



# The next stage of biodiversity reforms

What you need to know

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# NSW Biodiversity & Native Vegetation Reforms

- 1. Quick refresher: What the reforms will do**
- 2. What's on exhibition?**
- 3. Bio Conservation Regulation:**  
Offsets Scheme, Biocertification, Vegetation SEPP
- 4. Rural Native Vegetation Management:**  
Map, codes, private land conservation
- 5. Questions**



Regent Honeyeater Source: Birdlife Australia

- 1

**Review of biodiversity conservation legislation in NSW**

In June 2014 an independent panel of experts was appointed to conduct a comprehensive review of biodiversity conservation legislation in NSW. The panel released it's final report, with 43 recommendations, in December 2014.
- 2

**“Government commits to implement Panel’s recommendations”**

In March 2015 Government committed to implement all 43 of the Independent Panels recommendations.
- 3

**Draft Reform Package on exhibition**

The draft package of reforms was on exhibition for eight weeks during May – June 2016. The package included the draft Biodiversity Conservation Bill and the draft Bill to amend the Local Land Services Act 2013, as well as other supporting products.
- 4

**Parliament passes new legislation**

On 17 November 2016, the NSW Parliament passed the Biodiversity Conservation Bill and Local Land Services Amendment Bill.
- 5

**Draft Regulations and products on exhibition**

The NSW Government has released draft regulations for the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* as well as a suite of supporting products and tools. Exhibition runs from 10 May to 21 June 2017.
- 6

**Reforms will commence**

Government will continue to develop and refine the regulations and supporting products , following exhibition. The reforms will commence on 25 August 2017.
- 7

**Consultation will continue**

Government continues to develop other supporting products, including the Biodiversity Conservation Investment Strategy and the Native Vegetation Regulatory Map. These products will not commence until we have undertaken further consultation.



# 1. Refresher: The new legal architecture

- **Biodiversity Conservation Act 2016** - This will replace the: *Threatened Species Conservation Act 2003*, *Nature Conservation Trust Act*, and parts of the *National Parks and Wildlife Act 1974* (licensing, offences)
- **Local Land Services Amendment Act 2016** - This will replace the:
  - *Native Vegetation Act 2003*,
  - *Native Vegetation Regulation 2005* and
  - *Environmental Outcomes Assessment Method*. (to maintain or improve biodiversity, soil, water, salinity)
- **Biodiversity Assessment Method** – A single tool to assess impacts
- **Self-assessable rural land clearing codes**
- **Land use map** – This identifies excluded, regulated and unregulated land
- **Priority Investment Strategy and Funding package**
- **Biodiversity Conservation Program** (continues the Saving our Species program)
- **Risk-based tiers of regulation for wildlife interactions**  
(licensing, codes and exemptions)

## 2. What's on Exhibition?

Regulations and other key products to support the Government's new *Biodiversity Conservation Act 2016* and *Local Land Services Amendment Act 2016*, are on exhibition for **six weeks from 10 May until 21 June**.

- Draft Biodiversity Conservation Regulation 2017 and Regulatory Impact Statement
- Draft Local Land Services Amendment Regulation 2017
- Draft Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017
- Explanation of Intended Effect for the *State Environmental Planning Policy (Vegetation) 2017*
- Land Management (Native Vegetation) Code
- Biodiversity Assessment Method (BAM) and BAM tool (Link)
- Accreditation Scheme for Application of the Biodiversity Assessment Method
- Draft Sensitive Biodiversity Values Land Map (Link)
- Serious and irreversible impacts guidance
- Offsets payment calculator (Excel) and User Manual
- Facts sheets and guides

## Strengths

- Funded Private land conservation program (distinct from offsets market)
- No Net Loss standard for the Biodiversity Assessment method (BAM)
- Repeatable scientific method
- Criteria for Areas of Outstanding Biodiversity Value
- New category of sensitive mapped land – excludes codes
- Accreditation & code of conduct for assessors
- Compliance tools & biodiversity monitoring program
- Dugongs & drones

## Weaknesses

- Repeal of Native Vegetation Act and environmental standards that go with it, replaced with Codes
- Heavy reliance on flexible and indirect biodiversity offsets – weaker standards in the BAM and for biocertification
- Conservation gains aren't guaranteed in law, but dependent on funding decisions
- There is significant discretion for decision-makers
- Significant risk of policy failure

## 3. Draft Biodiversity Conservation Regulation

- The Draft BC Regulation fills in the details on key parts of the BC Act 2016:
  - Part 2: Protecting animals & plants
  - 3: Areas of Outstanding Biodiversity Value (e.g. listing criteria)
  - 4: Threatened Species and Ecological Communities
  - 5: Private Land Conservation Agreements
  - 6: Biodiversity Offsets Scheme
  - 7: Biodiversity Assessment and Approvals under Planning Act
  - 8: Biocertification of land
  - 9: Public consultation and public registers
  - Parts 10-14: BC Trust, Compliance, Biodiversity reporting, delegations.
  - Schedule 1: Penalty notices.
  - Schedule 2: Bio Con Advisory Panel.

## Areas of Outstanding Biodiversity Value (Draft Reg, 3.1)

- **Draft Regulation sets criteria for listing AOBVs:**
  - Areas of ‘state, national or global’ importance & ‘significant contribution’
  - Science-based criteria, with very high thresholds for listing
  - Replace ‘critical habitat’ (expanded and carried over)
  - Positive recognition of climate refuges, resilience, education & research
- **Areas for improvement**
  - No formal public nomination process or timeframes
  - No interim protection (e.g. identified but not yet declared)

# Biodiversity Offsetting Scheme

- **Bio Con Act introduces a new Biodiversity Offsetting Scheme and Biodiversity Assessment Method (BAM).**
  - BAM measures loss or gain in native vegetation and habitat loss as ‘biodiversity credits’, i.e. offsets (ecological debt?)
- **BAM report required for many NSW development activities:**
  - All State Significant Development & Infrastructure affecting threatened sp.
  - Local development that meets the BAM threshold:
    - Area of clearing relative to minimum lot size (e.g. 0.25 to 2ha clearing)
    - Any clearing on Sensitive Biodiversity Values Land Map (at Reg 7.3).
    - Opt-in only for Part 5 local infrastructure.
- **BAM largely replaces existing threatened species assessments and biodiversity offsetting methods**
  - Non-biodiversity impacts: still assessed by existing planning law methods

# Serious and Irreversible impact principles

- **Serious and Irreversible impacts** on biodiversity values:
  - Must be refused for local projects (Part 4)
  - Are further considerations for major projects (SSD, SSI) and biocertification
  - Are determined in the ‘opinion’ of consent authority (BC Act).
- Reg. sets **principles** to identify Serious & Irreversible impacts (6.7):
  - ‘...likely to **contribute significantly to the risk** of a threatened species or ecological community **becoming extinct...**’
  - due to further rapid decline, habitat impacts etc.
- Guidance to consent authorities applying principles (on exhibition)
- Chance to suggest other impacts:
  - e.g. consider cumulative impacts; risk of up-listing?
  - Soil, water, salinity impacts

# Meeting Offset Scheme obligations

- Draft Reg sets out **Offset rules** to compensate for impacts predicted in BAM report
- Options include, in any combination (at 6.2):
  - a. Retire **like-for-like** biodiversity credits
  - b. Retire credits under **Variation rules**
  - c. Fund an action [listed in BAM] to benefit species or e. community impacted
  - d. Mine site rehabilitation
  - e. Pay to the BC Fund instead [per the Act s. 6.30].
- Draft Reg then sets out:
  - **Like-for-like offset rules**
  - **'Variation' rules**
  - **Ancillary rules** (TBC: credit types, mine rehab standards, exclusions)
  - Chance to strengthen?

# Like-for-like rules (Draft, 6.3)

- **Like-for-like rules** are technical but quite broad

Offset category	Like-for-like offsetting rule
Threatened Ecological Communities (TECs)	Same TEC in same subregion (or nearby subregion <100km)
Threatened Species Habitat	Same class* of vegetation in same or nearby subregion *there are 99 veg classes in NSW but ~1500 Plant Community Types
'Species credit' species (i.e. Threatened plants & animals not predicted by veg. type/habitat)	Same species, anywhere in NSW (e.g. Koala, Squirrel Glider, all threatened plant species)

## Offset Variation rules (6.4 - 6.6)

- **Problem: Variation rules weaken rules for offset equivalence**
  - EDO NSW: Like-for-like is ‘absolutely fundamental’ to offsets integrity
  - Peer Reviewers (2015): weak offset rules could undermine ‘price signal’ of offsets
- Proponent must first take **reasonable steps** to obtain like-for-like credits:
  - Check register, potential Stewardship sites, list ‘Credits wanted’ (6.5(2))
  - What other steps?
- **Different Variation rules apply to:**
  - Proponents (developers, rural landholders)
  - Bio Con Trust (Fund obligations)
  - ‘Strategic Biocertification’ (Part 8)
- OEH can exclude impacts on species/communities from variation.

## Variation rules for developers (6.4)

Offset category	Variation: if reasonable steps to find like-for-like offsets fail
Vegetation types	Allowable offsets expanded from same veg. 'class' (99 in NSW) to same 'formation' (16 in NSW)
TECs, Threatened Sp. Habitat, other threatened vegetation	Location rules weakened
Hollow Bearing Trees	Can be substituted for <b>artificial hollows</b> (e.g. Superb Parrot failure)
'Species credit' plants & animals (i.e. not predicted by vegetation)	a <b>plant for a plant</b> ; or an <b>animal for an animal</b> ; at equal or higher risk of extinction (in same or nearby subregion) E.g. impacts on koalas can be offset by protecting squirrel gliders

# Biodiversity Certification (Part 8 Act and Draft Reg)

- BC Act expands Biocertification to:
  - Allow private developers to apply (urban/rural)
  - Minimise serious and irreversible impacts (no ‘maintain or improve’ test)
  - New ‘Strategic’ category (looser environmental rules for planning auth’s)
- Draft Regs set out criteria for Minister to declare ‘Strategic’ application (8.2):
  - E.g. land size, regional/district plan, Planning advice, triple bottom line
  - No specific environmental criteria (such as ESD principles)

# Proposed Vegetation SEPP: urban and E-zones – clearing for land uses where Council doesn't require dev. consent

## What?

- New State Environmental Planning Policy (SEPP) proposed for tree-clearing...
- in urban areas and Environmental (E) zones statewide.
- Native Veg. Panel or Council will assess clearing application depending on size.

## Why?

- Address incremental clearing and fill a 'regulatory gap':
  - outside Rural zones
  - where the purpose of clearing **does not require development consent** (e.g. extensive agriculture)

## When?

- If clearing **exceeds BAM Threshold** (clearing size OR sensitive values map):
  - then BAM applies and
  - Native Veg Panel applies LLS Act criteria.
- If clearing is **under BAM Threshold**:
  - Council Development Control Plans apply (tree preservation orders)

# Proposed Vegetation SEPP: Consulting on details

- On exhibition: Dept of Planning's Explanation of Intended Effect
  - No draft SEPP yet
  - DCPs continue to regulate small-scale clearing that doesn't need 'consent'.
  - Clearing allowed under existing SEPPs will continue even once VSEPP adopted
- Govt consulting on the details now, asking:
  - Should NV Panel delegate urban/e-zone clearing decisions to Councils?
  - Should all clearing above BAM threshold require development consent?
    - Panel considerations (s. 60ZG LLS Act) v Council (s. 79C EP&A Act)
  - Should VSEPP set out mandatory exemptions to allow certain clearing?
    - List of exempt clearing raises concerns given recent misuse of 10/50 Code.

## 4. Rural Native Vegetation Management

**Key elements:**

**New maps**

**New codes**

**New panel**

**Private land  
conservation**



# Native Vegetation Regulatory Map

- **Excluded Land (Grey)**
  - urban lands, national parks etc.
- **Category 1 (Blue) – Exempt**
- **Category 2 (Yellow) – Regulated**
- **Category 2 – Vulnerable Regulated Land**
  - clearing subject to additional restrictions including dead veg. or non-native species where vulnerable land (e.g. steep, erodible, riparian)
- **NEW Category 2 – Sensitive Regulated Land (a win)**
  - Code-clearing not permitted, requires NV Panel approval.



# Native Vegetation Clearing Codes

- Invasive Native Species
- Pasture expansion
- Stock fodder – mulga species
- Continuing Use
- PVP Transition Code
- Equity Code
- Farm Plan Code



# Land Management (Native Vegetation) Code 2017

- Aim of the Code:
  - Authorise Clearing on Category 2 – Regulated Lands
  - Require Set Aside areas (in perpetuity, runs with the land – on a public register)
  - Authorise the re-categorisation of land
- Applies to all Rural Zoned Lands – some Crown lands
- Code does **not** apply to:
  - Native veg on Category 2 **Sensitive** Regulated Land
  - Native veg on Category 2 Regulated Land – **Old Growth Forest**
  - Native veg that forms a **Critically EEC**

# Private land conservation

- 3 agreement categories:
  - Biodiversity Stewardship Agreement
  - Biodiversity Conservation Agreement
  - Wildlife refuge
- *Part 5 BC Regulation* – provisions relating to private land conservation agreements
- Public access to the register of set aside areas is unclear



# Summary: key issues for submissions

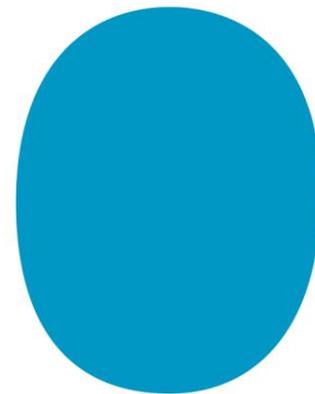
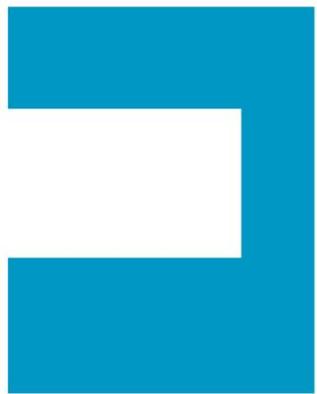
Support the good bits

- Consultant accreditation & code of conduct.
- Offsets Scheme (BAM) threshold will capture significant clearing and cumulative impacts.
- Compliance tools & biodiversity monitoring program
- Funded PLC program (distinct from offsets market)

Recommend:

- Mapping - Expand list of sensitive regulated land to exclude code-based clearing
- Delete Equity & farm plan codes
- Tighten Offset variation rules
- Delete discounting discretions
- Restrict option to pay \$ in lieu of finding offsets (cash for clearing)
- Strengthen standards in BAM & calculator

QUESTIONS?



# Next steps

- Submissions due **21<sup>st</sup> June 2017**
- More info at:  
[www.landmanagement.nsw.gov.au/](http://www.landmanagement.nsw.gov.au/)
- EDO NSW submission will be available at:  
[www.edonsw.org.au/biodiversity\\_legislation\\_review](http://www.edonsw.org.au/biodiversity_legislation_review)

