



SUBMISSION

WSROC Submission to the NSW Government regarding the proposed biodiversity conservation reform.

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Western Sydney Regional Organisation of Councils Ltd

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1. Introduction and background

About WSROC

Thank you for the opportunity to provide a submission to the proposed NSW Biodiversity Reform Package on behalf of the Western Sydney Regional Organisation of Councils (WSROC).

WSROC represents nine councils in the Western Sydney which together provide planning and services for over 5,500 square kilometres, ranging from densely populated metropolitan areas to rural lands and the World Heritage Area of the Blue Mountains. The region's population is just around 1.8 million and is expected to increase by almost 1.6 million over the next 20 years.

WSROC provides a strong voice for the residents of Western Sydney to improve quality of life. The organisation has a reputation for considered policy analysis and advocacy on a wide range of issues affecting the residents of Western Sydney. WSROC also manages a number of projects, which are either funded jointly by its members or from external sources.

This Submission

WSROC welcomes the opportunity to make a submission to the NSW Government regarding the proposed Biodiversity Reform Package. Please note that this submission focuses mainly on issues of greatest concern to our member councils and is not a comprehensive review of all elements of the proposed Biodiversity Reform Package. Lack of comment on other elements of the proposed reforms does not imply WSROC support for those elements.

2. General comments

WSROC is extremely concerned by the proposed package of biodiversity legislation reforms as it removes many of NSW's long-held environmental protections. While the funding that has been allocated for private land conservation and species conservation is welcomed, funding cannot compensate for inadequate regulatory protections. Overall WSROC is of the opinion that the current proposed reforms represent a serious retrograde step for environmental law and policy in New South Wales.

Insufficient detail

Much of the detail of the proposed reform is being left to codes, regulations and the proposed State Environmental Planning Policy (SEPP) for native vegetation clearing in urban areas, which are not yet available for review. The same goes for the BAM thresholds, which have not yet been released, despite it being important for the management of biodiversity in urban areas. It is counter-productive to genuine engagement with stakeholder communities when access to pertinent and detailed information is unavailable.

In the interest of ensuring that collaboration between our two levels of government produces the best outcomes for our communities, WSROC makes the following recommendations:

Recommendations:

- that the proposed SEPP be opened to public consultation and comment
- that the BAM thresholds be made public and available for comment

Ministerial responsibility

We note that the Minister for Primary Industries to be nominated as the Minister responsible for approvals of vegetation clearing. We believe this to be inappropriate, given the potential for conflicts of interest in decision-making. The responsibility should revert to the Minister for the Environment instead.

Recommendation:

That the Minister for the Environment be nominated as the Minister responsible for both the Biodiversity Conservation Act and the land clearing assessment divisions of the Local Land Services Act.

3. Increased pressure on Local Government

Councils are expected to be responsible for assessing Development Applications and applying the BAM and proposed offset rules. The complexity of the proposed system will require ongoing training and support for council officers assessing applications using the BAM.

WSROC is concerned about the resource availability for LLS agencies and local councils to provide their important regulatory roles in these proposed reforms. Councils are further limited in what conditions can be imposed on a Development Consent.

Local authorities should be sufficiently trained and resourced and should be provided with the authority to pursue any breach of the new legislation. Penalty Infringement Notice amounts should reflect the seriousness of the offence of clearing/destroying endangered species. WSROC would also welcome OEH to play a greater role in assessing and assisting with contentious developments and vegetation clearing enforcement and compliance to prevent local government being left vulnerable.

WSROC is concerned that the removal of local controls (as proposed in the SEPP) will be destructive, as most urban councils develop policy and procedures for dealing with local matters, especially in relation to tree preservation. This control should remain with local government.

Recommendations:

- A more cost-efficient process whereby Local Government has meaningful input into the initial 7 part test conducted and does not have to incur additional costs to conduct their own assessments.
- Councils should be empowered with adequately resourced enforcement officers to conduct site assessments to ensure the specific requirements outlined in the Review of Environmental Factors are adhered to.
- Local controls should not be impacted as local government have a greater understanding of their community and the pressures faced.

4. Native vegetation clearing in urban areas and the proposed biodiversity offsets scheme

Monitoring and reporting

The reform currently makes no mention of a monitoring and publicly reporting system. WSROC feels this is needed. Such a system should include monitoring and reporting on vegetation clearing, other biodiversity impacts, the retirement of biodiversity offset sites and updates on their management status. This role is best placed with a state government agency and should be regularly updated by information supplied by approval authorities. The same agency should be responsible for periodic auditing of local approval authorities to ensure appropriate implementation.

Recommendation:

A system for monitoring and reporting should be developed; the agency responsible should also periodically audit local approval authorities to ensure appropriate implementation.

Reliance on the Biodiversity Assessment Method (BAM)

WSROC is concerned about the proposed heavy reliance on ‘offsetting’ biodiversity impacts. An attempt to introduce a single offset tool across all forms of development in NSW is welcomed, however, the proposed scheme is inappropriate in an urban context and will not achieve a balance for environmental, social and economic interests in land.

WSROC is extremely concerned that the proposed reforms are likely to lead to an increase in vegetation clearing in urban areas, resulting in a loss of local biodiversity including local extinctions, and as a result, significant loss of human amenity.

Our main concerns regarding the BAM are listed below:

- **Adverse impacts on the urban landscape**

The offset scheme offers the greatest risk to preserving vegetation in urban areas. The increasing level of population density projected in the next few decades will place additional pressures on the existing bushland pockets. These pockets contain many migratory, threatened and rare species. Removal of any of the existing bushland in urban areas will increase pressure on the remaining bushland and decrease the liveability of our environment. The biodiversity within the urban environment needs to be protected, not offset. Loss of Western Sydney’s natural bushland assets will have broader implications such as an increase in the region’s already prevalent urban heat island effect.

Further, WSROC expresses concern that the stated direct like-for-like offsetting requirements are relaxed and can be circumvented. If a like-for-like offset cannot be found, this should indicate that the proposed impact on the species, ecological community or other biodiversity value has reached a serious and irreversible state and should not be permissible.

Another major concern is that there is no provision for local offsets. This could have detrimental effects on urban environment and could result in an urban LGA being devoid of vegetation and have it offset outside of the region. This will have an adverse impact on local biodiversity.

Recommendations:

- If offsets are used, the hierarchy of avoid, minimise, offset must be strictly applied; as must the concept of like-for-like.
- Clear objectives of improving or maintaining biodiversity values, and achieving ‘no net loss’ of biodiversity must be set.
- Local offsetting should be considered as favourable for an application and should be allowed.

- **Offset credit sites protected in perpetuity**

Biodiversity offset credit sites must be protected in perpetuity. The option to pay money in lieu of an actual offset will result in net loss of certain threatened species and communities. Offset areas and set asides may be further offset later on rather than actually protected in perpetuity. WSROC does not support allowing the “offsetting of an offset” as this will result in an even more accelerated decline for the species or communities involved.

Recommendation:

Biodiversity offset credit sites must be protected in perpetuity from all forms of development and the biodiversity credits insured against the possible impact of future natural disasters.

- **Standardised guidelines**

WSROC expresses concern regarding the current allowance for the approval authority (the local council or LLS) to have discretion over discounting the offset requirements as determined by the calculator. There is no provision for State Government review or audit, or third party appeal of discounting decisions. This means that the BAM is allowed to be implemented differently (or effectively ignored) by different approval authorities. This not only erodes the equity of the proposed reforms, it also erodes the intention of the BAM to act as a 'single tool' to assess biodiversity impacts.

Clear, standardised guidelines for what constitutes a serious or irreversible impact should be developed by the State Government for approval authorities to follow across the State. Approval authorities should be given the discretion to set additional triggers for serious or irreversible impacts on local biodiversity as they deem necessary.

There is currently not a great deal of information and detail available regarding the process of the BAM assessors. WSROC would recommend that a comprehensive program to accredit assessors of the BAM be in place prior to the commencement of the legislation.

WSROC notes that offsetting should not be able to be applied to listed critically endangered species. It has been the previous offsetting schemes and "biocertification" which has allowed the continued clearing of communities that were previously only listed as Threatened Ecological Communities, such as the Cumberland Plain Woodland, such that they have been elevated to Critically Endangered and on the brink of extinction.

Further, we would like to comment that serious and irreversible impacts on Critically Endangered communities or species must remove the possibility of consent being granted regardless of the size or class of the project, and offsetting should be excluded in these instances. This removes the perception of discrimination by applying the same protections equally. Additionally, it removes the risk of undermining any gains made by imposing protections on smaller projects, when it is larger projects that would potentially have a greater impact on Critically Endangered communities or species.

Recommendations:

- Offsets should be applied consistently across the State, and discretion for approval authorities to 'discount' offsets should not be granted. The offset requirements decided by the calculator should be considered as the minimum requirements.
- A comprehensive program to accredit assessors of the BAM should be in place prior to implementation of the legislation.
- Offsetting should not be able to be applied to listed critically endangered species.
- Serious and irreversible impacts on Critically Endangered communities or species must remove the possibility of consent being granted regardless of the size or class of the project.

- The amendments to the Assessment of Significance should not remove the key threatening process question.
- **Cumulative impact**
The proposed BAM has not reviewed cumulative impact of vegetation clearing. Remnant vegetation including threatened ecological communities could be incrementally cleared or offset until they altogether disappear from a site.

Recommendation:

Cumulative impact needs to be worked into the mechanics of the BAM framework.

5. Repeal of the Native Vegetation Act

WSROC expresses grave concern regarding the proposed repeal of the Native Vegetation Act. The *Local Land Services Amendment Bill* replaces the *Native Vegetation Act* and its Environmental Outcomes Assessment Methodology (EOAM) with self-assessable Codes, exemptions and discretionary clearing. There are no clear environmental baselines, aims or targets. There are no requirements for assessing the possible implications of intended clearing on soil erosion, salinity, water quality, biodiversity or carbon sequestration. There is no requirement to “maintain or improve” environmental conditions on site.

It will not be possible to evaluate whether the reforms have achieved improved outcomes for biodiversity conservation and ecologically sustainable development without targets to measure progress against. Moreover, when provisions are less stringent, less evidence-based, less accountable, they are likely to result in significant clearing increases in NSW.

The NVA was developed in consultation with farmers and conservationists in response to failures of previous regulatory regime to prevent inappropriate land clearing. Any reform of biodiversity and land clearing legislation in NSW should result in raising the bar of environmental assessments for all proponents. An equitable approach to environmental assessment would require all proponents to meet a standard of improving or maintaining current biodiversity values and environmental condition.

Recommendation:

- WSROC recommends that the *Native Vegetation Act 2003* be retained. To achieve consistent integrated assessment and reporting processes the *Native Vegetation Act* should be expanded to cover all vegetation clearing in NSW, including urban areas, regardless of the purpose or location of the clearing.
- That all developments and changes in land use involving land clearing must be held to the same standard, to improve or maintain biodiversity values and environmental condition.

6. Area clearing threshold

WSROC reiterates again the importance of small scale vegetation in urban areas. The area clearing threshold approach does not allow for the consideration of the proposed clearing as a proportion of remaining vegetation and ecological communities either on the site or in the local government area (or bioregion) as a whole. A project clearing less than 0.5 hectares (and thereby under the lowest proposed area clearing threshold) may be extremely significant in a suburb where very little native vegetation remains, possibly having a role of a biodiversity corridor or vegetated ‘stepping stones’

Further, the area-based clearing threshold (at whatever size it is set) does not prevent cumulative clearing. If an area clearing threshold is set, it should be required that all DAs are assessed against a

centralised database of all previous DAs. When a successive DA that, when considered in concert with a previous DA, tips the proposed clearing over the area threshold, should then trigger the BAM.

Recommendation:

- The area clearing threshold be revised to a much smaller area more appropriate to the urban context, and to take into consideration cumulative effects of land clearing.

7. Conclusion

Through this submission WSROC expresses its concern regarding the proposed Biodiversity Reform Package as it removes many of NSW's long-held environmental protections. Our key concerns are listed below:

- More detail regarding the SEPP and proposed BAM threshold is needed for a more detailed response.
- WSROC strongly recommends that the Minister for the Environment be nominated as the Minister responsible for both the Biodiversity Conservation Act and the land clearing assessment divisions of the Local Land Services Act
- A system for monitoring and publicly reporting should be developed; the agency responsible should also periodically audit local approval authorities to ensure appropriate implementation.
- If offsets are used, the hierarchy of avoid, minimise, offset must be strictly applied; as must the concept of like-for-like. Clear objectives of improving or maintaining biodiversity values, and achieving 'no net loss' of biodiversity must be set.
- The legislation is to recognise the importance of the urban environment. The offset scheme offers great risk to preserving vegetation in urban areas.
- Adequate resourcing for councils is to be ensured given that they are expected to be responsible for assessing Development Applications and applying the BAM and proposed offset rules.

Overall WSROC is of the opinion that the current reforms represent a serious retrograde step for environmental law and policy in New South Wales.

We strongly encourage the State Government to consider the issues highlighted in this paper especially given that the growth aspirations for Western Sydney have the potential to unnecessarily affect urban amenity unless adequately addressed in legislation.