and compliance, a reduced skill base for carers and reduced monitoring and reporting.

Environment groups and wildlife groups felt that changes to wildlife licensing would mean less oversight.

*Relaxing licencing provisions as they exist today in our view will lead to an increase in harm to and illegal sales of native fauna. (NSW Wildlife Council)*

The Environment Group Alliance believed that the wildlife licensing provisions from the NPW Act should be retained and that codes of practice should be in addition to licensing not a replacement.

WIRES Northern Rivers agreed with this position:

*The proposed loss of 20,000 licences and no ongoing checks will result in wildlife being mishandled by untrained members of the public. The proposed change from a licensing system to an accreditation program completely undermines the work that we do as wildlife carers. Wildlife carers require considerable skill, knowledge, special facilities and continual mentoring to raise or rehabilitate successfully. (WIRES Northern Rivers)*

The Australasian Bat Society stated that:

*The killing of protected species must only occur under licence and the outcomes of the licensing programs must be monitored. (Australasian Bat Society)*

#### Differing views on proposals to regulate rehabilitation providers

There were differing views between the Environment Group Alliance and some wildlife rehabilitation providers on wildlife rehabilitation regulation.

The Environment Group Alliance stated that the sector could be strengthened by improved systems for dispute resolution and additional support to increase volunteer engagement to meet the growing demand for wildlife rescue and care. The Alliance also commented that there was little information about the new code of practice or accreditation scheme for wildlife carers and that the Government should engage closely with the relevant stakeholders.

Wildlife Rescue South Coast opposed any fundamental change to the method of authorising or operating wildlife rehabilitation services in New South Wales.

*It is our conviction that all necessary improvements could and should be made within the existing framework. We see no evidence to suggest that a fundamental shift in the sector is needed, but we perceive a real risk that changes that are not supported by well-established organisations, will negatively impact on the cost effectiveness and quality of services delivered by Wildlife Rehabilitation service providers in NSW. (Wildlife Rescue South Coast)*

Sydney Wildlife stated that there was little information about codes of practice or the accreditation scheme for wildlife carers. An increased reliance on codes of practice would mean there was less monitoring and record keeping, which may encourage the illegal collection of native animals.

#### Kangaroo Harvesting Code

Submissions generally opposed the Kangaroo Harvesting Code for differing reasons. These submissions suggested further consultation was required to finalise a regulatory approach.

*The Code should not be adopted. If kangaroo shooting is to be allowed under NSW law, it should be treated as a high-risk activity requiring significant monitoring and enforcement measures. (Animal Defender's Office)*

The Kangaroo Industries Association of Australia suggested that the proposed changes should not proceed due to a lack of impact assessment, lack of consultation and multiple deficiencies in the code. Voiceless recommends licensing of both commercial and non-commercial killing of kangaroos and suggested that the regulatory framework be developed as part of a separate consultation process.

The Animal Defenders Office (ADO) suggested that the objectives of the Kangaroo Harvesting Code be reordered so that the key objective is to ensure kangaroo harvesting is humane and minimises the pain and suffering of the animal.

## 9.4 Areas of outstanding biodiversity value

Part 3 of the Biodiversity Conservation Bill proposes new provisions that enable areas of outstanding biodiversity value (AOBV) to be identified and protected.

### Level of interest

2% of the submissions received commented on the proposed AOBV concept.

### Key points raised by stakeholders

#### Support of the concept of AOBV

The concept of AOBV was widely supported by environment, community and wildlife groups, environmental consultants, scientists, local councils and many individuals. The mining industry sought consultation on any declarations and the property development industry wanted clear, specific criteria for any AOBV declaration.

*CES recognises that this is an important initiative, is the first of its kind and reflects world's best practice, requires explicit listing criteria and can improve on critical habitat provisions. (Centre for Ecosystem Science, CES)*

*Provisions to declare Areas of Outstanding Biodiversity Value which replace the provisions for listing of Critical Habitat under TSC Act are cautiously welcomed. Critical Habitat listings are chronically underutilised under the TSC Act. The proposed Bill should allow for AOBVs to be far more easily declared and ensure they become no-go zones for development activities. (Ku-ring-gai Council).*

*The criteria for the listing of 'Areas of Outstanding Biodiversity Value' (AOBV) are currently very broad, and there is no requirement to identify the biodiversity values that are the rationale for the listing. Further, there is no indication of any oversight or appeal rights with respect of the declaration of AOBV on land. (UDIA)*

#### Local knowledge should inform determination of AOBV

Local councils sought a mechanism for the inclusion of local knowledge in the process of determining the AOBVs.

*Councils seek mechanisms for inclusion of local knowledge in the process of determining the AOBVs and the opportunity to identify areas for investment. (Local Government NSW)*

#### AOBVs need to be protected

Environment groups and scientists were concerned about the long-term protection of AOBV:

*If AOBVs are to achieve their conservation purpose, they must be categorised effectively as a 'red light' for land clearing under the proposed regime. It should be made clear that no code-based clearing, allowable activities, or development consents (including mining) can occur in AOBV. (EDO)*

*Areas of high conservation value must have absolute permanent protection from land clearing and development. This should be achieved through inclusion in the NSW Reserve System or funded management under a relevant conservation agreement in perpetuity. (Mudgee District Environment Group)*

#### Stakeholders should be consulted before any AOBVs are declared

The NSWMC requested that holders of mining authorities should be provided with notice of any proposed declaration of an AOBV over an area of land to which the mining relates with a period of six weeks notice. The Australian Bat Society thought that the public must be given an opportunity to comment on AOBV declarations.

#### Declarations of AOBVs need to be clear and specific

The Urban Development Institute of Australia (UDIA) felt that AOBV declarations must be open to appeal. They felt the listing criteria for AOBVs were too broad, and they felt that the declarations should be specific about the area the AOBV covers with respect to species, values and/or ecosystems.

The Property Council stated that the replacement of ‘critical habitat’ with the broader AOBV concept may create uncertainty about the ability of developers to act on some approved projects.

#### Mixed views on how AOBV should be determined

Submissions on AOBVs included comments about who should be responsible for declaring an AOBV and comments on suitable eligibility criteria.

Some submissions recommended that the NSW Scientific Committee should be responsible for listing and declaring AOBVs, rather than the BC Bill proposal, which gives the Minister for Environment this responsibility. The Centre for Ecosystem Science (CES), University of New South Wales recommended a process for the declaration of AOBVs:

*The listing process for Areas of Outstanding Biodiversity Value should replicate the existing process for listing threatened species, populations, ecological communities and key threatening processes and by analogy, the Scientific Committee should be responsible for listing and declaration of Areas of Outstanding Biodiversity Value. This would subject the assessment and listing of Areas of Outstanding Biodiversity Value to the same independent, scientifically rigorous process as other biodiversity assets, signalling the Government’s intention for effective implementation. (CES)*

EDO believed that AOBVs must be determined on ecological grounds and not be over-ridden by socio-economic considerations.

BirdLife Australia commented that they have identified important bird and biodiversity areas that could be AOBVs.

*In Australia we have identified 315 Important Bird and Biodiversity Areas (IBAs) – sites of global significance for the conservation of birds and biodiversity – including 45 in NSW. Many of these IBAs have local community groups with dedicated ‘guardians’ who regularly monitor the condition of these sites. We recommend aligning the NSW Government’s current thinking about AOBVs with the IUCN Key Biodiversity Area (KBA) Standard, which is designed to harmonise approaches to the identification of globally important sites for biodiversity. (BirdLife Australia)*

The Nature Conservation Council (NCC) and the Law Society felt that if an area is the habitat of an endangered species this should be a reason for declaring it an AOBV. They also welcomed the provision for AOBVs to be enacted in response to future threats of climate change.

Timber NSW stated that historical or existing land-use activity, particularly regarding private native forestry activity and the socio-economic benefits deriving from it, be taken into account in all decisions relating to the declaration of an AOBV.

## 10. Monitoring and compliance

### 10.1 Monitoring

In accordance with the recommendations of the Independent Biodiversity Legislation Review Panel, the reform package provides for establishment of a new, comprehensive system for monitoring and reporting on the condition (extent and quality) of biodiversity in New South Wales.

#### Level of interest

8% of the submissions received commented on the proposed monitoring regime.

#### Key points raised by stakeholders

##### Calls for improved goals, targets and monitoring

Environment and wildlife groups, councils and many individuals called for the new laws to be closely monitored to assess rates of biodiversity loss. A number of submissions also called for legislation to specify the agency responsible for monitoring.

The environment groups and environmental consultants wanted the adoption of a set of clear, ambitious, state-wide environmental and natural resource management (NRM) goals and targets that are given effect in regional plans.

*The reforms need to set high-level biodiversity conservation and natural resource management goals, more specific targets, and establish a set of state and regional environmental accounts – to make the environment visible in decision-making. (EDO)*

Submissions also raised concerns that the exhibition materials lacked detail about monitoring and reporting. WIRES Northern Rivers stated that they were extremely concerned that the Government has provided little explanation of how the new laws will be monitored in order to determine changes in land clearing rates and whether biodiversity values are enhanced.

*One aim of the Bill is to ‘slow the rate of biodiversity loss’, yet there is no provision for measuring biodiversity loss to assess the aim’s success. Monitoring of species, their populations and factors that affect their status is the only way of measuring this rate of loss, and a key step in halting it. (RZS NSW)*

Submissions called for a legislated process for data collection and management.

*The OEH function of management of the NSW Wildlife Atlas/Bionet should be recognised in legislation to enable appropriate resources to be allocated and to legitimise policies on data management. The ability for the Minister for the Environment to collect, collate and use data to achieve the objects of the Bill should be legislated, including refusal of public access to data that could be reasonably expected to lead to harm or interruption of breeding of threatened species or ecological communities. (Lake Macquarie City Council)*

Stakeholders also have queries and suggestions about who would be responsible for monitoring and reporting. For example, the Sydney Coastal Councils Group asked what role the Natural Resources Commission would have in the implementation, review or auditing of the proposed reforms.

Local Government NSW (LGNSW) commented that monitoring data should be publicly available. The LGNSW submission also suggested that:

*A simple and effective mechanism is needed to ensure data generated in a BAR through any additional assessment work contributes and updates existing biodiversity knowledge and data. The format of a BAR report should facilitate a direct link to appropriate databases. (LGNSW)*

## 10.2 Compliance and enforcement

In response to the recommendations of the Independent Biodiversity Legislation Review Panel, the draft Biodiversity Conservation Bill proposes a modernised and robust risk-based approach to regulation. This approach emphasises education and voluntary compliance, while still giving regulators the tools to take enforcement action against those who do the wrong thing, in a way that is commensurate with the seriousness of an offence.

### Level of interest

9% of the submissions received commented on compliance and enforcement.

### Key points raised by stakeholders

#### Lack of clarity of regulatory roles of agencies

Many submissions indicated that it was not clear which agencies were to be allocated compliance roles.

*The proposed bill will reduce the role of the Environment Minister in important biodiversity decisions, with the primary regulatory role for land clearing sitting with the Local Land Services and Minister for Primary Industries. This will constitute a conflict of interest. In addition the LLS does not have the expertise nor the resources to take on this role. (Daroo Orange Urban Landcare Group)*

*We are concerned over the capacity of LLS to enforce legislation. We recommend that OEHL is fully involved at all stages of land clearing proposals, monitoring, reporting and compliance activities. (Australian Native Plant Society Canberra Region)*

#### Farmers feel investigative powers are too broad

NSW Farmers and many individual farmers stated that the investigative powers included in the draft Bill go above and beyond current investigative powers and beyond the powers of the police. They stated that the provisions would result in landholders being guilty until proven innocent. They want the Bill to include qualifying factors for officers to enter private farmland, including seeking permission from landholders and gaining agency head clearance. NSW Farmers also want the Bill to provide for the right for a person to avoid self-incrimination.

#### Reviewing decisions and appeal rights

Submissions raised queries about what rights stakeholders will have to appeal decisions.

For example, Timber NSW stated that there should be a provision to enable the Primary Industries Minister to seek a review of any decision by the Environment Minister on the basis that social and economic factors were not considered.

The Law Society of NSW wanted the Bill to include rights to request reasons for decisions and open standing appeal rights in relation to licences and other statutory decision-making processes.

The Environment Defenders Office (EDO) believes a third party should be entitled to bring proceedings in the LEC for an order to remedy or restrain a breach of a Conservation Agreement or Wildlife Refuge.

#### Compliance agencies need adequate resources for enforcement

There was a general demand for adequate resourcing to ensure appropriate levels of enforcement.

LGNSW and many local councils stated that ensuring compliance with conditions of consent is time-consuming and costly for the consent authority and that adequate resourcing of councils to undertake this role is needed. Many individuals stated that OEHL and LLS require sufficient resources to implement and enforce the new legislation.

#### Knowledge defence and blanket exemptions should be deleted

Environment groups and many individuals were concerned that the provisions relating to harming animals and damaging habitat require knowledge that their actions would be likely to harm animals or damage habitat. They felt this is a shift from the current provisions.

The Law Society of NSW recommends removing the blanket exemptions for offences (sections 2.1(2) and 2.8(b)) in regard to threatened species and endangered ecological communities.

#### Offences and penalties

The timber and forestry industries thought that the approach taken to classifying clearing offences was too blunt.

*Regulation needs to take account of environmental risk. For example, a very minor Code non-compliance should not be subject to the same maximum penalty as an unauthorised land clearing event undertaken on a large scale. In summary, cl 60 M(1) of the LLSA Bill should be modified to clearly differentiate between high risk clearing activities (above a certain scale), moderate risk activities and lower risk Code or management plan offences. (Timber NSW)*

EDO had a range of comments on the enforcement of Private Land Conservation (PLC) agreements. They believe it should be a strict liability offence to breach a Biodiversity Stewardship Agreement, Conservation Agreement or Wildlife Refuge; or for any person to cause a party to such an agreement to breach that agreement.

#### Onus of proof

Some farmers were concerned that the onus of proof in the draft legislation lies with the person charged with the offence, not on the regulator to prove the offence:

*The onus of proof of reasonable excuse in any proceedings for an offence under this Act or the regulations lies on the person charged with the offence. The burden of proof should not be on the offender. We are all innocent until proven guilty. No exceptions. (Grazier)*

# 11. Other land management and biodiversity conservation reform issues

## 11.1 Public consultation process

### Level of interest

3% of the submissions received commented on the public consultation process.

### Key points raised by stakeholders

#### Incomplete elements of the reform means that the package is difficult to understand

Many submissions from all sectors stressed that it was very difficult to fully assess the reform package without all products and tools being available for comment. For example:

*Much of the information is complex and technical, but it is also incomplete. How the reforms will work in practice cannot be fully understood in the absence of further information, particularly in relation to the Codes. Further consultation with land owners and communities is essential on these details before the reforms are implemented and Council supports the NSW Government's intentions in this regard. (Eurobodalla Shire Council)*

*All details of the proposed Bill must be made publicly available at the same time in order to allow for informed public review and comment. This includes the regulations, codes and the proposed SEPP. (Kuring-gai Council)*

#### Time for consultation inadequate

Almost all submissions from all sectors requested further time to consider the reform proposals.

*The amount of time allocated for public consideration and comment is insufficient to deal with major changes proposed. It is a matter of grave concern that the Baird government is actively suppressing public comment by providing such a short comment period on matters which involve significant complexities. (Australians for Animals, NSW Inc.)*

*It would be a sign of good faith by the government if the consultation process was fairer to the community by providing all the necessary information and a realistic timeframe in which to make a response. The minimum of 28 days is somewhat difficult to achieve and does not allow the community to make a fully considered response to a complicated piece of legislation. (Caldera Environment Centre)*

Local Government NSW (LGNSW) commented that an eight-week consultation phase for such a significant and extensive reform package was considered inadequate by councils to prepare detailed, endorsed submissions.

BirdLife Australia and several other community bird groups wanted the public comment period extended by a period of no less than six months and for it to include genuine engagement of the community in the design of new biodiversity legislation.

#### Complex documentation

The community felt the consultation material was difficult to understand and navigate and that the lack of an email address for submissions was an additional barrier to accessing required information to understand the reforms.

*The information on the website has caused significant confusion for many members. (NSW Farmers)*

The draft Bills represent the most significant changes to biodiversity conservation in a generation. The change will have significant implications for the environment and communities right across NSW. We are concerned that the government consultation process has been flawed and the broad community, including landholders

and environment groups have struggled to understand the proposed changes and engage in the consultation period. (Environment Group Alliance)

## 11.2 Other issues

This report has presented key issues raised in submissions by grouping comments under the main reform elements. A range of issues was raised that do not fit neatly under any of these reform elements. This section of the report summarises these other issues.

### Climate Change

#### Level of interest

87% of the submissions received commented on climate change.

#### Key points raised by stakeholders

Many submissions questioned the lack of reference to climate change in the reform documentation. They stressed that the reforms negated money spent by the Commonwealth on climate change and that the reforms did not meet Australia's international climate change obligations. Submissions also noted the reduced ability of species to migrate to adapt to climate change if land clearing increases.

*SSROC also notes that Australia's carbon emissions reduction is closely tied to the control of land-clearing. Increasing land-clearing would increase our carbon emissions, and contribute to climate change. Given that anthropogenic climate change is a key threatening process identified in the Biodiversity Conservation Bill, the Bill is inherently contradictory. SSROC urges the NSW Government to strengthen significantly the aspects of the reforms that would be likely to result in increased land-clearing. (Southern Sydney Regional Organisation of Councils, SSROC)*

*The regulation must also acknowledge that the distribution of suitable habitat for many threatened species will also likely change due to the impacts of climate change. Provisions need to allow for species dispersal and protection of potential suitable habitat. (Northern Inland Council for the Environment)*

*Threats from climate change must be meaningfully addressed in the legislation. Particularly in relation to flying foxes and changes to forage resource availability due to changes to seasonality of flowering. (Australasian Bat Society)*

### Aboriginal values

#### Level of interest

1% of the submissions received commented on Aboriginal values.

#### Key points raised by stakeholders

Some stakeholders suggested that consultation with Aboriginal communities about biodiversity values should be a key element in the reforms. There were also concerns that the reforms do not support protection of Aboriginal heritage.

The NSW Aboriginal Land Council suggested that there needed to be a better recognition of the role of Aboriginal people in biodiversity conservation including support for the use of traditional ecological knowledge. They also suggested that there should be exemptions for traditional Aboriginal cultural activities.

The Law Society of NSW suggested that consultation with Aboriginal communities and local representative organisations should be enshrined in the legislative processes for identifying status and values of biodiversity and developing conservation actions. The Law Society also stated that it was concerned that:

*Both Bills fail to include any provisions regarding impacts on Aboriginal Traditional Owners' use of land, flora and fauna ... Likewise, there is no provision in the proposed Bills for the right of native title holders to say whether biodiversity stewardship agreements are appropriate in areas where they have recognised Native Title rights and interests. (Law Society of NSW)*

The Wellington Local Aboriginal Land Council expressed concern that the proposals will impact Aboriginal cultural heritage across the state. They stated that there were no safeguards proposed to protect Aboriginal cultural heritage being destroyed through land management activities.

Submissions from individuals noted that Aboriginal scar trees and other items of heritage value would be detrimentally impacted by this legislation.

The National Parks and Wildlife Advisory Committee was concerned about the proposal to transfer travelling stock routes and their management to Local Land Services (LLS) and how this may conflict with Aboriginal access to other crown land, waterways and Aboriginal places.

### Timber harvesting on private land

#### Level of interest

1% of the submissions received commented on timber harvesting on private land.

#### Key points raised by stakeholders

NSW Farmers and Timber NSW requested a review of regulatory arrangements for timber harvesting on private land:

*The Private Native Forestry (PNF) Code of Practice must be administered by LLS. The PNF Code must be reviewed so as to consider PNF as an integrated agricultural management activity. (NSW Farmers)*

### Balancing competing land uses

#### Level of interest

1% of the submissions received commented on balancing competing land uses.

#### Key points raised by stakeholders

Some submissions stated that the proposed legislation strikes the wrong balance between biodiversity conservation and infrastructure development for the mining, property and farming sectors. Many submissions expressed concern that the reforms do not apply equally to mining and other land uses, and several farmers were concerned that they are held to different standards than are required of mining enterprises.

The Royal Zoological Society NSW (RZS NSW) felt that ecologically sustainable development (ESD) is appropriate in legislation related to environmental planning, but not to biodiversity conservation where the aim is to restrain damaging developments, conserve what we have and restore what has been degraded or diminished.

*Reduction in red tape or obstacles for farmers should not come at the expense of the entire State's biodiversity values. (Willoughby City Council)*

## Next steps for the land management and biodiversity conservation reforms

The government aims to introduce the legislation into the Parliament in October 2016.

Subject to Parliament passing the proposed legislation, the government will commence the new laws in stages in 2017.

The government plans to start the full legislative changes from 1 July 2017.

Further consultation on more detailed components of the package will take place before the proposed legislation commences, including:

- » exhibiting the supporting regulation
- » consulting on the Native Vegetation Regulatory Map
- » exhibiting a draft SEPP (Urban Tree Removal) by the end of 2016
- » exhibiting draft instruments such as the Biodiversity Assessment Method and the Land Management Codes from early 2017.

## Attachment A – Acronyms

ADO	Animal Defenders Office
BAM	Biodiversity Assessment Method
BAR	Biodiversity assessment report
BC Bill	Biodiversity Conservation Bill
BCT	Biodiversity Conservation Trust
CCAA	Cement Concrete and Aggregate Association
CES	Centre for Ecosystem Science UNSW
DPI	Department of Primary Industries, NSW
ECA	Ecological Consultants Association, NSW
EDO	Environment Defenders Office
EEC	Endangered ecological communities
EIANZ	Environment Institute Australia and New Zealand
ESA	Ecological Society of Australia
ESD	Ecologically sustainable development
FOG	Friends of Grasslands
HIA	Housing Industry Association
IACA	Institute of Australian Consulting Arboriculturists
LGNSW	Local Government NSW
LLS	Local Land Services
LLS Bill	Local Land Services Amendment Bill
NCC	Nature Conservation Council
NCVA	Nambucca Valley Conservation Association
NPA	National Parks Association of NSW
NSWMC	NSW Minerals Council
OEH	Office of Environment and Heritage NSW
PAWD	Pastoralist's Association of Western Darling
PIA	Planning Institute of Australia NSW Division
PLC	Private Land Conservation
RAMAs	Routine agricultural management activities
RZS NSW	Royal Zoological Society NSW
SEPP	State Environmental Planning Policy
SoS	Saving our Species
SSD	State significant development
SSI	State significant infrastructure
SSROC	Southern Sydney Regional Organisation of Councils
UDIA	Urban Development Institute of Australia, NSW
WIRES	Wildlife Information, Rescue and Education Service
WSROC	Western Sydney Organisation of Councils

