

Biodiversity Reforms - Have Your Say
PO Box A290
SYDNEY SOUTH NSW 1232

28 June 2016

Dear Sir/Madam

NSW BIODIVERDIVERSITY REFORM LEGISLATION PACKAGE – SUBMISSION FROM THE COUNCILS OF THE HUNTER, CENTRAL COAST AND MID-COAST REGION

The Hunter, Central Coast and Mid-Coast Region welcomes the opportunity to comment on the proposed Biodiversity Legislation reforms released on 3 May 2016.

The attached submission was developed by the Hunter Councils Environment Division, through an open consultative process with officers and senior managers from the following NSW Local Government Authorities:

- Central Coast Council (formerly Gosford & Wyong)
- Cessnock City Council
- Dungog Shire Council
- Lake Macquarie City Council
- Maitland City Council
- Mid-Coast Council (formerly Gloucester, Great Lakes & Greater Taree)
- Muswellbrook Shire Council
- City of Newcastle
- Port Stephens Council
- Singleton Council
- Upper Hunter Shire Council

Although the region supports the NSW Government's desire to streamline and consolidate biodiversity protection legislation, we do not believe the proposed legislation will achieve its overall stated aims of *"maintaining a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development"*.

The Councils of the region, along with Hunter Councils have a long history of biodiversity protection of our region, and have compiled a significant library of spatial data on species, landscapes and habitats. Since 1996, Hunter Councils has successfully sourced \$19.7 Million dollars from the Federal and State governments to work with member councils on biodiversity and broader sustainability issues, this does not include the many millions of dollars our member councils have been awarded and invested in similar and complementary projects. The introduction of legislation that directly contradicts the proven effectiveness of these conservation efforts is not supported by the councils of the region.

Our region is approximately 35,000 km², with some 4,800 plants and animals, 300 of which are included on State and/or Federal Threatened Species lists. There is also over 30 vegetation communities that are state and/or federally listed as endangered or critically endangered. The region is home to sites of international significance such as The Greater Blue Mountains Area (Wollemi & Yengo National Parks), Gondwana Rainforests of Australia (Barrington Tops National Park), and the Myall Lakes & Hunter Estuary Wetland RAMSAR sites. The region also crosses four bioregion boundaries (North Coast, Sydney Basin, Brigalow Belt South, and New England Tableland).

The region is experiencing growing pressure from mining and residential development, and a number of new regional growth plans being developed (Central Coast and Hunter regions). Any lessening of protection regulations will undoubtedly increase fragmentation, reduce structural connectivity and ultimately allow land clearing, the prime Key Threatening Process to continue that will not only contribute to damaging biodiversity, but also agricultural activities, Councils' economic efficiency and ultimately impact on the State's food security as we move into a carbon constrained economy.

The following submission provides detail on the issues and concerns of the Councils of the region. Key issues we request the Minister consider and address include:

- **Consultation processes and timing for response is inadequate** for the scale of the reforms, especially compared to other reforms currently being undertaken (Coastal reforms, Environmental Planning & Assessment Act, Growth Plans and Local Government Reforms).
- **Removal of explicit environmental standards** such as "improve or maintain" from the legislation, and the reduction and dilution of standards associated with offsetting as the basis for the Biodiversity Assessment Methodology.
- **Complex administrative systems** are still included, and have not addressed issues where this new legislation interacts with the Mining Act, Environmental Planning & Assessment Act, State Environmental Planning Policies, Local Environmental Planning Policies or Development Control Policies.
- **Conflicting legislative instruments** as the Local Land Services Amendment Bill is largely deregulating land clearing which directly reduces the effectiveness and intent of the Biodiversity Conservation Bill.
- **Increased resourcing needs and responsibilities** on local government, yet without the detail provided in Regulations, SEPPs and Guidelines, it is impossible to quantify the quantum of increased responsibilities and impacts on current council planning and compliance management systems.
- **Too much flexibility:** the introduction of the Biodiversity Conservation Fund enabling developers to offset their obligations through a payment, and commence works without any authority (or the Biodiversity Conservation Trust) knowing if the required offsets area available is in direct contradiction to the ESD precautionary principle.
- **Too much discretion:** the Biodiversity Assessment Methodology will provide details of the offsets required for any given development or activity, yet the planning authority has the ability and discretion to discount the offsets, this has the ability to

undermine the system as local politics will ultimately determine offsets, not science and biodiversity conservation requirements.

- **Limited to no ability to gauge, manage or modify processes to respond to cumulative impacts** of clearing and developments. The allowable activity, clearing to codes and clearing in urban areas, coupled with 10/50 regulations, State Significant Infrastructure, State Significant Development and continued Part 4 developments (EP&A Act) mean that an unprecedented amount of land clearing can occur without approval, or mapping, and therefore direct and timely consideration of the cumulative impact of clearing cannot be provided.

We thank the NSW Government for wanting to address inconsistencies and complexities in the legislation as it concerns biodiversity conservation and planning, but feel that the Exposure Bills will be unable to achieve adequate levels of biodiversity conservation, and should be significantly modified to address these concerns prior to being introduced to parliament.

Please do not hesitate to contact Mr. Bradley Nolan (Director Hunter Councils Environment Division) on 02 4978 4024 to discuss any aspect of this submission.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Roger Stephan', with a long horizontal flourish extending to the right.

Roger Stephan
Chief Executive Officer

Detailed Submission

The following submission has been compiled with advice and information from the now 11 Councils of the Hunter, Central Coast and Mid-Coast Region of NSW. Individual member Councils will also submit their own detailed submissions to the legislation. This submission will support and provide regional context for those individual submissions.

General comments on the proposed Biodiversity Conservation Reforms

1. The draft Bill is inconsistent with the principles of Ecologically Sustainable Development (see point 11).
2. Australia is an arid country, with limited arable lands, and one of the highest species extinction rates in the world. The reforms allow land clearing without appropriate consideration to issues of dryland salinity, water quality, structural connectivity and change to landscapes and regions due to predicted climate change. There is a high level of risk for perverse impacts related to land degradation and species and community extinction through the introduction of these reforms.
3. Although the Reforms are accompanied with the promise of \$100 Million through the Saving our Species program and \$240 Million as seed funding to the Biodiversity Conservation Trust for private land conservation, the provision of funds for the first 5-years does not ensure delivery of the objectives of the Bill. The Native Vegetation Act was accompanied with significant State Government investment, and once this was exhausted, there was still a strong legislative basis for conservation activities. Councils are concerned that once the funding is exhausted the State will be left with weak conservation laws that rely largely on self-regulation and a market based mechanism to drive biodiversity value.
4. It is unclear how effectively these reforms will integrate with the Lower Hunter Strategic Assessment, Upper Hunter Strategic Assessment, Draft Hunter Plan, Coastal reforms and the review of the *Environmental Planning and Assessment Act*.
5. There is not enough legislative weight given to avoiding or mitigating impacts to biodiversity. The offset scheme will result in an overall loss of vegetation, habitat and biodiversity at the local scale and regionally. An easy offset process only encourages development to maximise the development area and pay for the impact via land purchase or credits.
6. The inclusion of 'variation rules' to biodiversity offsets undermine the intent and ability of the reforms to conserve biodiversity, communities and species throughout the landscape. It is unclear how the offset rules will ensure clear conservation outcomes when like for like is not found. We believe there is limited ability to find 'like for like' offsets for many communities in the Hunter (due to excessive clearing activities to date), so all clearing in the region now will impact on biodiversity values.
7. The lack of detail associated with the Exposure Bills means there is significant uncertainty about the ability of the reforms to achieve the stated aims, and the

ability for authorities to understand the impact of the reforms on their local landscape and internal resources and responsibilities.

8. There are insufficient requirements and processes to address cumulative impacts on biodiversity loss through development and application of clearing codes through the reforms. Biocertification appears to be the only process for considering cumulative impacts, and this is, by definition, restricted to the area being bio-certified. That said, changes to the Biocertification process that enables developers to source offsets outside of the certification area (or in fact through a payment to the Fund) completely undermine the biocertification process as it was originally intended.
9. The biocertification process (in any form) should be strongly encouraged for planning proposals considered by Local Government, as an attempt to manage and consider cumulative impacts. Where biocertification is not used, the EP&A Act should include stronger provisions for protection of biodiversity and the need to effectively consider cumulative impacts.
10. Disappointingly, the proposed legislation is a missed opportunity to strengthen current legislation and simplify the planning system. Specifically, the proposed bill has not attempted to embed current scientific understanding about ecosystem resilience, climate change, and cumulative direct and indirect impacts. It is unfortunate that Councils were not consulted during the development of the Bill as local authorities are at the forefront of planning and using the existing system.
11. The reforms propose “allowable” land clearing without approval across a significant proportion of the state. Councils have concerns that this will increase fragmentation, and exacerbate issues of habitat loss and human / animal conflict, as seen with current conflict with flying foxes (research is proving many of the issues experienced now, are caused by loss of habitat through land clearing).
12. The Objects of the *Biodiversity Conservation Bill* include a specific reference to “improve and share knowledge, including local and Aboriginal knowledge”, yet there is no clearly articulated action or program within the reform package that will see this as an outcome

Consultation processes and timing

13. Local Government Authorities are a key sector considering their role as strategic planners, approval authorities, managers of community and crown land, developers, and biodiversity conservation managers.

Although the full legislative review process was commenced in 2014, the sector, and the wider community have only been provided eight weeks to review the available documents, attend information sessions, and interrogate the Bills to try to understand their impact on their localities and responsibilities. The review period is overlapping with a number of other reforms including: coastal reforms; regional growth plans; Environmental Planning & Assessment Act; and Local Government reforms which has stretched council resources.

The tight timeframes for review and comment are further exacerbated by the requirement for reports to be developed and tabled to Councils prior to their approval for submission, meaning some councils have only a few days between attending an information session and the development of their submissions to enable them to meet the reporting timeframes for their Council.

Given the complexity and 'on-ground' impact of these reforms, as they relate to both environmental / landscape changes, and council resources, such a constrained consultation period in no way provides adequate time for councils and other organisations to fully interrogate the Bills, and assessment methodologies to understand and quantify the real impact of these reforms.

14. Given there is a significant amount of detail yet to be developed, the full scope of these reforms is, as yet, unknown. Councils and other organisations are unable to adequately identify the real impact of these changes without access to the following information:
 - a. Regulations for the *Biodiversity Conservation Bill*.
 - b. Regulations for the *Local Land Services Amendment Bill*.
 - c. Native Vegetation Clearing SEPP.
 - d. Guidelines for the impact and implementation of the Bills.
 - e. Definitions central to the conservation aspects of the Bills, such as "Serious and Irreversible Impacts".
 - f. Compliance responsibilities of State and Local Authorities.
 - g. Concurrence, approval and rejection abilities and responsibilities for various activities regulated under the Bills.
 - h. Precedence of any legislation or SEPP and the interaction of these Bills with existing legislation and SEPPs.
 - i. Draft mapping associated with the legislation, including the Native Vegetation Regulatory Map and the Areas of Outstanding Biodiversity Value.

Intent, Principles, and Standards of the Biodiversity Conservation Reforms

15. It is unclear how the Exposure Bills will be able to successfully deliver their stated purpose. Clause 1.3 of the *Biodiversity Conservation Bill 2016* states:

"The purpose of this Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development (ESD) described in the Protection of the Environment Administration Act (1991)".

The *Protection of the Environment Administration Act (1991)* requires the following principles to be implemented to achieve ESD:

The precautionary principle — *that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

Inter-generational equity — that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

Conservation of biological diversity and ecological integrity — that conservation of biological diversity and ecological integrity should be a fundamental consideration,

Improved valuation, pricing and incentive mechanisms — that environmental factors should be included in the valuation of assets and services, such as: (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

The overall removal or reduction in environmental standards, increases in unregulated clearing, and reduction to offset standards that will arise from the reforms; will clearly inhibit the ability of any State or Local Authority to achieve ESD.

Furthermore, any local loss of species or biodiversity (as the variant offsetting rules will enable) directly contradicts the principle of inter-generational equity, and Councils are required (by their Charter) to consider cumulative impacts of decisions, but the legislative reforms do not support or actively enable councils to implement this requirement.

16. The removal of the ‘improve or maintain’ standard from the legislation is problematic as this is widely accepted in practice and recommended for inclusion in the Federal EPBC Act review. This is essential in achieving no net loss. Additionally, there are a number of key principles and terms that are currently undefined (or ill-defined) and therefore provide little opportunity to understand how real, conservation will be achieved on-ground. Principles which require further clarification in the legislation are:

- ‘Serious and irreversible impacts on biodiversity values.
- Principles for biodiversity offsets, especially definitions of ‘avoid’, ‘mitigate’ then last resort ‘offsets’.
- ‘Areas of outstanding biodiversity value’. This term is essential to define if these areas are to be given preferential protection and access to private land conservation funding.
- ‘Sensitive values’ for the purpose of creating the sensitive values threshold map.
- ‘Like for like’ biodiversity offsetting.
- ‘Like for similar’ biodiversity offsetting.
- Definition and differentiation between ‘urban’ land, ‘non-urban’ land, and ‘rural’ land.

17. The Bills aim to conserve biodiversity at the State and Bio-region scale, but do not reference the need for regional or local conservation, meaning the application of the various frameworks set up through the reforms could facilitate the local extinction of species and communities, with offsets of these extinctions being provided outside the locality and region, which would provide a net biodiversity loss in areas and as such, is not supported by the region.
18. Clarity is required regarding legislative precedent to clearly identify which legislation and Environment Planning Instruments have precedent over the others. Specific concern is raised regarding interaction with the Environmental Planning & Assessment Act, Mining Act, State Environmental Planning Policies and DCPS (created either under a SEPP or the Standard LEP instrument).
19. The new legislative structure proposed for land clearing is both more complex and less transparent than the existing *Native Vegetation Act 2003 (NV Act)*, especially in relation to approvals. Of particular concern is the separation of provisions between the draft *Biodiversity Conservation Bill 2016*, *Local Land Services Amendment Bill 2016*, and instruments made under the *Environmental Planning and Assessment Act 1979 (EP&A Act)* which is confusing and undesirable. It is likely to lead to inconsistencies between rural and urban areas, and potential gaps and uncertainties in the approval framework.

It is noted that the draft bills do not implement key recommendations of the Independent Biodiversity Legislation Review Panel. In particular, that the assessment and approval of agricultural development involving clearing of native vegetation be regulated under the EP&A Act (Recommendation 1d) and that local environmental plans provide landholders with certainty about which types of agricultural development involving native vegetation clearing require consent (Recommendations 4 & 6). Implementing these recommendations would be preferable to the proposed legislative structure.

It would appear preferable to implement a revised Biodiversity Conservation Bill together with complementary changes to the EP&A Act with the latter including provisions relating to approvals, biodiversity offsets, and biodiversity certification. No changes would then be required to the Local Land Services Act 2013.

Specific concerns with the structure of draft Biodiversity Conservation Bill 2016 are:

- It is unnecessarily complex to divide administration of native vegetation, biodiversity, bushland, urban trees and land use planning between three ministers, multiple agencies and numerous pieces of legislation and regulatory instruments. The role for local government also needs to be clearly identified.
- It is important to clearly differentiate between land use change and planning decisions, and land management decisions. Exempt clearing primarily relates to management whereas approval requirements relate to land use change decisions affecting native vegetation (e.g. buildings, roads and tracks, mining, and changes from grazing to cultivation, etc.).
- The objects of the Bill should refer to conservation of biodiversity and ecological integrity at the site and local scale, as well as bioregional and State scales. This would recognise the importance of landholder management practice and local

government responsibilities. Without recognising local scale biodiversity and decisions, the Bill will not achieve its objects, as it relies on local decisions to contribute to the regional and state outcome.

- The objects of the draft Bill should also recognise the importance of conserving biodiversity and native vegetation to maintain and improve other natural resources such as soils, water quality and quantity, landscape, and to mitigate / adapt to climate change.
- The drafting of the Bill needs review to remove ambiguities and missing definitions for key terms (e.g. 'bioregional', 'biodiversity values', and the relationship between 'environmental assessment' and 'biodiversity assessment' is not clear).
- It would be desirable if biodiversity offsets and biocertification provisions were in the EP&A Act as these are both primarily land use planning tools.
- It is important that local and regional plans prepared under the EP&A Act incorporate biodiversity objectives and priorities as recommended by the Independent Biodiversity Legislation Review Panel (Recommendations 4 & 15).
- The extent of ministerial discretion is too great and appears to extend to areas outside the Minister's direct legislative responsibility, especially in relation to approval for strategic biocertification of planning instruments.
- The bills fail to acknowledge the fact that native vegetation is not just about biodiversity, but also soils, salinity, water quality and balance, carbon sequestration and environmental degradation generally. Integration of these related matters is essential for effective planning, natural resource management and environmental (including strategic) impact assessment.

Native Vegetation Mapping

The Native Vegetation Regulatory Map underpins the entire land management framework of the *Local Land Services Amendment Bill*, and therefore needs to be developed and maintained to a scientifically and statistically high standard. The creation of the Native Vegetation Regulatory Map and the Sensitive Values Map must be developed to the highest quality, and accuracy and finest scale possible to ensure the effective operation of the Bills. Concerns of the region's Councils include:

20. The maps underpinning this legislation need to have scale, accuracy and quality suitable for decision making purposes. Experience in the region suggests that the appropriate scale and accuracy of vegetation maps are limited in their availability and costly in their development. Appropriate maps do not currently exist and therefore there is significant concern about the methodology for developing the current maps, and how they may be misinterpreted in what they describe on ground.
21. The draft mapping has been produced at a State Scale and does not reflect local or regional activity.

22. Draft mapping (data) has not been made available for review.
23. The methodology underpinning the development of the Native Vegetation Regulatory map does not appropriately address a number of issues including (but not limited to):
 - a. Wetland areas, or areas of intermittent inundation
 - b. Native or derived grasslands
 - c. Saltmarsh and similar structural formations.
24. The method for mapping grasslands has yet to be determined. We cannot endorse the current Native Vegetation Regulatory Map methodology, as it is incomplete.
25. Wetland areas, areas of intermittent inundation and saltmarsh mapping should override the statewide mapping (consideration should be given to including the new Coastal SEPP mapping to this mapping product to reflect these values).
26. Finescale local mapping should override the state wide modelling (where available). For instance, the Central Coast and Lower Hunter are fully mapped to a more appropriate scale – these datasets should be incorporated.
27. The maps described for this legislation should be ‘live’ and continually updated with changes in land clearing. New floristic and condition information should also be updated continually. An online system, similar to NSW Land and Property Information's Local Environmental Plans mapping portal, would be appropriate.
28. Impacts of changes should be reported through to Councils and State Agencies as they relate to impacts of cumulative impact and application of allowable activities and Codes of Practice, and any change in land classification from regulated lands to unregulated.
29. The Native Vegetation Regulatory Map provides details only of native vegetation coverage, and does not provide detail or advice on structural connectivity, vegetation condition, or plant community types. Without a full understanding of the value of the vegetation to biodiversity and ecosystem services, we believe the use of the map to essentially pre-approve areas of clearing, will not, and cannot protect biodiversity values across the landscape.
30. The inclusion of land cleared of native vegetation at 1 January 1990 in the Native Vegetation Regulatory Maps as *Category 1: Exempt Land* has serious implications for conservation of biodiversity in the region. Revegetation has been actively pursued and supported throughout the region to provide structural connectivity and habitat to ensure the maintenance of biodiversity. The range of reasons for revegetation from voluntary vegetation, informal offsetting arrangements, conditions of consent, grant programs and strategic zonings will potentially not be captured in the map method statement and further detail is needed. This highlights the concerns over replacing current constraints on regulating land clearing and potential inconsistencies with local policies and controls developed to fill gaps in legislation.
31. A single map across NSW is problematic given different mapping accuracies and methods, different land uses and landscapes, and the wide variation in vegetation communities across the landscape. Mapping is rarely accurate enough and ground

truthing is required to confirm presence of high conservation values to avoid disputes.

The ability to request amendments to the maps, and proposed right of appeal against determinations in the Land & Environment Court, is likely to create uncertainty, conflict, and potential inconsistency in land clearing decisions. A clear review process is required (without the ability for Land and Environment Court appeals). Mapping is essentially a technical process and should be open to review with the supply of more accurate data gathered onsite. In using and interpreting the Native Vegetation Regulatory maps it is unclear whether:

- a. Site based surveys and ground-truthing will be undertaken, and are required for decision-making and compliance. Assessing whether exemptions and codes of practice are being correctly complied with requires site survey.
- b. Issues other than biodiversity are considered in the maps (e.g. salinity, soils, groundwater and surface water, and the role that native vegetation plays in maintaining these).
- c. Land inappropriately cleared in the past (e.g. Soil Conservation Service land capability classes VII and VIII) and protected lands are identified as requiring consent for clearing. On these lands exempt or code based clearing should not be allowed, development should not be permitted and native vegetation should be restored.
- d. How the proposed Native Vegetation Regulatory Map and the proposed Sensitive Values Threshold Map are linked.

The region has raised significant concerns about the proposed land clearing approval changes included in the *Local Land Services Amendment Bill*. Issues are:

32. The removal of RAMAs and replacement with Allowable Activities will increase the allowable clearing in the region. Currently RAMAs allow clearing of 6m from fence lines, whilst the new 'Allowable Activities' increase this distance to 15m. Over a 1km² paddock this is allowing a further 4% clearing of the site based on the current allowance. This coupled with allowable clearing under the management code, efficiency code and equity code – all without LLS approval (only notification) means a significant portion of private lands will be able to be cleared without the legal ability for any authority to intervene. Insufficient time has been provided in this consultation process to run scenarios of potential additional clearing that can occur without approval under these reforms.
33. BAM 'hectare' thresholds are not an appropriate measure of impact. Councils are concerned that the threshold will be abused, such as multiple DAs could be lodged on a site either concurrently or consecutively over a number of years to avoid triggering the threshold. For multiple lots in common ownership, separate DAs being lodged for each lot to avoid triggering a threshold. Similarly, land owners can clear just below the minimum threshold each year resulting in a significant loss of biodiversity and environmental impacts over time. It is not clear how this will be captured.

34. Clearing of EECs should be much more heavily regulated, if not banned. These communities are listed as threatened as their extent is significantly reduced from pre-European times. Utilising a simple, area affected, or % density thinning measure does not take into account condition, viability and connectivity, all of which should be of vital importance when determining the impact of any clearing or thinning of EECs.
35. Protection measures to secure any areas that are 'set aside' should include a mandatory conservation agreement over the affected land, be rezoned to acknowledge the protection of the site (i.e. E2, E3, or E4 Zone) and have management requirements placed on title. Notification should be provided to Councils of all set aside lands, and the Biodiversity Conservation Trust should ensure maps and the Conservation Investment Strategy map is updated with newly protected areas that are included over time.
36. The Councils of the region strongly believe the management of E Zones and R5 Zones should remain in the care and control of Local Government as part of their broader strategic land management responsibilities.
37. Assessing thresholds for clearing should not be made at the property level alone. Broader context is required to understand the habitat value of an area. Much research is available for understanding habitat requirement across landscape and local scales. For example, Doerr et. al. determined that areas of native vegetation need to be at least 10 ha to be viable habitat for a broad range of species. This CSIRO metareview also described the importance of lone trees and small areas of vegetation as stepping stones. A detailed connectivity analysis should inform the Native Vegetation Regulatory Map. Known habitat and connectivity parameters should be incorporated into clearing regulations and codes e.g. clearing should not reduce an area of vegetation to less than 10 ha.

Land Stewardship Framework

The proposed legislative reforms make wholesale changes to land stewardship and the existing Biobanking system. These changes are described as a "simplification of private land conservation", an intent supported by Councils in the region. Unfortunately it is not believed that the framework provided in the Bills will provide the desired outcome, or biodiversity conservation.

38. The limited uptake of BioBanking in the region is associated with (i) private landholders not wanting to 'lock-up their land' in binding agreements; (ii) large upfront costs to determine the biodiversity value of the site; (iii) large upfront deposits needed to fund the management activities; and (iv) Mining Act leaseholders and the Department of Primary Industries (Mineral Resources) refusing to agree to the establishment of a conservation agreement as it may impact on future mining abilities. The proposed changes to the framework have not adequately addressed any of these issues and therefore it is not believed that the desired outcome of the offsets policy will be achieved.
39. If the above holds true, and there is no significant uptake of Conservation Stewardship sites, it could transpire that the Fund will hold a significant level of

offset payments, but no ability to retire these funds into on-ground conservation agreements and management actions.

40. The likely impact of the above in the Hunter, Central Coast and Mid-Coast region is that the biodiversity offsets scheme may be unable to function because either:
 - a. Suitable 'like-for-like' offsets are unable to be sourced because of the lack of sites, and uptake of land containing 'like-for-similar' sites.
 - b. Mining companies and State Agencies will object and take court action against the establishment of biodiversity conservation stewardship sites.
 - c. An alternative negotiated offset action cannot be implemented.
41. The success of the legislation to provide on-ground protection therefore lies with the Biodiversity Conservation Trust, which may have a significant amount of money to invest, but a very limited market, or ability to access funds. Legislation that relies on a third party to meet offset obligations well after the impacts have been experienced by communities, cannot guarantee that the conservation outcomes, or loss of biodiversity and amenity issues experienced by local communities will be appropriately addressed.
42. The *Biodiversity Conservation Bill 2016* should include mechanisms or safe guards to ensure appropriate and timely feedback loops on biodiversity losses, to enable securing of appropriate (both in location and "type" offsets for approved developments.

Biodiversity Assessment Methodology and Biodiversity Offsets

The proposed offset rules are significantly weakened from the existing rules, and therefore not supported by the Councils of the region. Specifically the following points are made:

43. It is believed the application of an area based threshold does not appropriately consider the biodiversity value of a given site, considering:
 - Vegetation present on site (formation, class, community)
 - Quality and condition of vegetation
 - Presence of old growth forest or trees (presence of hollows and habitat)
 - Importance to local and regional structural connectivity

Utilising the area based BAM threshold, without adequate consideration of the above points will facilitate increased fragmentation and loss of important structural connectivity and habitat without any assessment of the value of that loss.

44. Offsetting should always be a last resort, and should not be considered in the initial assessment of a development application when considering impact.
45. The application of variation rules to reduce the requirement of 'like-for-like' offsetting is not supported.

46. The ability of offsets to be found outside of the locality where the biodiversity loss / impacts are experienced is not supported.
47. The ability for proponents to discharge their obligations into a 'Biodiversity Conservation Fund' and commence development without confirmation that appropriate offsets are available is not supported.
48. The ability for determined offset credits to be discounted at the approval stage of development applications is not supported.
49. Anywhere 'Serious and Irreversible Impacts' are determined, development should be rejected, regardless of whether it is a Part 4 Assessment, Part 5 Assessment, State Significant Infrastructure or State Significant Development.
50. Details on what constitutes a 'Serious and Irreversible Impact' need to be provided to adequately guide the consent authority's decision making. The BAM and these reforms cannot be endorsed without this level of detail provided as it is a central biodiversity protection element of the Bill.
51. The belief that as certain credits become scarcer and the market price of these credits increase will protect biodiversity loss is not believed to be true whilst ever the variation rules exist that enable the purchase of 'like for similar', etc.. Nor does this account for developers willing to pay a premium for particular developments. The rules will not preclude the extinction of species or communities.
52. The biocertification standards should not be lessened, i.e. the offset variation rules should not apply, and all offsets should be located within the certification area, as currently required. This will effectively address net loss at the local scale.
53. Data collected from BAMs should be entered into the state Vegetation Information System database. The VIS could feed into the BAM calculator tool to streamline data handling.
54. An assessment of dryland salinity hazard should be considered through section 4.1 with the assessment of geological significance and soil hazard features. This assessment should look at key drivers such as groundwater depth, soil type and over-clearing.
55. Hunter councils recommend that linear sites should be assessed in the same fashion as non-linear sites.
56. A definition of 'high threat exotic vegetation cover' is required (table 4. section 5.4.2)
57. Currently available Species Distribution Models (SDMs) should be referred to when assessing the habitat suitability for threatened species and populations. A large number of SDMs have been produced for the Hunter, Central Coast and Mid-Coast Region and are publicly available. Hunter Councils believe that it is within the State's means to produce SDMs for threatened species, which are already being utilised by Councils to undertake their strategic planning processes.
58. Referring to section 8.2.1.4 of the BAM – insufficient detail is provided as to how a proponent should assess the cumulative impacts of biodiversity values.
59. There are limited types of activities that are described within section 8.2.3 of the BAM, e.g. there is great detail on assessing impacts from wind turbines, but there is

no reference to the impacts from the construction of roads. Assessment of impacts should be standard across each type of activity.

60. The 'streamlined assessment module' does not assess the paddock trees as habitat or as potential stepping stones. Paddock trees should not be cleared if they are within the connectivity parameters as defined by Doerr et. al. if the trees are important to regional structural connectivity. Hunter Councils does not support the assessment module in it's current form.
61. Clearing thresholds should not be set in relation to the lot size, but should consider the area of contiguous native vegetation in the locality, the area to edge ratio of native vegetation (as increases to this ratio increase the likelihood of invasive weed and pest incursions). Connectivity parameters as described by Doerr et. al. should be considered as standards and used to support the protection and development of local and regional structural connectivity.

Biodiversity Conservation Trust & Biodiversity Fund

The Creation of the Biodiversity Conservation Trust and its expanded role from the Nature Conservation Trust is welcomed, although there are a number of specific issues that should be addressed in how the Trust will operate, how funds will be allocated and reported, and how the Trust will interact with the State and Local Governments.

62. Strict rules should be applied to ensure the Biodiversity Trust funds and acquits appropriate offsets within a 6-12 month period of payments made into the fund. Without clear regulations, and active feedback to the market about scarcity of particular credits, on-ground biodiversity could be easily lost, and a sluggish market would increase potential losses.
63. It is recommended that a proportion of the Biodiversity Conservation Trust be allocated for investment in local government in recognition of their strategic and land management responsibilities as dictated in law, and in recognition that they are a significant landholder across the state.
64. The Board of the Biodiversity Conservation Trust should include Local Government representatives and a broad membership from across the various regions of NSW.
65. The Biodiversity Conservation Fund should not be used to fund deficiencies in NSW State Government funding (e.g. National Parks, OEH or LandCare), or where funds should be obtained from other sources (e.g. mine rehabilitation or subsidence).
66. The Fund should be available for local government to fund local offset schemes.
67. The Biodiversity Conservation Trust should be given powers to compulsorily acquire lands of significant Biodiversity Value that should be managed under stewardship agreements where necessary.
68. The development of the Biodiversity Conservation Investment Strategy should be used to inform, and be informed by local and regional land use plans, to ensure appropriate focus is provided to conservation areas already identified in approved plans.

The development of the Biodiversity Conservation Investment strategy will require the following:

- High quality appropriately scaled (1:25,000) regional Plant Community Type mapping
- Spot 5 imagery to adequately identify structural connectivity across the landscape.
- Maps of planned (or approved) developments or mining interests, land release areas included in regional Growth Plans, areas under mining leases or exploration licences, etc.
- Areas under conservation agreements (including offsets and set aside areas).

69. A scientific assessment methodology should also then be applied to determine areas of high biodiversity value and connectivity requirements to either protect, or rehabilitate to increase or improve areas of biodiversity value and connectivity.

Hunter Councils and our members have commenced this work and would seek to work directly with the body tasked with the development of the Biodiversity Investment Strategy to ensure key areas locally and regionally are included in the strategy.

The 'on-ground' success of the Investment Strategy will lie with the Biodiversity Conservation Trust being able to address the barriers private landholders have to utilising the various mechanisms currently on offer. Without appropriate consideration of the Social Science available at present, addressing these barriers, and providing the appropriate incentives, no amount of money put into the Fund will successfully result in large areas of private land being protected for biodiversity conservation purposes.

Local Council Resources and Management Requirements

The proposed reforms provide significant impact to Local Authorities and the resources (financial, staff and systems) required to implement them. The Councils of the region make the following comments:

70. It is unclear to what extent Council officers will need to understand the BAM process and what is the Council role in compliance against BAM requirements and conditions. Comprehensive free training opportunities should be provided (ongoing) to Councils to ensure they have appropriate skills and resources to effectively undertake their legislative and regulatory responsibilities as required by these reforms.
71. It is unclear the role of OEH in receiving referrals for BAR and SIS reports. The documentation seems to suggest that OEH concurrence will be 'deemed to be provided' if the BAR and Conditions meet the BAM standards. The Councils believe that OEH should not be able to delegate their approval and concurrence responsibilities, as they will have access to broader regional and state issues regarding species impacts that should influence approval for development.

72. It is unclear to what extent Councils, OEH and LLS will share compliance and enforcement responsibilities across the various reform changes.
73. It is unclear when, or how, Councils or LLS may reject development or clearing applications. Ability to reject applications must be included in the legislation.
74. Significant resources are required across the majority of Local Government responsibilities to effectively respond to the proposed legislative reforms, including (but not limited to): strategic planning, development planning, community planning, environmental compliance, natural resource management, sustainability, and community engagement. Written resources (guidelines etc.) along with financial support are required to ensure Local Government can undertake the required management and planning activities.
75. Active and on-going links to other legislative processes should be confirmed. Maps of Sensitive Values developed through regional growth plans, should be linked to the same datasets driving these reforms, and all areas of state and local government should be accessing the best available data at any given point in time.
76. OEH should increase resourcing related to the uploading of data into the NSW Vegetation Information System and similar products to ensure data availability is as close to “real time” as possible, to ensure all planning decisions account for situations on-ground and not a theoretical understanding of impacts based on outdated information. Funding should also be allocated to improve the usability of the VIS.