

15 December 2017

NSW Office of Environment and Heritage
Conservation Programs Branch
Level 12
PO Box A290
Sydney South NSW 2000

By email: lmhc.support@environment.nsw.gov.au

Dear Biodiversity Conservation Trust,

Draft Biodiversity Conservation Investment Strategy 2017 – 2037

EDO NSW is a community legal centre specialising in public interest environmental law. We welcome the opportunity to provide comment on the *Draft Biodiversity Conservation Investment Strategy 2017 – 2037 (Draft Strategy)* and the *Identifying priority investment areas – Supplementary information to the Draft Biodiversity Conservation Investment Strategy 2017 – 2037 (Supplementary Information)*.

The Draft Strategy is an important element of the new biodiversity laws as it will direct investment in private land biodiversity conservation under the *Biodiversity Conservation Act 2016*. During consultation on the legislative reforms, the proposed investment was used by the NSW Government to justify the relaxation of environmental protections elsewhere (especially to land clearing controls under the amended *Local Land Services Act*). It is therefore vital that the investment actually delivers biodiversity outcomes, given the increased clearing that is likely to occur under the new laws. EDO NSW has made extensive submission on the NSW biodiversity conservation reforms – our previous recommendations are published on our website.¹

EDO NSW strongly supports investment in biodiversity stewardship and conservation on private land. We see such investment as an important use of public funds, provided that it is based on genuine ecological need, has appropriate legal protections in perpetuity to deliver biodiversity outcomes, and is not simply subsidising landholders for not clearing land they never intended to do.

This submission provides feedback on the strategic context, proposed principles for identifying priority areas and for investment in the Draft Strategy, and on the Supplementary Information.

¹ See: http://www.edonsw.org.au/biodiversity_legislation_review

Draft Strategy

Part 1 - Strategic context

Part 1 of the Draft Strategy sets out the strategic context.

We support a 20 year vision - 2017 to 2030 - provided that the strategy can be updated and amended as new information (including newly recognised species and ecological communities) comes to light, and to take into account biodiversity impacts across the state as the new land clearing laws roll out.

In terms of how the Draft Strategy complements other programs, we recommend that there be more detail provided – for example, in terms of how the Draft Strategy interacts with the *Draft NSW National Parks System Directions Statement*.

We support the purpose and objectives (Figure 1, p3). In particular, we welcome the objective to improve connectivity and build resilience to climate change, as this will be important to counteract increased rural clearing across the landscape. We note that the objective (set out in legislation) to optimise biodiversity outcomes at the bioregional and state scales directs the strategy, but hope that the objectives of the strategy – such as to improve protection of least protected ecosystems - may contribute to delivering outcomes at the local level, and avoiding local extinctions.

The definition of private land conservation includes Crown land (p4). We submit that further detail and transparency is needed if Biodiversity Conservation Trust (**BCT**) funds are to go to Crown land management. It would be preferable to have a separate Crown land protection and conservation management budget, in addition to the \$240 million for private land conservation.

The Draft Strategy recognises a role in terms of contributing to national and international biodiversity commitments, although does not adopt the specific targets (p6). We would support specific targets being incorporated into the strategy, such as the National Reserve System (**NRS**) targets and Aichi target 11 for comprehensive, adequate and representative (**CAR**) reserves in NSW (p7).²

The Draft Strategy consultation questions ask if there are any other commitments that might be relevant (p8). We submit that further consideration needs to be given to the links between private land biodiversity conservation and climate change mitigation from avoided clearing (as a relevant contributor to the NSW goal of net zero emissions by 2050). In doing so, there needs to be clarity around co-benefits, rigorous governance, and accountability for the potential use of funds for dual purposes. We have previously advised on the need for: funding the \$240m private land conservation commitment separately and additional to the NSW Climate Change Fund, and for clear and separate carbon accounting in the land sector to

² This could be addressed by better integration with the *Draft NSW National Parks System Directions Statement*.

promote co-benefits for carbon and biodiversity, while avoiding funding projects that have adverse effects on biodiversity.³

Part 2 - Priority investment areas

Part 2 of the Draft Strategy sets out the process for identifying priority investment areas.

To enhance transparency, a regularly updated map of areas should be required to be published on line (p10).

Principles for identifying priority areas

We generally support the proposed principles for identifying priority areas, and make comments regarding principles 1, 2 and 4 and the use of datasets below.

We recommend that *Principle 1: Areas of high environmental value should be prioritised* should be extended to include:

- major drinking water catchment areas;
- the coastal zone;
- core and potential koala habitat;⁴
- Old growth forest and inland rainforest; and,
- high conservation grasslands.

We strongly support *Principle 2: Areas that improve ecological connectivity and resilience to climate change should be prioritised*. It is not clear how native grasslands have been considered under *Principle 2*, and we recommend this be clarified.

We are concerned that *Principle 4: Areas where high environmental value assets are under the greatest pressure should be prioritised* is misleading as it only really applies in relation to agricultural uses, rather than urban or major project development. Biodiversity at the greatest threat from these impacts is intended to be dealt with by offsetting. The Draft strategy states (p17):

Areas under pressure from clearing for urban and other forms of development will not be prioritised through this process as these areas are expected to have a biodiversity offsets market operating. Indeed, private land conservation investment should generally avoid areas where an active offsets market is in place so as not to impact the efficient operation of these markets.

As noted elsewhere, we have serious concerns about the proposed offsetting system under the new laws. Excluding investment in areas under great threat for this reason pre-supposes successful ecological outcomes for which there is no evidence. We are strongly concerned about the prioritisation of the offsets scheme to deliver

³ See EDO NSW submission NSW Government Climate Change Fund – Draft Strategic Plan – EDO NSW submission, December 2016, available at: http://www.edonsw.org.au/climate_change_energy_policy

⁴ We note that these definitions are subject to change, and may potentially expand, but we strongly recommend interim rules and protection of these areas in the interim.

outcomes.⁵ Based on our expert analysis, it is possible that the new offsets scheme will actually allow a net loss of certain species and communities in areas of high development pressure, rather than contribute to a CAR protected area network. Offsets do not need to be like for like, or be in the area impacted by clearing, so will not deliver outcomes in priority areas. The limited application of principle 4 in this context should be made clear.

In terms of applying principle 4 (p17), if the BCT is only looking at agricultural impacts, Statewide land and soil capability data is not an unreasonable surrogate for clearing pressure, however it ignores current farming trends and landholder behaviour which might drive clearing in some areas or prevent clearing in others, north east NSW for example.

Regarding how the principles will be applied (step 3, p17), it is not clear how the multiple datasets have been combined/weighted to inform application of each principle.

We are also concerned that the approach of using “only Statewide data is used so that equitable comparisons can be made between subregions and NSW Landscapes” (p17) means the BCT is not using best available data but instead using what OEH happen to have. This approach may increase the risk of poorly targeted funding and inability to monitor and audit on biodiversity outcomes. The BCT should be using better local data where it is available.⁶

In summary, the resulting application of the principles and datasets means that the central west sheep-wheat belt is largely priority 1 (map p20). We are concerned that many areas of unique biodiversity with significant clearing pressures (ie, coastal zone) is de-prioritised and therefore dependent on the biodiversity offsets scheme to deliver biodiversity outcomes. To some extent this may be addressed by funding channelled to declared areas of outstanding biodiversity value (**AOBV**), but the AOBV nomination/declaration process is not yet clear. We are also concerned about the willingness of landholders to take up private land conservation agreements in the central West and the exclusion of willing landholders in other parts of the State.

Part 3 – Making Investment decisions

Part 3 of the Draft Strategy identifies investment principles and targets. We provide comment on principles 2, 3 and 4, and the proposed targets below.

In relation to promoting long-term outcomes – *Principle 2: Investment in private land conservation should seek to promote long-term outcomes both for landholders and the environment* - there should be no investment (beyond establishment of wildlife refuges) in agreements that are not protected in-perpetuity. Given the broader

⁵ While we agree that it is appropriate that developers should fund biodiversity conservation in relation to any unavoidable impacts of their development on biodiversity, we have serious concerns about the offsets rules now in place. See EDO NSW submissions on the biodiversity reforms – including on the Biodiversity Assessment Method, and Biodiversity Credit Calculator – available at: http://www.edonsw.org.au/biodiversity_legislation_review

⁶ Also, areas where comprehensive regional data is not available, that region should be identified and prioritised for data gathering.

operation of the new legislation, without a clear principle to this effect, there is no guarantee that investment areas will not be cleared in the future if agreements expire or land changes ownership.

In relation to ensuring complementary investment with other programs – *Principle 3: Investment in private land conservation should complement other government and non-government programs* - we submit that funding under the *Saving Our Species* program that is for works on private land should only be provided where a conservation agreement is also involved.

Regarding *Principle 4 - Investment in private land conservation should support sustainable farming enterprises and promote regional economic benefits and avoid land use conflicts* – we are concerned that 'avoiding land use conflicts' really equates to protecting the areas that would not be otherwise cleared. This strategy and the ensuing investment should constitute a mechanism to invest in the protection of native vegetation based on ecological need, not whether other land uses may be an option. The principle of additionality must also apply – ie, that investment will not be for vegetation that should not be cleared anyway.

In addition, further detail should be provided regarding co-benefits. For example, one reason for low take-up of the previous private land conservation schemes is that landholders did not want to preclude future opportunities for potential carbon credit production. Analysis of genuine co-benefits should be undertaken so more comprehensive advice can be given to landholders considering their options.⁷

Targets

While we have always strongly supported investment in biodiversity stewardship, we are concerned that the targets for diversified investment streams (targets 3 and 4, p30) could inadvertently create potential for political influence and corruption if farming income will be higher for doing something landholders were going to do anyway.

Furthermore, there needs to be monitoring and assessment of actual biodiversity outcomes within the sampled landscapes, otherwise the target is purely quantitative, not qualitative. There needs to be a demonstrated increase in biodiversity *values* as a result of investment, not just in area. This is fundamentally important for the biodiversity regime as a whole given the likely impact of new laws on biodiversity outside of PLC agreement areas. In this context we note the Draft Strategy states in relation to *Delivering the strategy* (p32):

While this strategy sets targets and long-term priorities for private land conservation, the Biodiversity Conservation Trust will be responsive to changes in the landscape when designing programs and setting annual priorities. This may include adjusting annual priorities to respond to projected (or actual) rates of clearing in some parts of the state, or supporting landholders to adapt to the impacts of climate change.

This will need to involve assessment of clearing done under the new self-assessable codes and allowable activities. This data may not be easily accessible.

⁷ We note that this may involve consideration under Commonwealth legislation.

Finally, the targets should be modified/clarified to refer to protected area agreements, rather than private land conservation agreements which include forms of protection which are not in perpetuity. While we support mechanisms such as wildlife refuge agreements, given that they can be terminated at any time, they should not form contributed to achieving the 5 or 20 year targets for protected areas.

Supplementary information

The following comments relate to *Table 2 - Principles and data for identifying high priority NSW Landscapes* (p6):

- *Principle 1: Areas of high environmental value should be prioritised* - As noted, we recommend the definition of high environmental value be expanded to include: major drinking water catchment areas, the coastal zone, core and potential koala habitat, old growth forest and inland rainforest, and high conservation grasslands. Other data sets that are readily available (such as through the SEED portal⁸) and should be used to inform high environmental value areas include those for NSW wetlands, Southeast and Tablelands Regional Plan Corridors, High Environmental Values of the South East Tablelands Planning, and SEPP 26 littoral rainforest.
- *Principle 2: Areas that improve ecological connectivity and resilience to climate change should be prioritised* - There have been a number of corridor mapping projects that could/should have been included from GER to regional council projects. For example, NARCLiM has done climate modelling which shows areas most likely to be impacted and therefore in need of increased protection and corridors.
- *Principle 3: Areas that contribute most towards achieving a comprehensive, adequate and representative (CAR) protected area system should be prioritised* - In relation to 'Proportion of NSW Landscapes permanently protected in the protected area system across public and private land (measure of 'adequacy')', the NPS Directions Statement makes it clear that this does not necessarily indicate adequacy but is an alternative measure that is easier to track. Further, it is unclear what 'NSW Map of areas protected or managed for conservation v1.0', what 'managed for conservation' means and whether it is publically available.
- *Principle 4* – In addition to the concerns raised above that this principle focuses only on agricultural clearing, the data proposed to be used does not capture other diverse threats such as from climate change or other specific types of vegetation under threat such as salt marshes and mangroves.

Regarding Table 3 'High Environmental Value' criteria data description (p6), we note that the datasets for Threatened Ecological Communities are poor, and there does

⁸https://datasets.seed.nsw.gov.au/dataset?q=&topic=Environment&sort=score%20desc%2C%20meta_data_modified%20desc

not seem to be provision to include more accurate local data, or linkages to a strategy to improve data in identified areas of need.

Regarding 'important wetlands' (p7), we note that the current SEPP 14 is being reviewed and remade (subsumed into a new Environment SEPP). We strongly recommend ensuring significant buffer areas around important wetlands.

Finally, the dataset for koala habitat (p7) identifies very little habitat, and provides a really poor representation of important koala habitat.

Thank you for the opportunity to provide this feedback. For further information, please contact (02) 9262 6989 or [rachel.walmsley\[a\]edonsw.org.au](mailto:rachel.walmsley@edonsw.org.au).

Yours sincerely,

EDO NSW

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

Rachel Walmsley

Policy & Law Reform Director EDO NSW