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Conservation Programs Branch
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December 15, 2017

RE: Submission on the Draft Biodiversity Conservation Investment Strategy 2017 – 2037

Dear Sir/Madam,

Thank you for the opportunity to provide comments on the *Draft Biodiversity Conservation Investment Strategy 2017 – 2037*. This submission has been prepared jointly on behalf of environment groups from the Stand Up for Nature Alliance.

INTRODUCTION

Nature in NSW is under threat. Vast areas of the NSW landscape have been cleared or degraded, over 1000 native species are listed as threatened, and rivers and wetlands are in poor health. Our natural landscapes remain under threat from ongoing loss and fragmentation of native vegetation and wildlife habitat, significant biodiversity loss, degradation of rivers, wetlands and water catchments, urban sprawl, traffic congestion, air pollution and waste, and carbon pollution and impacts of climate change.

The Coalition Government's Biodiversity Legislation Review, commenced in 2014, recently culminated in the commencement on 25 August 2017 of the *Biodiversity Conservation Act 2016* and the amendments to the *Local Land Services Act 2013*.

Environment groups have consistently criticised the reforms, arguing that important biodiversity and conservation laws have been weakened and that the new laws are simply designed to facilitate land clearing and development across NSW. We maintain this view.

Part of the Government's reform package is a \$240 million dollar investment in private land conservation to be managed by the newly established Biodiversity Conservation Trust under the *Biodiversity Conservation Act 2016*. While we welcomed this increased investment in private land conservation, we argued that it should not come at the expense of robust environmental protections.

We have also raised concerns that money allocated is insufficient and not guaranteed in future budgets, and recommend future funds be established to ensure landholders who enter into permanent agreements aren't left without management funding in the event of investment reduction after the initial five years.

It is within this context that the Government has released for public exhibition the *Draft Biodiversity Conservation Investment Strategy 2017 – 2037* and *Draft NSW National Parks System Directions Statement*. These two documents intend to set the strategic direction for future protection and conservation of natural areas on private and public land in NSW.

Less than 10% of the NSW landscape is within a protected area. Specifically 9% of NSW is protected as part of our public National Parks Estate, and only a further 0.4% of private land is adequately protected for conservation¹. This is far short of Aichi Target 11 which states that at least 17% of terrestrial and inland water areas and 10% of coastal and marine areas are to be conserved through ecologically representative, well connected systems of protected areas².

This is an important opportunity to develop an ambitious plan for increasing the amount of protected land in NSW and stem the ongoing threats of habitat destruction, biodiversity loss and environmental degradation of our natural landscapes.

This submission focuses on the *Draft Biodiversity Conservation Investment Strategy 2017 – 2037*, and provides some general comments in relation to the *Draft NSW National Parks System Directions Statement*. A separate, more detailed submission is being made in relation to the *Draft NSW National Parks System Directions Statement*.

DRAFT BIODIVERSITY CONSERVATION INVESTMENT STRATEGY 2017 – 2037

The *Draft Biodiversity Conservation Investment Strategy 2017 – 2037* (**Draft Investment Strategy**) has been developed under the new *Biodiversity Conservation Act 2016*. It is intended to guide investment in biodiversity conservation, and in particular to guide the Government and the Biodiversity Conservation Trust in prioritising investment in biodiversity conservation³.

Earlier submissions from environment groups into the NSW Biodiversity Legislation Review recommended matters for consideration in developing a Biodiversity Investment Strategy, and also suggested that the identification of priority areas not adversely impact on or delay the ability of altruistic landowners to enter into private land conservation mechanisms⁴. Our earlier comments continue to be relevant.

¹ *Draft Biodiversity Conservation Investment Strategy 2017 – 2037*, p12

² The Aichi Biodiversity Targets were developed under the Convention for Biological Diversity Strategic Plan 2011 – 2020 to address biodiversity loss. Aichi Target 11 states that “By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape”.

³ Section 5.1(2) *Biodiversity Conservation Act 2016*

⁴ See *The Future for Biodiversity in NSW, Environment groups' joint response to the consultation package of reforms to land management and biodiversity conservation in NSW*, June 2016, available at www.nature.org.au/media/213826/environment-groups-joint-submission_final-270616.pdf

Specifically, environment groups suggested that the following considerations are relevant to the development of biodiversity investment strategy:

- Potential for restoration of habitat connectivity;

We now provide the following feedback on the Draft Investment Strategy currently on public exhibition:

Principles for Identifying Priority Areas

The Draft Investment Strategy includes four principles for identifying priority investment (Part 2.3.2). While we generally support the overarching principles, we provide the following suggestions for strengthening the principles and their application:

- **Principle 1: Areas of high environmental value should be prioritised**

We agree that areas of high environmental value should be prioritised. The Draft Investment Strategy further specifies that:

“Areas of high environmental value include areas that contain a high proportion of:

- *threatened ecological communities, listed under NSW and Commonwealth legislation, comprising critically endangered ecological communities, endangered ecological communities, or vulnerable ecological communities*
- *over-cleared vegetation types, defined as being a vegetation type that has been cleared to an extent 70% or greater from its pre-European extent, and listed on the NSW Vegetation Types Database*
- *threatened species and habitats for threatened species*
- *important wetlands, shown on the Directory of Important Wetlands in Australia, including Ramsar wetlands identified by the Convention on Wetlands of International Importance (Ramsar Convention 1971)*
- *littoral rainforests identified under State Environmental Planning Policy 26 – Littoral Rainforests, and coastal wetlands identified under State Environmental Planning Policy 14 – Coastal Wetlands*
- *core koala habitat identified under State Environmental Planning Policies”*

We make the following comments on this part of the Strategy:

- Threatened species and habitats for threatened species should include habitat necessary for species to recover to the point of no longer being threatened, whether occupied at present or not.

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- Recovery and protection of listed threatened ecological communities;
 - Recovery and protection of listed threatened species habitat;
 - Securing land of the highest biodiversity importance in-perpetuity;
 - Pre-emptively safeguarding properties in areas where future development is likely;
 - Migratory needs of species, particularly those listed on international conventions;
 - Current and future land use in the region;
 - Soil quality and erosion potential; and
 - Importance to water catchments.

- State Environmental Planning Policy 26 – Littoral Rainforests and State Environmental Planning Policy 14 – Coastal Wetlands will be superseded by the proposed new State Environmental Planning Policy (Coastal Management) which will redefine and map areas of the NSW coast into four coastal management areas in accordance with the Coastal Management Act 2016. We assume that it is intended that the coastal wetland and littoral rainforest area of the coastal zone will be prioritised under the Draft Investment Strategy, but suggest that it would be appropriate for all coastal management areas within the coastal zone, in particular the coastal environment area, to also be prioritised.
- In line with previous submissions we submit that both core and potential koala habitat should be prioritised for protection⁵.
- We agree that important wetlands should be prioritised for protection, but consideration should also be given to including other important water resources, for example, buffer areas around rivers and streams and as well as wild and scenic rivers.
- Where relevant, other matters of national environmental significance should also be prioritised under the Investment Strategy, including for example, habitat for migratory birds. While some of these areas may be captured under other heads of consideration (e.g. threatened species habitat) the Investment Strategy should make specific reference to these matters of national environmental significance.
- Areas of old growth forest, inland rainforest and high conservation grassland should be included, and consideration should be given to whether the areas identified in the Draft Investment Strategy adequately capture these areas.
- Highly erodible land and lands vulnerable to degradation, soil salinity, fragile erodible soils, high slopes, streambanks and relevant buffer areas should be included.
- **Principle 2: Areas that improve ecological connectivity and resilience to climate change should be prioritised**

We agree that areas that improve ecological connectivity and resilience to climate change should be prioritised. It is unclear however exactly how these areas are identified for the purpose of the Draft Investment Strategy. Connectivity is easiest in areas of more complex landscapes (e.g. ranges) but harder in areas of large landscapes such as the west of the State. Connectivity is crucial in maintaining ecological integrity of existing protected areas.

Page 17 identifies ‘Extent of native vegetation’ as the relevant data set for identifying areas that improve ecological connectivity and resilience to climate change should be prioritised. It is unclear exactly what this means. It is also unclear how other strategic planning projects, such as identified habitat and wildlife corridors in Regional Plans, or the Great Eastern Ranges Initiative have informed the identification of areas that improve ecological connectivity and resilience to climate change.

⁵ We note that the definition of koala habitat is currently under review as part of the review of State Environmental Planning Policy 44 - Koala Habitat Protection

- **Principle 3: Areas that contribute most towards achieving a comprehensive, adequate and representative (CAR) protected area system should be prioritised**

While we generally support a CAR model, we believe this could be strengthened by establishing a standard for minimum ecosystem protection (for example , a 15% criterion based on JANIS criteria⁶).

At this point we also raise concerns that private land conservation agreements under the *Biodiversity Conservation Act 2016* may fall short of the IUCN requirements for protected areas. The sections of the *Biodiversity Conservation Act 2016* establishing private conservation agreements can be overridden by the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*. The *Biodiversity Conservation Act 2016* would need to be amended such that mining interests cannot operate where areas fall within areas under at least one of the categories of conservation agreements.

- **Principle 4: Areas where high environmental value assets are under the greatest pressure should be prioritised**

We agree that priority should be given to areas where high environmental value assets are under the greatest pressure, but do not agree with how the Draft Investment Strategy applies this principle – namely focusing on areas under pressure from significant agricultural clearing but not areas under pressure from clearing for urban and other forms of development, including mining, without scientific justification. This disparity is further highlighted in our response to Investment Principle 4 below.

The suggested rationale for this is that areas under pressure from clearing for urban and other forms of development are expected to have a biodiversity offsets market operating and private land conservation investment should generally avoid areas where an active offsets market is in place so as not to impact the efficient operation of these markets (see page 17 of Draft Investment Strategy).

Environment groups have significant, long-held and widely publicised concerns with biodiversity offsetting and in particular the biodiversity offsetting scheme set up under the *Biodiversity Conservation Act 2016*⁷. In particular we are concerned that there are no absolute protections for areas of high environmental value (i.e. nothing is off limits to offsetting) and weak offsetting rules allow areas to be destroyed without equivalent environmental values being protected.

The fact that the Government is undertaking the task of identifying and prioritising for protection the most vulnerable areas of the State, yet at the same time suggesting that some of these areas will be destroyed by future development, highlights the failure of our planning system to protect areas of high conservation value.

If an area is identified as a high priority conservation area under this Draft Strategy then it is an indication of the significant environmental value of the land and there should be no discouragement for protecting it. In some cases it would be even more appropriate for lands identified to be specifically transferred to the protected areas system where suitable and in conjunction with existing areas reserved under the National Parks and Wildlife Act.

⁶ See Taylor MFJ, Fitzsimons JA, Sattler PS, 2014., *Building Nature's Safety Net 2014: A decade of protected area achievements in Australia*. WWF-Australia, Sydney

⁷ See *The Future for Biodiversity in NSW Environment groups' joint response to the consultation package of reforms to land management and biodiversity conservation in NSW*, June 2016 < https://www.nature.org.au/media/213826/environment-groups-joint-submission_final-270616.pdf>; see also *Paradise Lost: The weakening and widening of biodiversity offsetting in NSW 2005-2016*, Nature Conservation Council of NSW, 2017 < <https://www.nature.org.au/our-campaigns/land-clearing-and-wildlife/offsets-report/>>

Applying the Prioritisation Principles

Part 2.3.3 of the Draft Investment Strategy provides a general description of the data sets that have been used to apply the prioritisation principles and produce mapping of Priority Investment Areas. The Government has provided supplementary information outlining the data sets used in a separate document, *Identifying priority investment areas*. The use of the mapping to guide investment decisions is discussed in more detail below.

Investment Principles

In addition to the four principles for identifying priority areas discussed above, the Draft Investment Strategy includes five additional principles for guiding investment decisions. This structure is somewhat confusing. Consideration could be given to amending the terminology within the document to reduce this confusion. For example, the two sets of principles could be more specifically named as Prioritisation Principles and Investment Principles, or the terminology could be changed so there a set of 'criteria' for identifying priority investment areas, and principles for guiding investment decisions.

Further, we note that decision making models currently exist for the purpose of identifying and prioritising areas for conservation⁸. Rather than arbitrary Investment Principles within the Draft Strategy, NSW could utilise existing models which are explicit about values to be protected, targets for protection, costs and real risks of loss if no action. These models can factor in cost-effectiveness for investment.

That said, we make the following comments on the Investment Principles in the Draft Strategy:

- **Principle 1: Investment in private land conservation should seek to maximise conservation benefits**

It is a little unclear how Investment Principle 1 interacts with the identified priority areas and mapping. Investment Principle 1 appears to provide a separate, yet similar set of considerations as Priority Area Principle 1 to ensure 'investment in private land conservation seeks to maximise conservation benefits'.

It is assumed that the purpose of identifying and mapping the priority area is to guide investment decisions. Indeed the introductory comments to Part 3 indicate that investment should be directed to the priority investment areas identified in the Strategy however the Investment Principles do not clearly require this.

Investment Principle 1 should better align with the identified priority investment areas and mapping. That is, rather than setting out separate criteria for Investment Principle 1, this principle should clearly explain how the Priority Area Mapping should be applied and decisions made to maximise conservation benefits for both private and public lands.

Alternatively, as suggested above, NSW could utilise existing models, such as *Marxan*⁹, which are explicit about values to be protected, targets for protection, costs and real risks of loss if no action.

⁸ See, for example, *Marxan*, decision support software for conservation planning globally, <http://marxan.net/>

⁹ *Ibid.*

- **Principle 2: Investment in private land conservation should seek to promote long-term outcomes – both for landholders and the environment**

We submit that Government investment should be primarily directed at permanent ‘in-perpetuity’ agreements. The importance of in perpetuity agreements is not adequately recognised in this approach. While we recognise that this may deter some landholders from entering into agreements, Government spending should be directed at securing permanent agreements that will contribute towards meeting identified targets.

The Strategy highlights that only ‘in-perpetuity agreements’ meet the IUCN definition of ‘protected area’ for the purpose of achieving a comprehensive, adequate and representative protected area system and Aichi targets (see page 12). As Government targets are based on CAR and Aichi Target 11, it follows that investment should be towards areas that will achieve these targets.

Further, as noted above we have concerns that private land conservation agreements under the *Biodiversity Conservation Act 2016* may fall short of the IUCN requirements for protected areas. In all cases, the *Biodiversity Conservation Act 2016* provisions do not negate the application of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991* from accessing such areas into the future. The *Biodiversity Conservation Act 2016* would need to be amended such that mining interests cannot operate where areas fall within areas under at least one of the categories of conservation agreements.

Ultimately, investment of Government money should not be allowed to establish non-permanent protections, but could be used to upgrade lower level (non-perpetuity agreements) to higher level (perpetuity agreements). Existing non-permanent agreements such as Wildlife Refuges who are either not eligible or do not wish to move to permanent agreements should continue to receive conservation support.

We also strongly disagree the lowering the bar to allow ‘term’ Conservation Agreements. If landowners are reluctant to enter into in-perpetuity protection there are other non-Government entry level programs such as Humane Society International’s Wildlife Land Trust available to them, and while offering term agreements may increase initial uptake in Government programs, in our view it’s not a worthy justification. Prioritising or providing funding for term Conservation Agreements diminishes the conservation benefit of the Government’s investment, with the lack of security around such temporary investment being one of the chief criticisms of the federal Environmental Stewardship Program.

- **Principle 3: Investment in private land conservation should complement other government and non-government programs**

We agree in principle that investment in private land conservation should complement other government and non-government programs, however note that the Strategy could better explain the interaction between existing programs and the priority investment area mapping.

Additionally, while suggestions that Government private land conservation investment funds could be used to proactively acquire certain types of biodiversity credits would not technically be spending them to facilitate development, a fine line appears to be being walked. We do not support the loaning of designated private land conservation money and we urge that no Government funding be spent on such activities. The full amount of funding must be available for the stated priorities, and acquittal of credits the Biodiversity Conservation Trust has oversubscribed to must not use private land conservation funding as a fall-back for misdirected investment.

- **Principle 4: Investment in private land conservation should support sustainable farming enterprises and promote regional economic benefits and avoid land use conflicts**

Money earmarked for conservation should be focused solely on the protection of habitats. Alternative funds should be used to support sustainable farming enterprises and promote regional economic benefits, rather than diverting important funds from the Biodiversity Conservation Trust.

The Government's new biodiversity conservation and land management laws are premised on the basis that investment in private land conservation will counter any biodiversity loss that may come from the weakening of biodiversity and conservation laws. Environment groups have been critical of this approach, arguing that strong biodiversity and conservation must be maintained in addition to increased investment in private land conservation. We have also raised concerns that money allocated is insufficient and not guaranteed in future budgets. The money that has been allocated should be focused solely on conservation and the protected of habitat.

Further, as noted above, we have concerns that the Strategy recommends that investment is avoided in areas that are likely to be future development sites for urban growth and mineral and energy resource industries. This approach assumes that future development will destroy natural areas. It highlights the fact that our planning system is designed to allow development to go ahead in areas of environmental value rather than protect those areas from development. If the Government was serious about protecting our most under threat and high value environmental areas, the planning system would provide absolute protection for those areas and prohibit future development.

- **Principle 5: Investment in private land conservation should be cost-effective, transparent, efficient and make the best use of available mechanisms to deliver investment**

We generally agree that investment in private land conservation should be cost-effective, transparent, and efficient, and make the best use of available mechanisms to deliver investment. However, more important is the overall cost-effectiveness of Government spending towards achieving environmental outcomes. The Government should not be spending more money on private land conservation when it is more efficient to simply buy the land and put it into the public reserve system, especially in the case of areas of high environmental value.

Robust and transparent mapping, monitoring and evaluation will be essential for assessing how the program is operating and whether it is leading to improved conservation outcomes. It will also be important for securing ongoing Government investment in private land conservation, which is a key component of the Government's biodiversity and land management reforms. We have previously raised significant concerns with the weakening of biodiversity laws on the premise the conservation gains would be made through private land conservation, particularly when ongoing funding is not guaranteed¹⁰.

¹⁰ See *The Future for Biodiversity in NSW, Environment groups' joint response to the consultation package of reforms to land management and biodiversity conservation in NSW*, June 2016, available at www.nature.org.au/media/213826/environment-groups-joint-submission_final-270616.pdf; See also *Conserving and Restoring Biodiversity in NSW - Submission to the Independent Biodiversity Legislation Review Panel*, September 2014, < www.nature.org.au/media/1891/140919-ncc-tec-npa-tws-submission-to-the-independent-biodiversity-legislation-review-panel_final.pdf>

The Strategy states that the efficiency and effectiveness of the program should be measured in accordance with the monitoring and evaluation framework set out in Part 4, including an independent evaluation in line with the NSW Government Evaluation Framework. Obviously, the evaluation should review whether the Strategy's own targets have been met.

Targets

The Draft Investment Strategy includes short- and long-term targets to help measure the strategy's progress in meeting its environmental as well as socio-economic objectives:

- *Target 1: By 2022, private land conservation agreements will protect examples of 30 NSW Landscapes that are either not represented within, or are inadequately protected in, the protected area system in 2017*
- *Target 2: By 2037, private land conservation agreements will protect examples of 90 NSW Landscapes which are either not represented within, or are inadequately protected in, the protected area system in 2022*
- *Target 3: By 2022, diversified incomes streams will improve the financial sustainability of participating landholders relative to similar local businesses*
- *Target 4: By 2037, diversified income and investment streams will improve the financial sustainability of regional and rural communities*

In our view, these targets are inadequate, arbitrary and disconnected from larger strategic goals. We are concerned that:

- There is no requirement with respect to the size of the 'examples' of the landscapes required to achieve Targets 1 and 2 – would one square metre be sufficient? This "sampling" approach doesn't reflect contemporary land management planning.
- There should be overall biodiversity targets without regard to tenure (for example, by 2020, critical habitats are identified for all threatened species and at least 50% of critical habitat for each species is inside protected areas and by 2020, all threatened ecosystems have been identified and at least 15% of original extent of each ecosystem is inside protected areas).
- Targets 3 and 4 are not directly related to achieving biodiversity outcomes. Again, we express our concerns that the money earmarked for allocation by the Biodiversity Conservation Trust should be solely focused on conservation and the protection of habitat.
- These targets do not contribute towards increasing the protected areas system in line with IUCN categories and principles. As noted above, areas subject to mineral exploitation in particular cannot be considered part of the CAR protected system without changes to the current legislation.

DRAFT NSW NATIONAL PARKS SYSTEM DIRECTIONS STATEMENT

The *Draft NSW National Parks System Directions Statement (Draft Directions Statement)* will replace the *New South Wales National Parks Establishment Plan 2008*. Its purpose is to shape decisions over the short-term to ensure progress towards the long-term objective of building a comprehensive, adequate and representative national parks system.

It is noted that a Draft Directions Statement was publically exhibited in 2015, but was not finalised. Environment groups provided feedback on the 2015 Draft Directions Statement and much of that feedback remains relevant. It is unclear how earlier feedback has informed the 2017 Draft Directions Statement and it seems previous concerns have not been adequately addressed.

Environment groups are preparing a separate submission on the Draft Directions Statement that should be considered as part of the current consultation process. Already we note however that some of the same issues identified in this submission, such as arbitrary and disconnected targets and a “sampling” approach apply here also. Further, for the two documents to work effectively, concerns about the private land conservation agreements falling short of IUCN requirements must be rectified, with all areas subject to investment being recognised as not forming part of the CAR protected areas system. Such a system can only currently operate through the *National Parks and Wildlife Act 1974*.

Thank you for the opportunity to provide a submission on the *Draft Biodiversity Conservation Investment Strategy 2017 – 2037*. Please do not hesitate to contact me on ncc@nature.org.au or (02) 9516 1488 should you require any further information.

Yours sincerely,



Daisy Barham
Campaigns Director, Nature Conservation Council of NSW

On behalf of the Nature Conservation Council of NSW, National Parks Association of NSW, Humane Society International, WWF Australia and the International Fund for Animal Welfare.