

EDO NSW Briefing Note
Areas of Outstanding Biodiversity Value
under the *Biodiversity Conservation Act 2016*

An area of outstanding biodiversity value (AOBV) is an area with irreplaceable biodiversity values that is of state, national or global importance. AOBVs identify the most valuable sites for biodiversity conservation in NSW outside of the national reserve system. AOBVs are intended to be a 'priority for government investment' and are considered as an 'automatic priority' under the *Biodiversity Conservation Investment Strategy 2018*.

Problem: Despite the fact that the AOBV tool has potential to protect the most important areas of biodiversity in NSW, no new AOBVs have been declared or registered since the *Biodiversity Conservation Act 2016* (BC Act) came into effect in August 2017ⁱ, and no process for community members to nominate AOBVs has been established.

Whilst the BC Act establishes procedural requirements to be followed once an area has been recommended by the Environment Agency Head for an AOBV declaration, the Act does not include any information, guidelines or requirements for nominating an AOBV to the Environment Agency Head.

Solution: We recommend establishing a clear and transparent process for any person to nominate an area to be recommended by the Environment Agency Head as an AOBV. A clear nomination process for AOBVs would be best practice and consistent with the current nominations process for threatened species.

Establishing a clear, efficient and transparent procedure is necessary to clarify how members of the public and other agencies such as Local Land Services (LLS), Biodiversity Conservation Trust and the Scientific Committee should engage with the AOBVs nominations process.

Elements to include in an AOBV nomination process

1. Make explicit that any person can nominate an area for consideration as an AOBV.
2. Establish a process for recommending and nominating AOBVs, including an online form and guidelines,ⁱⁱ that specify information requirements to address the criteria for AOBV established by the BC Act and Regulation, and clearly outline what data, evidence and mapping is required to support a nomination.
3. Set clear timeframes for consideration and Ministerial declaration.
4. Outline the process for the Scientific Committee, Biodiversity Conservation Trust and Biodiversity Conservation Advisory Panel to provide advice to the Environment Agency Head on an AOBV nomination and resulting recommendation, and to the Minister on an AOBV declaration.
5. Clarify the role of the LLS in discussing with landholders and recommending potential AOBVs, including providing landholders with information about financial incentives and assistance.
6. Ensure that any land recommended to the Minister by the Environment Agency Head as an AOBV is mapped as Category 2 – sensitive regulated land in the Native Vegetation Regulatory Map within 2 weeks of receiving the recommendation from the Environment Agency Head.ⁱⁱⁱ

Further background

Purpose of an AOBV

The NSW Government introduced the AOBV tool under the BC Act as a means of addressing a ‘significant gap in legislation.’ The need for strengthened measures to ‘maintain, conserve and restore areas of special biodiversity value’ was highlighted by the Independent Biodiversity Review Panel in 2014. AOBVs are intended to be broader than the ‘critical habitat’ category established under the now repealed *Threatened Species Conservation Act 1995*, as they are not limited to only protecting habitat of threatened species or ecological communities. AOBVs are also intended to protect ‘sites vital for maintaining landscape connectivity, supporting migratory species, sustaining climate refuges or the last known site of a species occurrence.’^{iv}

Criteria for an AOBV

The Environment Minister may declare any area in NSW to be an AOBV if they are of the opinion that:

- The area is important at a State, national or global scale, and
- The area makes a significant contribution to the persistence of:
 - multiple species, or at least one threatened species or ecological community;
 - irreplaceable biological distinctiveness;
 - ecological processes or ecological integrity; or
 - outstanding ecological value for education or scientific research.^v

The declaration of an area may relate to, but is not limited to, protecting threatened species or ecological communities, connectivity, climate refuges and migratory species.

The *Biodiversity Conservation Regulation 2017* sets out further criteria for AOBV.^{vi} The Regulation also establishes that further guidelines on the application of the criteria may be published.

In addition to being a crucial tool in meeting strategic biodiversity conservation goals, AOBVs also complement and strengthen the existing private land conservation network. An AOBV declaration creates financial incentives for additional private land conservation agreements with any landholder whose land is within a proposed AOBV.

For further detail contact (02) 9262 6989.

ⁱ It is noted that ‘critical habitats’ identified under the now repealed *Threatened Species Conservation Act 1995* have been carried across to the new *Biodiversity Conservation Act 2016* as AOBVs. There are currently only four habitats identified in this way: the habitat for the Gould’s Petrel, Little Penguin population in Sydney’s North Harbour, Mitchell’s rainforest snail in Stotts Island Nature Reserve and the Wollemi Pine.

ⁱⁱ The *Biodiversity Conservation Regulation 2017* provides for guidelines to be made that can specify the information requirements. A useful precedent can be found in relation to the threatened species listing process that has background information and guidelines.

ⁱⁱⁱ Land that is recommended as an AOBV to the Minister by the OEH is categorised as Category 2 – sensitive regulated land: *Local Land Services Regulation* clause 108(2)(g).

^{iv} See: Environment Minister’s second reading speech:

<https://www.parliament.nsw.gov.au/bill/files/3357/2R%20Biodiversity%20and%20cognate%20bill.pdf>

^v *Biodiversity Conservation Act 2016* section 3.3.

^{vi} Further criteria are set out in Clause 3.1 *Biodiversity Conservation Regulation 2017*.