

16 June 2016

Biodiversity Reforms - Have Your Say  
PO Box A290  
Sydney South  
NSW 1232

Dear Sir/Madam,

**Proposed land clearing legislation – Biodiversity Conservation Bill 2016 and Local Land Services Bill 2016**

The National Trust strongly opposes the enactment of the Biodiversity Conservation Bill 2016 and the Local Land Services Bill 2016 in their present form as they will promote major increases in land clearance in New South Wales, do not provide a credible framework for the protection of Biodiversity in NSW and will counteract Australian Government moves to restrict land clearing as a means of ameliorating the impacts of global climate change.

Since its inception in 1945 the National Trust has had a constant and “hands-on” approach to biodiversity conservation. In its earlier years, prior to the creation of the National Parks and Wildlife Service, the Trust acquired several bushland properties commencing in 1953 with its first property - Montague Island off Narooma. This was followed by the Bantry Bay Reserve in 1961 and Hawkesbury Reserve at Brooklyn in 1963.

The National Trust, lobbying with other community groups and individuals, led to the establishment of the first faunal reserve – the John Gould Reserve on Cabbage Tree Island in 1954. In 1964 the Trust took a stand against sand mining at Myall Lakes and in 1968 accepted an invitation from the National Parks Association of NSW to join with seven other conservation organizations to campaign for the creation of Myall Lakes National Park. This National Park was gazetted in June, 1977 after a nine year campaign.

In 1978 the National Trust lodged a submission with a State Pollution Control Commission inquiry, opposing the logging of the Grady’s Creek Flora Reserve. The Trust then joined with other conservation organizations to generally oppose rainforest logging in New South Wales. After five years lobbying the NSW Government in October 1985 announced that it would protect the State’s remaining rainforests from logging.

But the Trust’s major and direct involvement with biodiversity conservation was the establishment in 1977 of its Bush Regeneration Program, the first of its type in the world, whereby local councils contracted the National Trust to regenerate and restore native bush land in urban areas.

In the preliminary planning stages for the current legislation, the Trust put in a submission in September, 2014 to the Biodiversity Legislation Review. It is disappointing to note that the Trust’s major concerns were not addressed in the new legislation: -

*There must be a clear legislative commitment to end broad-scale land clearing across NSW. The NSW government should commit to a ‘no net loss’ of native vegetation reflecting its diversity and value.*

*Decisions must be based on objective science-based decision making criteria (e.g. the existing Environment Outcomes Assessment Methodology under the Native Vegetation Act), and its discretionary decision making should be very limited.*



Having examined the draft legislation, the National Trust must agree with the position of the Environmental Defenders Office –

*The NSW Government’s proposed biodiversity legislative and policy package removes many of NSW’s long-held environmental protections, and represents a serious backward step for environmental law and policy in New South Wales.*

The National Trust has the following specific concerns with the proposed legislative package –

**1. Legislation fails to tackle cumulative impacts and climate change impacts of clearing**

The proposed “biodiversity” legislation should have taken this opportunity to address key threats to biodiversity conservation. However it fails to address cumulative impacts and the climate change impacts of clearing (potential increase in carbon production).

**2. Vulnerable ecological communities will be less protected**

“Vulnerable ecological communities” are excluded from the definition of threatened species.

**3. Mining will be permitted in areas of high biodiversity value**

Mining is permitted in areas which were intended to “offset” previous losses and in areas of outstanding biodiversity value.

**4. Developments with the greatest adverse impacts will have less stringent approval systems**

For projects with potentially the biggest impacts (State Significant Development), decisions will not be based on objective science-based decision making criteria (e.g. the existing Environment Outcomes Assessment Methodology under the Native Vegetation Act), but will be discretionary and exemptions will be available.

**5. The two proposed pieces of legislation are contradictory**

The Biodiversity Conservation Bill allows for the listing of threatened species and ecological communities by a Scientific Committee while the Local Land Services Bill will increase known threats to those threatened species and ecological communities.

The *Biodiversity Conservation Bill* lists key threatening processes including “loss of hollow bearing trees” while the *Local Land Services Bill* permits clearing of paddock trees without approval.

There is an inherent conflict between the Bills. A conflict between reducing the impact of listed key threatening processes to biodiversity and permitting more land clearing using self-assessed Codes and discretionary development applications.

**6. Public participation/consultation is a sham**

A failure to follow consultation processes will not invalidate planning instruments or decisions. Proposed public register provisions are far less detailed than at present. Issues raised in public submissions may be just ‘summarised’ by the development proponents and not directly considered by decision makers.



## **7. Loopholes for avoiding protection measures**

Consent authorities have discretion, that is, they do not have to apply the results of the 'biodiversity assessment method' established to underpin decision making on land-clearing.

Offsets may be discounted based on other subjective considerations.

Even with 'red flag' or 'no go' areas where clearing and development would cause serious and irreversible biodiversity loss, discretion to ignore a 'red flag' is permitted.

## **8. Uncertainty in compliance and enforcement**

There is no reliable estimate of the quantity of land clearing which will occur if the new legislation is enacted with its 'self-assessable' codes.

There is no indication who will have the responsibility for undertaking compliance and enforcement of the proposed legislation's offences and penalties.

## **9. Conflict between the Bill's Objects and provisions**

The Bill's objects include -

“to improve and share knowledge, including local and Aboriginal knowledge, about the status and values of biodiversity and of ecosystem services and the effectiveness of conservation actions.”

Notwithstanding the above object and the Biodiversity Panel's report requiring high-quality environmental data, monitoring and reporting, the legislation sets no clear requirements. This will make it very difficult to assess the quantity of biodiversity being lost under the proposed new regime of 'self assessment.'

## **10. Key recommendation of Review Panel ignored**

The Independent Biodiversity Legislation Review Panel had recommended that land clearing involving a change of use should be assessed under planning laws. The draft legislation has ignored this recommendation and has given the responsibility for approving land clearing to Local Land Services which do not have the resources and expertise to carry out this function.

## **11. Draft Legislation is dependent on future mapping**

The draft legislation's approval system will be dependent on mapping which has not yet been finalized and which is already disputed and regarded as problematic.

## **12. The current *Native Vegetation Act's* world class Environmental Outcomes Assessment Methodology will be abandoned in the proposed legislation**

The Environmental Outcomes Assessment Methodology (EOAM) will be replaced with self-assessable codes, exemptions and discretionary clearing. The new legislation contains no clear environmental baselines, aims or targets. It contains no bans on broad scale clearing, no mandatory soil, water or salinity assessments and, most importantly, no 'maintain or improve' standard to ensure positive environmental outcomes either at the site or at the landscape scale.

The Independent Panel did not recommend the complete removal of 'improve or maintain' biodiversity from the NSW biodiversity and conservation laws.



### **13. The new legislation will foster significant increases in vegetation clearing in NSW**

The provisions in the proposed legislation are less stringent, less evidence-based, less accountable and are likely to result in significant vegetation clearance increases in New South Wales.

### **14. The new legislation does not guarantee conservation but makes it dependent on funding**

The new legislation places heavy reliance on political budgetary decisions (usually short-term) to achieve biodiversity gains rather than the existing legislation's protections to prevent continued biodiversity decline.

The National Trust supports incentives and stewardship payments to rural landholders to conserve and protect environmental values. However, this funding would need to be supported by rules and targets that stop valuable biodiversity being cleared in rural and urban areas.

### **15. Proposed legislation's misplaced reliance on flexible and indirect biodiversity offsets**

The new legislation no longer aims to prevent impacts. Rather, it relies heavily on 'offsetting' biodiversity impacts (by managing other areas for biodiversity). It utilizes the standards of the problematic Major Projects Offsets Policy.

The Biodiversity Assessment Methodology is significantly weakened in that direct 'like-for-like' offsetting requirements are relaxed and can be circumvented. There is now an option to pay money in lieu of an actual offset which will cause a net loss of particular threatened species and threatened plant communities.

Offset areas and set asides may be further offset later rather than being properly protected in perpetuity.

### **16. The Draft Legislation has lower environmental standards**

The new biocertification scheme for large areas of land removes the existing legislative requirement to 'maintain or improve environmental outcomes'. Instead it applies its Biodiversity Assessment Methodology which imposes a broad discretion for imposing conditions. The current positive test is replaced with a negative test – to avoid 'serious and irreversible' biocertification environmental outcomes.

The removal of the current test contradicts the Bill's aim to conserve biodiversity and ecological integrity at regional and State levels.

### **17. The Draft Legislation is inferior in many ways to the present *Native Vegetation Act 2003*, *Threatened Species Conservation Act 1995*, *Nature Conservation Trust Act 2001* and the relevant sections of the *National Parks and Wildlife Act, 1974***

The *Native Vegetation Act* has been very effective and currently protects bush land and wildlife habitat across the majority of the state of New South Wales. During its period of operation 4 million hectares of farmland native vegetation has been protected via in excess of 950 property vegetation plans.

It is estimated that land clearing has declined by about 40% and consequently an estimated 116,000 native mammals have been saved by their habitat being retained.



Indeed, the most recent *NSW State of the Environment Report 2015* identified the *Native Vegetation Act 2003* as a key piece of legislation for protecting soils and facilitating sustainable land management.

**18. The draft legislation does not provide absolute protection for the most environmentally sensitive areas.**

While it is intended that the Biodiversity Assessment Method will trigger a ‘red flag’ for ‘serious and irreversible impacts on biodiversity values’, information on what constitutes ‘serious and irreversible impacts’ is presently missing from the draft Biodiversity Assessment Method. Also, as indicated earlier in Point 7, the application of the ‘serious and irreversible impacts’ red flag is discretionary for major projects, where the potential for such impacts is so much greater.

Areas of high conservation value must have proper and absolute protection and should not be available for land clearing and development.

The draft *Biodiversity Conservation Bill 2016* does make provision for the Environment Minister to declare ‘Areas of Outstanding Biodiversity Conservation Value’. However, it is not clear how these provisions will be put into practice and whether they will be used more widely than the current ‘critical habitat provisions’ in the *Threatened Species Conservation Act*, which to date have only been used to declare four areas of NSW as critical habitat.

The National Trust strongly argues that the application of the ‘serious and irreversible impacts’ trigger must be mandatory for State Significant Development (SSD) and State Significant Infrastructure (SSI). The Minister for Planning should refuse to grant consent for SSD and SSI if there are serious and irreversible impacts on biodiversity values.

**19. The draft legislation expands the use of ‘self-assessable’ codes**

The proposed legislation’s ‘self-assessable’ codes and new codes for farm efficiency and equity have the potential to dramatically increase land clearing across New South Wales.

The new codes proposed for NSW are similar to those which were implemented in Queensland under that state’s previous government which resulted in tree clearance of 278,000 hectares in the year 2014, triple the land clearance in 2009.

Under the proposed new ‘equity code’ in NSW up to 500ha can be cleared every three years. This code did not exist in the Queensland legislation.

While the Local Land Services will have a degree of oversight, the Local Land Services will be unable to refuse code based clearing.

**20. The draft legislation will accelerate the removal of “iconic” paddock trees**

Clearing under these codes will accelerate key threatening processes such as the ‘loss of hollow bearing trees’ and ‘loss of dead trees’. As indicated earlier in Point 5, the *Local Land Services Bill* permits clearing of paddock trees without approval whereas the *Biodiversity Conservation Bill* lists key threatening processes including ‘loss of hollow bearing trees’. There is clearly a contradiction between these two pieces of legislation.

**21. The draft legislation will facilitate the destruction of the most precious biodiversity**

Clearing of Endangered Ecological Communities (EECs) or threatened species habitat should not be permitted under self-assessable codes in the same way that heritage listed buildings cannot be approved for demolition or development by private certifiers.



## **22. Proposed 'set aside areas' are inadequate**

The legislation's proposed draft Codes would allow rehabilitation or revegetation to be utilized as 'set aside areas' even though such vegetation would be ecologically inferior to the vegetation being cleared and may take decades to improve in quality. 'Set aside areas' must be of equivalent quality to the vegetation in areas being cleared. If set-asides are to be used they must meet robust, scientific requirements that enhance biodiversity values.

## **23. Code based clearing must not be allowed to convert Category 2 land to Category 1 land**

The draft codes should not allow Category 2 land that is cleared under the Cropping Efficiency and System Efficiency Codes to be re-mapped to Category 1 land. This would mean that, rather than being protected, Category 2 land could be converted to Category 1 land if cleared in accordance with the Codes.

## **24. Farm Planning Code promotes degradation of vegetation quality**

The 'Farm Planning Code' provides for the creation and/or improvement of vegetation cores and corridors while allowing associated clearance of native vegetation. Replanted vegetation may take many years to, or might never, be ecologically equivalent to cleared vegetation.

## **25. 'System Efficiency' and 'Equity' Codes promote damaging vegetation clearance in the coastal zone**

The 'System Efficiency' and 'Equity' Codes must not allow land within 50 kilometres of the coastline to be cleared, regardless of current land use. These codes currently allow clearing of vegetation (including Ecological Endangered Communities) on coastal land, degrading environmental values and subdivision and development of coastal agricultural land for other uses.

## **26. The role of the Minister for the Environment is diminished**

The administration of the present Native Vegetation Act is with the Minister for the Environment, including land clearing applications, although the assessment and approval of Property Vegetation Plans have been delegated to the Local Land Service. Under the new legislation's regime the Minister for Primary Industries will deal with land clearing applications. As well, the Minister for Primary Industries will have significant discretion in applying the new laws.

Clearly such important decisions on biodiversity should be the role and prerogative of the Minister for the Environment.

Ministerial discretion should be limited and the outcomes of the Biodiversity Assessment Method should be applied. There should be no Ministerial discretion to 'discount' required biodiversity offsetting credits or to approve major projects or Biodiversity Certificates if there are 'serious or irreversible impacts on biodiversity'.

## **27. Biodiversity offsetting has become too complex and uncertain**

Scientific research has indicated that biodiversity offsetting schemes are by their nature difficult, with complex issues such as biodiversity equivalence, time lags for restoration and market dynamics providing significant challenges for offsetting mechanism's design. If the use of offsets continues to expand then there must be strict rules to deal with these limits and uncertainties.

There need to be clear objectives, rules for like-for-like offsetting, the recognition that some vegetation cannot be offset ('red flags'). There must be clear processes for transparency, monitoring,



enforcement and reporting.

**28. Draft legislation has no objective to ‘maintain or improve’**

The Native Vegetation Act 2003 has an objective “to prevent broadscale clearing unless it improves or maintains environmental outcomes”. The draft legislation has no equivalent objective.

**29. Biodiversity Conservation Actions inferior to genuine offsets**

The Draft Biodiversity Assessment Method proposes the use of supplementary measures called ‘biodiversity conservation actions’, in place of genuine offsets. Supplementary measures fail to meet best practice offsetting principles, including that offsets should be like-for-like. It is also of concern that the rules for the use of ‘biodiversity conservation actions’ are still under development and not available for public comment as part of the *Draft Biodiversity Assessment Method*.

**30. Mining site rehabilitation could be attributed as biodiversity offset credits**

Mining site rehabilitation should be an accepted responsibility of mining companies, not an action for which such companies could claim biodiversity offset credits. To attribute mining site rehabilitation towards the calculation of biodiversity offset credits is unproven and controversial. Restoration of such degraded landscapes with vegetation communities of biodiversity value is questionable.

**31. Prepayment of monies into offset funds prior to adequate offsets being identified inappropriate**

Development proponents would be allowed to discharge their offset requirements by paying money into a fund rather than being required to identify offsets and secure them before development proceeds.

**32. Discounting of biodiversity credits**

The Biodiversity Conservation Bill 2016 and the Local Land Services Amendment Bill 2016 provide a great deal of discretion to decision makers to allow for the discounting or altering of biodiversity offset credit requirements.

**33. The legislation virtually ignores climate change**

In the 213 pages of the Biodiversity Conservation Bill 2016 there are only two references to climate change. The first lists ‘Anthropogenic (human-caused) Climate Change’ as a Key Threatening Process and the second reference is to the creation of climate refuges.

If human-caused climate change is recognized as a key threatening process for biodiversity then why doesn’t the legislation comprehensively and effectively deal with this threat?

Australia has already warmed by 1° and climate change is accelerating. Research has proven that land clearing reduces rainfall, increases temperatures, increases the duration of droughts and exacerbates El Niño events.

**34. Climate Change is a Threat to Biodiversity and Farmers**

Australia is experiencing severe fires and storm events. While it would not be possible to attribute any individual such event to Climate Change, the increasing occurrence and severity of these events is predicted under scientifically agreed climate change models. Ignoring climate change will prove a very dangerous and reprehensible neglect of duty to our farmers and the environment.



**35. Legislation promoting more vegetation clearance is a step in the wrong direction.**

Major increases in vegetation clearance will make matters worse when regional climate change could be dealt with by rapid and extensive reforestation.

**36. Increased clearing undermines Federal Government policy and financial commitments**

Relaxing of land clearance laws will negate the \$1.2 billion spent by the federal government on purchasing emissions via avoided clearing and revegetation from the Emissions Reduction Fund (ERF).

**37. NSW has benefited the most from the Emissions Reduction Fund**

Most of the contracts under the Emissions Reduction Fund were awarded to New South Wales and so the Australian taxpayer has the most to lose from increased vegetation clearance negating the achievements under the Fund.

**38. To reduce the impacts of climate change land should act as a carbon sink**

Emissions from the land sector are rising faster than all other sectors and will average 46 million tonnes per year between 2014 and 2020. Land must act as a carbon sink and land clearance must not be increased.

**39. Australia is failing its international obligations**

Increasing emissions by removing restrictions on land clearing will directly contradict Australia's recent signing of the Paris Climate Agreement.

**40. Proposals for loosening controls on the keeping of wildlife**

Proper management of biological diversity use and conservation requires increased and more sophisticated monitoring techniques. The proposed loosening of these controls on the keeping of native wildlife is in direct contradiction of these scientifically recognized requirements.

**41. Increased use of Codes of Practice will have adverse impacts on biodiversity conservation**

Using codes of practice may lead to less monitoring and record keeping and encourage illegal collection of native animals from the wild. Illegal collection may have impacts on biodiversity at the local scale, particularly in accessible locations close to population centres.

**42. Lack of information on codes of practice and accreditation**

Presently there is little information about the new codes of practice or accreditation scheme for wildlife carers.

**43. The government has been unable to state how much additional land clearing will occur**

The government has provided little explanation of how the new laws will be monitored to determine changes in land clearing rates and the impact of biodiversity values.

**44. Clearing of paddock trees**

The draft codes specifically allow for the clearing of paddock trees. These trees are iconic in the Australian landscape being immortalized by artists such as Hans Heysen. Code-based clearing will therefore directly exacerbate the Key Threatening Processes 'clearing of native vegetation', 'loss of





hollow bearing trees’ and the ‘removal of dead wood and trees’.

#### **45. Paddock Trees are vital for Biodiversity Conservation**

The website of the NSW Department of Environment and Heritage highlights the importance of Paddock Trees for maintaining and conserving biodiversity.

Isolated and small patches of trees - or paddock trees - are a prominent feature of agricultural landscapes in Australia. For the already highly cleared vegetation communities (e.g. Yellow Box), researchers, including researchers from OEH, have found that small patches of trees (up to 0.5 hectares) represent 40 per cent of remaining woodland cover and are therefore an extremely important focus for conservation and restoration efforts.

Research has also shown that large old paddock trees support more native birds and bats than individual trees within a woodland setting. The fauna take advantage of the different habitats within the cracks and hollows that form as the trees age.

However, isolated and small patches of trees are declining at a rapid rate, due to natural ageing and death, dieback, a sickness in trees which progresses from the tips of the shoots, along the branches, eventually to the trunk and low rates of recruitment (regeneration).

Research has concluded that paddock trees could be lost from south east Australia within the next century.

It is unthinkable that legislation would be introduced in New South Wales to exacerbate this problem and further threaten biodiversity conservation.

#### **46. Current and proposed management of paddock trees**

Clearing of paddock trees in an agricultural area is currently already permitted as a Routine Agricultural Management Activity (RAMA) (NSW Office of Environment and Heritage 2015). The RAMA permits the clearing of isolated paddock trees (a single tree or group of up to three trees that are over 50m from the next tree) that are under 80cm diameter at breast height (DBH). 200 trees can be cleared per 1000ha per notification.

Trees greater than 80cm DBH cannot be cleared, neither can clumps of trees within an area greater than 0.25ha, trees on vulnerable land or trees near watercourses. The proposed new legislation will increase the number of codes under which paddock trees can be cleared to five: the ‘Cropping Efficiency’, ‘Grazing Efficiency’, ‘System Efficiency’ ‘Equity’ and ‘Farm Plan’ codes.

These codes provide for ‘islands’, ‘peninsulas’ and single trees to be cleared and provides for the clearing of trees over 80cm DBH to take place under certification. The clearing of paddock trees—and clumps of trees— is therefore likely to substantially increase under the new framework.

#### **47. Paddock Trees are vital for Biodiversity Conservation**

Paddock Trees are vital for both nature and farmers. In fact, despite their appearance as lonely trees in a sea of agriculture, scientists believe that paddock trees are ‘keystone’ features in the landscape. This is because their ecological importance is disproportionately large compared to their numbers and area of cover.

Compared to sites with no trees, even a small increase in the number of trees from 0-5 in an agricultural landscape markedly increases the numbers of species of bats and birds present. In fact, the presence of a single tree can double the number of bird species. Paddock trees provide ecological



functions at a local level by providing habitat for animals, at a landscape level by increasing connectivity (they act as 'stepping stones' that animals can use to cross an otherwise inhospitable agricultural landscape) and even provide continuity through time.

This connectivity provided by paddock trees is likely to become even more important to animals as climate change progresses. Paddock trees provide large tree hollows, which are very important for lots of Australian animals including the threatened superb parrot that nests in big paddock trees in agricultural landscapes. For superb parrots, and large cockatoos such as the endangered red-tailed black cockatoo, dead paddock trees are also very important for nest sites. In fact, tree hollows are so important that the loss of hollow-bearing trees has been identified by the NSW Scientific Committee as a Key Threatening Process (NSW Scientific Committee 2007).

But wild animals are not the only beneficiaries from paddock trees: farmers reap significant rewards too. Paddock trees are important in soil conservation and have a positive influence on soil properties such as carbon, nitrogen and phosphorous levels. They provide a microclimate and shade for stock (Local Land Services 2014), and many native animals that utilise paddock trees, such as owls, are useful to farmers.

#### **48. The new legislation will also impact on the urban environment**

The new legislation is to rely heavily on 'offsetting' to provide greater flexibility for developers. This will allow developments to proceed that might otherwise be refused because of impacts on threatened species habitat or endangered ecological communities.

Under this system developers are not limited to the 'like for like' principle where offset areas must be of equivalent ecological type to the area affected by development, preferably in the area affected.

All developers would be able to substitute entirely different vegetation and also employ so-called supplementary measures, such as paying into a fund or rehabilitating mine sites, an action that should be the responsibility of the mining company.

#### **49. Claims that paddock trees are reservoirs for pests and weeds are totally unsubstantiated.**

Despite there being a large volume of scientific literature on paddock trees, there appear to be no studies to support the theory that paddock trees harbour pests and weeds. It is likely that weeds will grow under paddock trees due to the trees being used as perches by birds that disperse seed. But it is unlikely that paddock trees will be a greater source of weeds and feral animals than any other type of native vegetation—including offset sites. Current laws allow for the removal of weeds without approvals.

#### **50. Offsetting paddock trees is not possible**

Offsetting as a concept is fraught with problems, but offsetting trees that are over 200 years old is totally unrealistic as it will take over 200 years before the offset tree can provide the same habitat value to wildlife. Tree hollows are a prime example of this: large hollows can only form in large old trees. So the replacement of high quality complex habitat, such as a paddock tree, with lower quality regrowth does not make a suitable offset. This problem is known as the time lag, and it means that offsetting is not based in ecological reality.

The species that depend on the paddock tree may be unable to persist until the offset can provide the same habitat. The time lag has been repeatedly identified as a key flaw in offsetting because it means the offset does not achieve the key goal of no net loss.



## 51. Native Vegetation Report not released since 2013

The National Trust is concerned that no new Native Vegetation Report has been released since the 2011/2013 report. This information is vital as it provides a comprehensive picture of the status of the regulation, protection and extent of native vegetation. The associated Native Vegetation Report Card provides the latest information on the conservation, restoration, management and approvals for clearing native vegetation.

### Recommendations

The National Trust makes the following recommendations in regard to the Draft Biodiversity Conservation Bill 2016 and Local Land Services Bill 2016: -

- The two pieces of legislation should deal with two key threats to biodiversity conservation - cumulative impacts and the climate change impacts of clearing (potential increase in carbon production).
- “Vulnerable ecological communities” need to be better protected and should be included in the definition of threatened species.
- Mining should be excluded from areas of high biodiversity value and areas intended to “offset” previous losses.
- For projects with potentially the biggest impacts (State Significant Development) decisions should be based on objective science-based decision making criteria, not be discretionary and exemptions should not be available.
- The two pieces of legislation should be co-ordinated and, where the Biodiversity Conservation Bill allows for the listing of threatened species and ecological communities by a Scientific Committee, the Local Land Local Land Services Bill should remove risks to those threatened species and ecological communities. Thus, when the Biodiversity Conservation Bill lists key threatening processes including “loss of hollow bearing trees”, the Local Land Services Bill should only permit clearing of paddock trees with approval and in strictly limited situations. The Trust supports the removal of the conflict between reducing the impact of listed key threatening process to biodiversity and permitting more land clearing using self-assessed Codes and discretionary development applications.
- Public participation and consultation should be genuine and meaningful. There should be true public engagement. Issues raised in public submissions should be directly considered by decision makers to ensure that planning instruments and decisions are properly validated.
- The proposed loopholes for avoiding protection measures should be removed and decision making on land-clearing should be underpinned by the findings of the ‘biodiversity assessment method.’
- In ‘red flag’ or ‘no go’ areas where clearing and development would cause serious and irreversible biodiversity loss, there should be no discretion permitted to ignore a ‘red flag’.
- Uncertainty in compliance and enforcement should be removed through the provision of reliable estimates of the quantity of land clearing which will occur if the new legislation is enacted with its ‘self assessable’ codes. The responsibility for undertaking compliance and enforcement of the proposed legislation’s offences and penalties needs to be clearly indicated.
- The legislation should set clear requirements for high-quality environmental data, monitoring and reporting as set out in the Bill’s objects and in the recommendations of the Biodiversity Panel report. This is essential for the assessment of the quantity of biodiversity being lost under the proposed new



regime of 'self assessment'.

- Land clearing involving a change of use should be assessed under planning laws as recommended by the Independent Biodiversity Legislation Review Panel. Local Land Services do not have the resources and expertise to carry out this role.
- The mapping which is required for the draft legislation's approval system needs to be finalized and publicly reviewed before the legislation is enacted.
- The Environmental Outcomes Assessment Methodology (EOAM) should be retained and not replaced with self-assessable codes, exemptions and discretionary clearing. The new legislation should contain clear environmental baselines, aims and targets. There should be a ban on broad scale clearing, mandatory soil, water and salinity assessments and, most importantly, a 'maintain or improve' standard to ensure positive environmental outcomes at the site and at the landscape scale.
- The new legislation should reduce vegetation clearing in NSW.
- The new legislation should rely on protections to prevent continued biodiversity decline rather than placing heavy reliance on political budgetary decisions (usually short-term) to achieve biodiversity gains.
- The National Trust supports incentives and stewardship payments to rural landholders to conserve and protect environmental values. This funding would also need to be supported by rules and targets that stop valuable biodiversity being cleared in rural and urban areas.
- The new legislation should aim to prevent impacts rather than relying heavily on 'offsetting' biodiversity impacts (by managing other areas for biodiversity) and utilizing the standards of the problematic Major Projects Offsets Policy.
- The Biodiversity Assessment Methodology should be utilized and strengthened by requiring direct 'like-for-like' offsetting which should not be circumvented. There should be no option to pay money in lieu of an actual offset. Such an option would cause a net loss of particular threatened species and threatened plant communities. Offset areas should be protected in perpetuity and set asides should not be further offset at a later date.
- The Draft Legislation should maintain the environmental standards of the existing legislation. The existing legislative requirement to 'maintain or improve environmental outcomes' should be retained and not replaced with a broad discretion for imposing conditions under a new biocertification scheme for large areas of land. The current positive test should be retained and not replaced with a negative test – to avoid 'serious and irreversible' biocertification environmental outcomes. Retention of the current test would fulfill the Bill's aim to conserve biodiversity and ecological integrity at regional and State levels.
- The Native Vegetation Act has been very effective and currently protects bush land and wildlife habitat across the majority of the state of New South Wales. During its period of operation 4 million hectares of farmland native vegetation has been protected via in excess of 950 property vegetation plans. It is estimated that land clearing has declined by about 40% and consequently an estimated 116,000 native mammals have been saved by their habitat being retained. The most recent NSW State of the Environment Report 2015 identified the Native Vegetation Act 2003 as a key piece of legislation for protecting soils and facilitating sustainable land management. The Draft Legislation is inferior in many ways to the present Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and the relevant sections of the National Parks and Wildlife Act, 1974.



- The draft legislation should provide absolute protection for the most environmentally sensitive areas. While it is intended that the Biodiversity Assessment Method will trigger a ‘red flag’ for ‘serious and irreversible impacts on biodiversity values’, information on what constitutes ‘serious and irreversible impacts’ must be provided in the draft Biodiversity Assessment Method. The application of the ‘serious and irreversible impacts’ red flag should be essential for major projects, where the potential for such impacts is so much greater.
- Areas of high conservation value must have proper and absolute protection and should not be available for land clearing and development. The draft Biodiversity Conservation Bill 2016 does make provision for the Environment Minister to declare ‘Areas of Outstanding Biodiversity Conservation Value’. It needs to be made clear how these provisions will be put into practice and whether they will be used more widely than the current ‘critical habitat provisions’ in the Threatened Species Conservation Act, which to date have only been used to declare four areas of NSW as critical habitat.
- The application of the ‘serious and irreversible impacts’ trigger must be mandatory for State Significant Development (SSD) and State Significant Infrastructure (SSI). The Minister for Planning should refuse to grant consent for SSD and SSI if there are serious and irreversible impacts on biodiversity values.
- The proposed legislation’s ‘self-assessable’ codes and new codes for farm efficiency and equity have the potential to dramatically increase land clearing across New South Wales. The new codes proposed for NSW are similar to those which were implemented in Queensland under that state’s previous government which resulted in tree clearance of 278,000 hectares in the year 2014, triple the land clearance in 2009. Under the proposed new ‘equity code’ in NSW, up to 500ha can be cleared every three years. This code did not exist in the Queensland legislation. While the Local Land Services will have a degree of oversight, the Local Land Services will be unable to refuse code based clearing. The draft legislation should not introduce ‘self-assessable’ codes.
- The draft legislation should properly protect “iconic” paddock trees. The Local Land Services Bill currently permits clearing of paddock trees without approval whereas the Biodiversity Conservation Bill lists key threatening processes including ‘loss of hollow bearing trees’. There is clearly a contradiction between these two pieces of legislation. This contradiction should be rectified and clear action taken to protect Paddock Trees.
- Just as heritage listed buildings cannot be approved for demolition or development by private certifiers, Clearing of Endangered Ecological Communities (EECs) or threatened species habitat should not be permitted under self-assessable codes.
- ‘Set aside areas’ must be of equivalent quality to the vegetation in areas being cleared. If set-asides are to be used they must meet robust, scientific requirements that enhance biodiversity values. The legislation’s proposed draft Codes would allow rehabilitation or revegetation to be utilized as ‘set aside areas’ even though such vegetation would be ecologically inferior to the vegetation being cleared and may take decades to improve in quality.
- The draft codes should not allow Category 2 land that is cleared under the Cropping Efficiency and System Efficiency Codes to be re-mapped to Category 1 land. This would mean that, rather than being protected, Category 2 land could be converted to Category 1 land if cleared in accordance with the Codes.
- The Farm Planning Code needs to be revised as it currently promotes degradation of vegetation quality. The ‘Farm Planning Code’ provides for the creation and/or improvement of vegetation cores and corridors while allowing associated clearance of native vegetation. Replanted vegetation may take many years to, or might never, be ecologically equivalent to cleared vegetation.



- Land within 50 kilometres of the coastline should be excluded from the 'System Efficiency' and 'Equity' Codes. These codes currently allow clearing of vegetation (including Ecological Endangered Communities) on coastal land, degrading environmental values and subdivision and development of coastal agricultural land for other uses.
- The role of the Minister for the Environment should not be diminished. The administration of the present Native Vegetation Act is with the Minister for the Environment, including land clearing applications, although the assessment and approval of Property Vegetation Plans have been delegated to the Local Land Service. Under the new legislation's regime the Minister for Primary Industries will deal with land clearing applications. As well, the Minister for Primary Industries will have significant discretion in applying the new laws. Such important decisions on biodiversity should be the role and prerogative of the Minister for the Environment. Ministerial discretion should be limited and the outcomes of the Biodiversity Assessment Method should be applied. There should be no Ministerial discretion to 'discount' required biodiversity offsetting credits or to approve major projects or Biodiversity Certificates if there are 'serious or irreversible impacts on biodiversity'.
- There should be strict rules to deal with the limits and uncertainties involved with the use of offsets. Biodiversity offsetting has become complex and uncertain. Scientific research has indicated that biodiversity offsetting schemes are by their nature difficult, with complex issues such as biodiversity equivalence, time lags for restoration and market dynamics providing significant challenges for offsetting mechanism's design.
- There need to be clear objectives, rules for like-for-like offsetting, the recognition that some vegetation cannot be offset ('red flags'). There must be clear processes for transparency, monitoring, enforcement and reporting.
- The Native Vegetation Act 2003 has an objective "to prevent broadscale clearing unless it improves or maintains environmental outcomes". The draft legislation should have an equivalent objective.
- Genuine offsets should continue rather than the proposed use of supplementary measures called 'biodiversity conservation actions' under the Draft Biodiversity Assessment Method. Such supplementary measures fail to meet best practice offsetting principles, including that offsets should be like-for-like. It is also of concern that the rules for the use of 'biodiversity conservation actions' are still under development and not available for public comment as part of the Draft Biodiversity Assessment Method.
- Mining site rehabilitation should be an accepted responsibility of mining companies, not an action for which such companies could claim biodiversity offset credits. To attribute mining site rehabilitation towards the calculation of biodiversity offset credits is unproven and controversial. Restoration of such degraded landscapes with vegetation communities of biodiversity value is questionable.
- Development proponents should be required to identify offsets and secure them before development proceeds rather than being allowed to discharge their offset requirements by paying money into a fund.
- Biodiversity credits should be preserved entire and not discounted. The Biodiversity Conservation Bill 2016 and the Local Land Services Amendment Bill 2016 provide a great deal of discretion to decision makers to allow for the discounting or altering of biodiversity offset credit requirements.
- The legislation should deal properly and comprehensively with climate change. At present the legislation virtually ignores climate change. If human-caused climate change is recognized as a key threatening process for biodiversity then the legislation should comprehensively and effectively deal with this threat.



- The legislation should recognize that climate change is a threat to biodiversity and farmers. Ignoring climate change would prove to be a very dangerous and reprehensible neglect of duty to our farmers and the environment.
- The legislation should recognize that regional climate change can best be dealt with by rapid and extensive reforestation. Major increases in vegetation clearance will make matters worse and increased clearing undermines Federal Government policy and financial commitments. Relaxing of land clearance laws would negate the \$1.2 billion spent by the federal government on purchasing emissions via avoided clearing and revegetation from the Emissions Reduction Fund (ERF) and NSW has benefited the most from the Emissions Reduction Fund.
- To reduce the impacts of climate change land should act as a carbon sink. Emissions from the land sector are rising faster than all other sectors and will average 46 million tonnes per year between 2014 and 2020. Land should act as a carbon sink and land clearance should not be increased.
- Australia should meet its international obligations. Increasing emissions by removing restrictions on land clearing would directly contradict Australia's recent signing of the Paris Climate Agreement.
- Proper management of biological diversity use and conservation requires increased and more sophisticated monitoring techniques. The proposed loosening of these controls on the keeping of native wildlife is in direct contradiction of these scientifically recognized requirements.
- Increased use of Codes of Practice are likely to have adverse impacts on biodiversity conservation. There should be precautions put in place to ensure that there isn't less monitoring and record keeping which could encourage illegal collection of native animals from the wild. Illegal collection may have impacts on biodiversity at the local scale, particularly in accessible locations close to population centres.
- There needs to be more information provided on codes of practice and accreditation. Presently there is little information about the new codes of practice or accreditation scheme for wildlife carers and the government has been unable to state how much additional land clearing will occur. Also little explanation has been given on how the new laws will be monitored to determine changes in land clearing rates and the impact of biodiversity values.
- The Trust calls for proper protection of iconic paddock trees. The draft codes specifically allow for the clearing of paddock trees. These trees are iconic in the Australian landscape being immortalized by artists such as Hans Heysen. Code-based clearing will therefore directly exacerbate the Key Threatening Processes 'clearing of native vegetation', 'loss of hollow bearing trees' and the 'removal of dead wood and trees'.
- It should be recognized that paddock trees are vital for biodiversity conservation. The website of the NSW Department of Environment and Heritage highlights the importance of Paddock Trees for maintaining and conserving biodiversity. Isolated and small patches of trees - or paddock trees - are a prominent feature of agricultural landscapes in Australia. For the already highly cleared vegetation communities (e.g. Yellow Box), researchers, including researchers from OEH, have found that small patches of trees (up to 0.5 hectares) represent 40 per cent of remaining woodland cover and are therefore an extremely important focus for conservation and restoration efforts. Research has also shown that large old paddock trees support more native birds and bats than individual trees within a woodland setting. The fauna take advantage of the different habitats within the cracks and hollows that form as the trees age. However, isolated and small patches of trees are declining at a rapid rate, due to natural ageing and death, dieback, a sickness in trees which progresses from the tips of the shoots, along the branches, eventually to the trunk and low rates of recruitment (regeneration). Research has concluded that paddock trees could be lost from south east Australia within the next century. It is unthinkable that legislation would be introduced in New South Wales to exacerbate this



problem and further threaten biodiversity conservation.

- The current management of paddock trees should be retained. Clearing of paddock trees in an agricultural area is currently already permitted as a Routine Agricultural Management Activity (RAMA) (NSW Office of Environment and Heritage 2015). The RAMA permits the clearing of isolated paddock trees (a single tree or group of up to three trees that are over 50m from the next tree) that are under 80cm diameter at breast height (DBH). 200 trees can be cleared per 1000ha per notification. Trees greater than 80cm DBH cannot be cleared, neither can clumps of trees within an area greater than 0.25ha, trees on vulnerable land or trees near watercourses. The proposed new legislation will increase the number of codes under which paddock trees can be cleared to five: the 'Cropping Efficiency', 'Grazing Efficiency', 'System Efficiency', 'Equity' and 'Farm Plan' codes. These codes provide for 'islands', 'peninsulas' and single trees to be cleared and provides for the clearing of trees over 80cm DBH to take place under certification. The clearing of paddock trees—and clumps of trees—is therefore likely to substantially increase under the new framework.
- Paddock trees should be recognized as being vital for both nature and farmers. Despite their appearance as lonely trees in a sea of agriculture, scientists believe that paddock trees are 'keystone' features in the landscape. This is because their ecological importance is disproportionately large compared to their numbers and area of cover. Compared to sites with no trees, even a small increase in the number of trees from 0-5 in an agricultural landscape markedly increases the numbers of species of bats and birds present. In fact, the presence of a single tree can double the number of bird species. Paddock trees provide ecological functions at a local scale by providing habitat for animals, at a landscape scale by increasing connectivity (they act as 'stepping stones' that animals can use to cross an otherwise inhospitable agricultural landscape), and even provide continuity through time. This connectivity provided by paddock trees is likely to become even more important to animals as climate change progresses. Paddock trees provide large tree hollows, which are very important for lots of Australian animals including the threatened superb parrot that nests in big paddock trees in agricultural landscapes. For superb parrots, and large cockatoos such as the endangered red-tailed black cockatoo, dead paddock trees are also very important for nest sites. In fact, tree hollows are so important that the loss of hollow-bearing trees has been identified by the NSW Scientific Committee as a Key Threatening Process (NSW Scientific Committee 2007). But wild animals are not the only beneficiaries from paddock trees: farmers reap significant rewards too. Paddock trees are important in soil conservation and have a positive influence on soil properties such as carbon, nitrogen and phosphorous levels. They provide a microclimate and shade for stock (Local Land Services 2014), and many native animals that utilise paddock trees, such as owls, are useful to farmers.
- The new legislation should not impact adversely on the urban environment. The new legislation is to rely heavily on 'offsetting' to provide greater flexibility for developers. This will allow developments to proceed that might otherwise be refused because of impacts on threatened species habitat or endangered ecological communities. Under this system developers are not limited to the 'like for like' principle where offset areas must be of equivalent ecological type to the area affected by development, preferably in the area affected. All developers would be able to substitute entirely different vegetation and also employ so-called supplementary measures, such as paying into a fund or rehabilitating mine sites, an action that should be the responsibility of the mining company.
- It should be recognized that claims that paddock trees are reservoirs for pests and weeds are totally unsubstantiated. Despite there being a large volume of scientific literature on paddock trees, there appear to be no studies to support the theory that paddock trees harbour pests and weeds. It is likely that weeds will grow under paddock trees due to the trees being used as perches by birds that disperse seed. But it is unlikely that paddock trees will be a greater source of weeds and feral animals than any other type of native vegetation—including offset sites. Current laws allow for the removal of weeds without approvals.





- Offsetting paddock trees is not possible. Offsetting as a concept is fraught with problems, but offsetting trees that are over 200 years old is totally unrealistic as it will take over 200 years before the offset tree can provide the same habitat value to wildlife. Tree hollows are a prime example of this: large hollows can only form in large old trees. So the replacement of high quality complex habitat, such as a paddock tree, with lower quality regrowth does not make a suitable offset. This problem is known as the time lag, and it means that offsetting is not based in ecological reality. The species that depend on the paddock tree may be unable to persist until the offset can provide the same habitat. The time lag has been repeatedly identified as a key flaw in offsetting because it means the offset does not achieve the key goal of no net loss.
- Native Vegetation Reports should be regularly released to the public. The National Trust is concerned that no new Native Vegetation Report has been released since the 2011/2013 report. This information is vital as it provides a comprehensive picture of the status of the regulation, protection and extent of native vegetation. The associated Native Vegetation Report Card provides the latest information on the conservation, restoration, management and approvals for clearing native vegetation.

Yours sincerely,

Graham Quint  
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