Biodiversity Legislation Review
OEH Paper 4: Conservation in Land-use Planning
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1. Purpose of this paper

The Minister for the Environment has commissioned the Independent Biodiversity Legislation Review Panel to undertake a review of the native vegetation, threatened species and related biodiversity legislation in New South Wales.

As part of this process, the Office of Environment and Heritage (OEH) is preparing a series of six background papers. These are OEH papers, rather than a product of the panel. The panel will set out its views in its final advice to government.

This paper examines how biodiversity conservation is currently integrated into land-use planning.
2. Introduction to land-use planning in New South Wales

Land-use planning is about the use, development and protection of land in the present and long-term interests of government, industry (e.g. urban growth, agriculture, mining, tourism) and the community. It focuses on forward planning and aims to integrate social, economic and environmental issues to deliver sustainable outcomes. Land-use planning can operate at different geographical and temporal scales. For the purposes of this paper, it is used in the context of State, regional, local and landscape (or multi-site) strategic planning. It does not focus on planning at the individual property level.

For the most part, land-use planning involves identifying and defining priorities for different areas of land, taking into account the environmental and socio-economic context. Every state and territory in Australia has some form of land-use planning scheme that aims to ensure the fair, orderly, economic and sustainable use of the land.

In recent years, there has been a greater focus on upfront strategic planning that considers the impact of future development on biodiversity and the broader environment as early as possible in the planning system. The objective is to avoid new development in environmentally sensitive areas, manage cumulative impacts and provide greater development certainty.

Clearing for agricultural production and land management activities has not been the focus of strategic planning in recent years. The regulation of such activities currently requires consideration under the Native Vegetation Act 2003.

2.1 Role of land-use planning in biodiversity conservation

Land-use planning plays an important role in achieving conservation outcomes for biodiversity (including threatened species and native vegetation). It can facilitate the early consideration of biodiversity issues and provides a vehicle for:

- identifying and protecting areas of high conservation value and avoiding incompatible adjoining land uses
- assessing the cumulative impact of development on biodiversity
- identifying corridor networks to link protected areas and retain ecological connectivity
- planning in a more holistic manner to guide development design and set development standards and controls to avoid, minimise and then offset negative impacts in accordance with government policy.

2.2 Principal legislation

The Environmental Planning and Assessment Act 1979 is the law guiding land-use planning in New South Wales. It establishes a framework that has the following key elements:

- environmental planning instruments – State Environmental Planning Policies (SEPPs)\(^1\) and Local Environmental Plans that manage land use and set development standards and controls

\(^1\) Prior to 1 July 2009, the framework included regional environmental plans (REPs). REPs in force at that date continue in force as SEPPs, subject to review.
• development assessment and approval for site-based activities\(^2\) – this is addressed in *Biodiversity Legislation Review OEH Paper 5: Conservation in Development Approval Processes*

• implementation and enforcement – including ability to issue directions to planning authorities, appoint a planning assessment commission, and compliance and enforcement powers.

The Department of Planning and Environment is responsible for administering the *Environmental Planning and Assessment Act 1979*, including preparing SEPPs and directions which local councils must follow when preparing Local Environmental Plans.

Local government is central to the development and implementation of State and regional land-use directions. Through Local Environmental Plans, councils can integrate environment protection with the social and economic needs of their local government area.

The Office of Environment and Heritage's (OEH) role in land-use planning is predominately advisory to the Department of Planning and Environment and local government, in relation to environmental planning instruments and planning proposals. OEH also has a role in administering biodiversity certification under section 7A of the *Threatened Species Conservation Act 1995*.

### 2.3 Policy and plan-making framework

Land-use planning in New South Wales is guided by a framework of statutory and non-statutory plans and policies at various scales (Figure 1). Biodiversity considerations are incorporated into land-use planning at each scale, with requirements under both the *Environmental Planning and Assessment Act 1979* and the *Threatened Species Conservation Act 1995*.

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\(^2\) Including developments under Part 4 and activities under Part 5 of the *Environmental Planning and Assessment Act 1979*. 
**Figure 1: How biodiversity is considered in land-use planning in New South Wales**

<table>
<thead>
<tr>
<th>State</th>
<th>State Environmental Planning Policies and section 117 directions</th>
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<tbody>
<tr>
<td></td>
<td>• Biodiversity considerations</td>
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<td></td>
<td>• State Environmental Planning Policies: Department of Planning and Environment consults with OEH if a new or proposed amendment to a State Environmental Planning Policy is likely to affect threatened species, populations or communities, or their habitats (SAA, Environmental Planning &amp; Assessment Act 1979).</td>
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<tr>
<td></td>
<td>• Section 117 directions: Department of Planning and Environment seeks non-statutory advice from OEH when developing new or revising section 117 directions.</td>
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<tr>
<th>Region</th>
<th>Regional Growth and Infrastructure Plans, Regional Strategies (including Regional Conservation Plans), Subregional Delivery Plans</th>
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<tr>
<td></td>
<td>• Biodiversity considerations</td>
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<tr>
<td></td>
<td>• Regional Growth and Infrastructure Plans/Regional Strategies/Subregional Delivery Plans: Department of Planning and Environment seeks non-statutory advice and data from OEH to assist in the development of these plans and strategies.</td>
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<td></td>
<td>• Regional Conservation Plans: OEH led development of Regional Conservation Plans to complement Regional Strategies developed by the Department of Planning and Environment.</td>
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<tr>
<th>Local</th>
<th>Local Environmental Plans</th>
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<td>• Biodiversity considerations</td>
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<tr>
<td></td>
<td>• Department of Planning and Environment refers draft Planning Proposals (including comprehensive Local Environmental Plans) to OEH for consultation in accordance with requirements of the Environmental Planning &amp; Assessment Act 1979 (s34A and/or 506).</td>
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<td></td>
<td>• OEH may work with councils in the development of Local Environmental Plans to assist them to identify features of environmental significance or sensitivity.</td>
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<th>Landscape</th>
<th>Biodiversity certification (OEH), Strategic assessments (Commonwealth)</th>
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<td>• Biodiversity considerations</td>
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<tr>
<td></td>
<td>• OEH administers biodiversity certification under Part 7A of the Threatened Species Conservation Act 1995.</td>
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<td></td>
<td>• The Commonwealth Government collaborates with OEH to undertake strategic assessments in accordance with requirements of the Environment Protection and Biodiversity Conservation Act 1999.</td>
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<tr>
<th>Site</th>
<th>Development applications</th>
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<td></td>
<td>• Biodiversity considerations</td>
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<tr>
<td></td>
<td>• Development under Part 4 or 5 of the Environmental Planning &amp; Assessment Act 1979 requires concurrence from OEH or the Minister for the Environment if the assessment of significance (section 5A of the Environmental Planning &amp; Assessment Act 1979) determines that the project is likely to have a significant environmental impact.</td>
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Note: See section 3.1 for further information on State Environmental Planning Policies and section 117 directions.
3. Current mechanisms for integrating biodiversity conservation into land-use planning

The strategic planning framework established under the Environmental Planning and Assessment Act 1979 is not in the scope for this review, however, many of the mechanisms for biodiversity conservation that are being reviewed have been designed in response to this framework. This section of the paper therefore sets out the key elements of the land-use planning framework, the way in which they interact with the legislation under review and the effectiveness of this framework in achieving conservation outcomes.

3.1 Statewide mechanisms

The objectives and policies articulated in SEPPs and section 117 directions are intended to provide statewide strategic direction for land-use planning in New South Wales.

State Environmental Planning Policies

SEPPs are environmental planning instruments under the Environmental Planning and Assessment Act 1979 that deal with issues that the Minister for Planning considers to be of state significance. SEPPs impose planning controls over all or part of the State and have the effect of overriding any other planning control that would otherwise apply (e.g. land-use zonings in Local Environmental Plans).

Under the Environmental Planning and Assessment Act 1979, the Secretary of the Department of Planning and Environment is required to consult with OEH if a SEPP will or may adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats.

There are currently 43 SEPPs in force, including SEPPs with a narrow focus such as koala habitat protection or littoral rainforests as well as SEPPs with a much broader application, such as infrastructure or mining. Appendix A provides a summary of some of the SEPPs that are of most significance for biodiversity and the environment more broadly.

Section 117 directions

The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979, can issue directions that relevant planning authorities such as local councils must follow when preparing planning proposals for new Local Environmental Plans. Direction 2 addresses matters relating to the environment and heritage, including environment protection zones and coastal protection. Specifically, Direction 2.1 states that its objective is to ‘protect and conserve environmentally sensitive areas’.

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3 Part 3, Division 2, Environmental Planning and Assessment Act 1979
4 Section 34A, Environmental Planning and Assessment Act 1979
5 SEPP No. 44 – Koala Habitat Protection
6 SEPP No. 26 – Littoral Rainforests
7 SEPP (Infrastructure) 2007
8 SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)
OEH often supports local councils in applying this direction by providing data, advice or other information during the Local Environmental Plan-making process. However, it appears there is variability in how this direction is applied due to the fact that ‘environmentally sensitive areas’ are not defined in the directions and the capacity and resources available to local councils differ across the State.

3.2 Regional scale land-use planning

Since the mid-2000s, regional scale land-use planning has focused on the preparation of Regional Strategies by the Department of Planning and Environment, which in some cases are supported by Regional Conservation Plans prepared by OEH. These plans are intended to guide local councils in preparing their Local Environmental Plans. From a biodiversity perspective, the objective of the Regional Strategies and Regional Conservation Plans was to ensure that development zones avoided areas of high environmental value, so there would be fewer protracted and costly development applications. Appropriate zoning can also help manage the expectations of landholders about the development potential of their land.

Regional Strategies

In recent years, OEH has supported the Department of Planning and Environment’s development of Regional Strategies, which aim to guide sustainable urban, infrastructure and employment-related growth in a region over a 25-year period. They set goals for development and targets for housing and lot supply. They also identify areas of high conservation value that should be avoided in new developments. Regional Strategies have been prepared for the Far North Coast, Mid North Coast, Lower Hunter, Central Coast, Illawarra, South Coast, and Canberra–Sydney Corridor, and a draft prepared for the Murray.

Regional Strategies are given statutory effect through a section 117 direction made by the Minister for Planning. Under Direction 5.1, councils must ensure when preparing a draft Local Environmental Plan that it is consistent with the Regional Strategy. Specifically, draft Local Environmental Plans should only zone land and incorporate specific controls or provisions to be consistent with the land-use strategy articulated in the Regional Strategy.

Regional Conservation Plans

Some of the Regional Strategies required OEH to prepare Regional Conservation Plans to:

- further detail the environmental assets identified in Regional Strategies
- develop accurate spatial data to supply to local councils
- further detail the actions and planning provisions that may be appropriate for each type of environmental asset.

Regional Conservation Plans have been developed for the Far North Coast, Lower Hunter and South Coast and a draft has been exhibited for the Mid North Coast (Appendix B). Regional Conservation Plans were designed to support local councils in preparing Local Environmental Plans and assessing planning proposals.

*Do Regional Strategies and Regional Conservation Plans streamline regulatory processes?*

There is no provision to ‘switch off’ threatened species assessment for site-based activities proposed to take place in an area covered by a Regional Strategy (with or without a Regional Conservation Plan).
While such strategies and plans aim to ensure that development is sensitively designed and located, landholders and developers are still required to comply with environmental assessment requirements, and councils are required to consider and review such assessments at the individual development application stage.

**Effectiveness**

There is no over-arching policy or methodology guiding the development of Regional Strategies or Regional Conservation Plans and there has been considerable variability in how local councils have used Regional Conservation Plans. Factors that contribute to this variability include:

- data availability
- relationships between local and State government agencies
- different types of development pressures
- different levels of expected land-use change (volume / number of applications for re-zoning / development)
- capacity of local and State government agencies
- legacy zonings and expectations of development, e.g. when areas of high environmental value are in development zonings (but no development approvals are lodged) for many years as a result of earlier planning instruments
- types and complexity of environmental issues, e.g. water, Aboriginal cultural heritage, biodiversity.

While Regional Conservation Plans can inform local planning, they are just one of many inputs that councils consider when making Local Environmental Plans. The development of Regional Conservation Plans has not always aligned with the timing of local planning processes, which has affected their adoption in Local Environmental Plans. They are, by their very nature, contentious as they are seen to be an important input to determining the development potential of landholdings (by way of eventual land-use zoning).

In some cases, councils have worked collaboratively with OEH, the Department of Planning and Environment and their local community to incorporate the information from a Regional Conservation Plan into a Local Environmental Plan (see Appendix C for a case study on the Bega Valley Local Environmental Plan).

**Regional Growth and Infrastructure Plans**

The Department of Planning and Environment has announced it will develop Regional Growth and Infrastructure Plans that will cover the entire State and replace existing Regional Strategies and Regional Conservation Plans. Regional Growth and Infrastructure Plans will include targets for employment and housing and the related infrastructure that will be required to support this growth. They will be implemented through Subregional Delivery Plans or Local Environmental Plans and other mechanisms.

The Department of Planning and Environment is leading the preparation of the Regional Growth and Infrastructure Plans and OEH is contributing significant data on the environmental impacts of growth options to be presented in the plans as well as the known environmentally sensitive areas in each region. Where possible, the data in existing Regional Conservation Plans will be used in the preparation of new Regional Growth and Infrastructure Plans.
Subregional Delivery Plans

At this stage, Subregional Delivery Plans are proposed to be developed only for the Sydney metropolitan region and will be the primary delivery mechanism of the Sydney Metropolitan Strategy. They will set out how employment and housing targets will be met and how the supporting infrastructure will be delivered.

The Department of Planning and Environment is expected to work in partnership with local councils and the community to develop these plans. OEH works closely with the Department of Planning and Environment and other government agencies to ensure that biodiversity and other environment and heritage matters are appropriately considered.

3.3 Local land-use planning

Local land-use planning is delivered by local councils through Local Environmental Plans. The Minister for Planning is required to approve Local Environmental Plans and the Department of Planning and Environment supports the Minister in this role by working closely with councils and other agencies, including OEH, during the Local Environmental Plan-making process.

Local Environmental Plans

The Environmental Planning and Assessment Act 1979 requires formal consultation with OEH on Local Environmental Plans in two circumstances:

a) the Minister for Planning determines that consultation is required on a proposed Local Environmental Plan (‘planning proposal’). This consultation may be on matters broader than biodiversity (e.g. Aboriginal and historic heritage, flooding and estuary management, acid sulfate soils)

b) a Local Environmental Plan will or may adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats. In relation to a proposed Local Environmental Plan this consultation is to commence once the Minister for Planning has decided that the planning proposal should proceed.

Statutory consultations represent the majority of land-use planning activity undertaken by OEH. For the 2013–14 financial year OEH received 119 statutory referrals. The majority of these cases relate to amendments to Local Environmental Plans, primarily to rezone or amend minimum lot size and other provisions relating to the land for development purposes.

How do statutory referrals achieve conservation outcomes?

Statutory referrals are a key mechanism to ensure that Local Environmental Plans provide appropriate protection of biodiversity and other natural assets. OEH provides advice relating to the protection of natural assets, including environmentally sensitive areas and biodiversity, and may comment on:

- the location and extent of environmental assets of high conservation value, environmentally sensitive lands, heritage or natural hazards within the area subject to the planning proposal, and provision of spatial data of such areas

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10 Section 56(2)(d) Environmental Planning and Assessment Act 1979
11 Section 34A Environmental Planning and Assessment Act 1979
• the appropriateness of proposed zonings to ensure compatibility of land use, and 
recommendations as to the choice of an appropriate zone/s (see Box 1 for an explanation 
of environmental zones)
• potential offset requirements that may be negotiated between a planning authority and a 
proponent as part of a rezoning proposal
• development controls including the types of development that should be included in each 
zone (as permitted without consent, with consent or prohibited altogether), the application 
of local clauses, including overlays to identify environmentally sensitive areas and 
appropriate minimum lot sizes to prevent inappropriate subdivision and fragmentation.

Often this advice will draw heavily on the guidance contained in directions issued by the 
Minister for Planning, practice notes made by the Department of Planning and Environment, 
and Regional Strategies and Regional Conservation Plans.

In cases where a rezoning proposal is approved with a negotiated offset requirement (most 
commonly secured through a planning agreement), councils are still required to consider 
impacts on biodiversity when a development application is lodged. That is, there is no direct 
benefit for councils or proponents to having secured offsets at the rezoning stage (if that 
rezoning was not subject to biodiversity certification). This can act as a disincentive to 
councils and proponents considering offsets at the rezoning stage.

Appropriate land-use zoning not only helps to ensure that biodiversity values are protected, it 
also results in fewer protracted development applications and time and cost savings for 
development applicants and councils.

OEH advice is just one of many inputs that planning authorities receive. It is the role of the 
planning authority to balance competing views of different agencies, stakeholders and 
community groups and members.

Box 1

Use of environmental zoning to achieve conservation outcomes

The Standard Instrument (Local Environmental Plans) Order 2006 sets out 35 standard 
zeones for councils to use when preparing new Local Environmental Plans. Councils may 
select zones as appropriate to the needs of their local area. For each zone the Standard 
Instrument sets out core objectives for development and certain mandated permitted or 
prohibited uses.

A council may identify environment protection zones (E-zones) where the primary focus is 
the conservation or management of environmental values. Four E-zones are available: 
E1 National Parks and Nature Reserves, E2 Environmental Conservation, 
E3 Environmental Management and E4 Environmental Living.

While the use of E-zones can contribute to the protection of biodiversity by preventing a 
range of land uses that are likely to degrade biodiversity values, zoning itself does not 
provide permanent protection or require active conservation management of 
environmental land. Conversely, zoning land for development does not ‘switch off’ the 
requirement for environmental assessment of that land. This highlights the need for a 
combination of measures, such as biodiversity certification and the use of offsets, to 
deliver sustainable outcomes for biodiversity.
3.4 Multi-site land-use planning

In recent years, there has been a greater focus on upfront strategic planning that considers the impact of future development on biodiversity as early as possible in the planning system in order to avoid site-by-site assessments. The two key mechanisms that have been used to implement this form of strategic planning are:

- biodiversity certification under the NSW Threatened Species Conservation Act 1995, and

These mechanisms have improved the transparency and predictability of land-use decisions, documenting how decisions have been made and where economic benefits outweigh biodiversity outcomes, or vice versa.

Although there are significant time and cost savings to be made at the development assessment stage, biodiversity assessments at these scales have significant data requirements and can be time-consuming and expensive to complete. The upfront investment needs to be understood (by both planning authorities and landowners) in order to manage expectations about how quickly site-by-site assessment requirements will be ‘switched off’.

In a rural setting, the Native Vegetation Act 2003 includes provisions for multi Property Vegetation Plans, which have similar objectives to strategic planning in an urban context. However, there has been limited application of multi Property Vegetation Plans as discussed further below.

**Biodiversity certification**

Biodiversity certification was introduced in 2004 and is provided for under Part 7AA of the Threatened Species Conservation Act 1995. It aims to identify and protect areas of high conservation value at the early stages of land-use planning so that impacts can be avoided, minimised and offset strategically rather than dealt with at the individual development application stage.

Biodiversity certification is only applied to land that is proposed for development. The impact of development on biodiversity values on certified land must be offset through the application of ‘conservation measures’. Land to which conservation measures are applied is not certified.

A key incentive of biodiversity certification is that once conferred, requirements for site-specific assessment of the impacts on biodiversity values are ‘switched off’. This applies for development (including state significant development) under Part 4 and activities under Part 5 of the Environmental Planning and Assessment Act 1979.

In addition, the Native Vegetation Act 2003 does not apply to biodiversity-certified lands thereby reducing regulatory requirements.

The Minister for the Environment can confer certification only if it will improve or maintain biodiversity values. The term ‘biodiversity values’ is defined to include the composition, structure and function of ecosystems. It includes, but is not limited to, threatened species, populations and ecological communities, and their habitats\(^\text{12}\). Biodiversity values will be

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\(^{12}\) Section 4A TSC Act.
‘improved or maintained’ if the biodiversity certification assessment is carried out in accordance with the Biodiversity Certification Assessment Methodology.

Where can biodiversity certification occur?

Biodiversity certification can be conferred on specified land rather than on environmental planning instruments\(^{13}\). There are no thresholds defining the size of land to which biodiversity certification may be sought, however, the intention is that biodiversity certification operates for large-scale strategic planning (whereas mechanisms such as BioBanking are used for a single landholding).

Biodiversity certification has only been applied to urban settings to support the development of new housing and industrial/commercial development. However, if an Order of Certification applies to any land to which the Native Vegetation Act 2003 would otherwise apply, certification will switch off the Native Vegetation Act 2003 on such land.

Who can apply for biodiversity certification?

Biodiversity certification is available only to planning authorities (e.g. councils and the Department of Planning and Environment). It relies on planning authorities to initiate the process – to date the majority of applications have been made by councils for land that has been proposed for urban development. Under current provisions, it is possible for a local council to sponsor a landowner’s application for biodiversity certification on a single site.

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**Box 2**

**Amendments to biodiversity certification in 2010**

The Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010 clarified when the Minister may confer biodiversity certification.

The former NSW Government made further amendments in 2010, the effect of which were to:

- clearly outline the processes and procedures for obtaining biodiversity certification
- introduce the Biodiversity Certification Assessment Methodology, a transparent and robust assessment process that provides certainty in applying the ‘improve or maintain’ standard
- make the conferral of certification apply to specified areas of land, rather than to an environmental planning instrument, in order to remove uncertainty where overlapping instruments exist
- make clear that only planning authorities could apply for certification. Landholders seeking approval for single landholdings would be required to use BioBanking, unless a council agreed to sponsor an application for certification.

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\(^{13}\) Prior to 2010, certification could be conferred on environmental planning instruments, however, amendments were made to the TSC Act to require certification of land.
Gazetted orders for biodiversity certification

Biodiversity certification has been conferred five times. Two of these projects (Warnervale and Broulee) were conferred under the current legislative provisions (including the use of the Biodiversity Certification Assessment Methodology):

- State Environmental Planning Policy (Sydney Regional Growth Centres) 2006
- Wagga Wagga Local Environmental Plan 2010
- Albury Local Environmental Plan 2010
- Warnervale Town Centre Biodiversity Certification Strategy (2014)
- Broulee Biodiversity Certification Strategy (2014)

Appendix D summarises the key outcomes resulting from biodiversity certifications conferred to date.

Biodiversity certification strategy

A biodiversity certification strategy must be submitted with an application for biodiversity certification. It is a strategy for the implementation of conservation measures to ensure that the overall effect of the proposed development and conservation measures will improve or maintain biodiversity values.

At the planning stage, the planning authority uses the Biodiversity Certification Assessment Methodology to identify the biodiversity values of the land and determine the areas that can be protected in the long term. Losses in biodiversity values need to be offset, which can be done by protecting and improving areas of high conservation value.

Identifying biodiversity values and assessment methods

The Biodiversity Certification Assessment Methodology sets the rules for ensuring that biodiversity certification will improve or maintain biodiversity values (refer to Biodiversity Legislation Review OEH Paper 2: Information Provisions). It establishes a process for:

- identifying areas of land that are regarded as having high conservation value (i.e. 'red flag' areas)
- assessing and measuring biodiversity values and measuring the loss of biodiversity values
- determining offset requirements
- identifying conservation measures to meet the offset requirements.

Threats to ecosystem services such as dryland salinity, land degradation and water quality are not dealt with in the methodology.

The Biodiversity Certification Assessment Methodology has been designed to capture information on matters of national environmental significance facilitating an application for strategic assessment under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Relationship to BioBanking

The Biodiversity Certification Assessment Methodology is similar to the BioBanking Assessment Methodology but departs from it to account for the different scale of operation of

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14 Section 126K of the Threatened Species Conservation Act 1995.
Key differences include:

- definition of ‘red flag’ areas
- reduced field survey requirements
- reduced offsetting ratios.

To encourage planning authorities to undertake biodiversity assessments at the strategic planning phase, the Biodiversity Certification Assessment Methodology currently applies an offset ratio that is, in most cases, lower than the BioBanking Assessment Methodology (that is, development sites may require fewer credits, and offset sites may generate larger numbers of credits).

The Biodiversity Certification Assessment Methodology is considered by some planning authorities to be prohibitively complex and time-consuming, and councils may be reluctant to commit resources upfront for the assessment. It is acknowledged that applying the methodology at the scales required for biodiversity certification is complex with potentially significant field survey requirements. This can be particularly challenging in areas where there is insufficient baseline data available. OEH is preparing an operational manual for biodiversity certification which is expected to provide important guidance for interpreting and applying the methodology.

**How can offsets be secured?**

Offsets can be secured in a variety of ways including reservation of land, conservation agreements, financial contributions towards the conservation or enhancement of the natural environment and zonings.

A variety of mechanisms have been used, including the use of financial contributions, transfers of land from private into public ownership for public reserves, planning agreements, biobanking agreements, land-use zonings and other provisions of Local Environmental Plans.

Under the Biodiversity Offsets Policy for Major Projects and BioBanking itself, biobanking agreements are used as a standard offset mechanism. The Biodiversity Offsets Policy for Major Projects provides the option for developers to satisfy their offset requirement by making a financial contribution into a fund. Such streamlining could also be considered in biodiversity certification to ensure the development of a robust market in environmental offsets.

**Financial mechanisms for securing offsets**

One of the outcomes of a biodiversity certification strategy is the identification of areas for development and areas to offset impacts from that development. The implementation of this arrangement will often require a transfer of funds from landowners who benefit from the

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15 Fifteen different types of mechanisms are listed under section 126L of the Threatened Species Conservation Act 1995, including ‘any other measure that the Minister considers to be a conservation measure’.

16 This would require limiting the number of mechanisms available under section 126L of the Threatened Species Conservation Act 1995.
certification (through the ‘switching off’ of site-based assessments) to landowners who voluntarily agree for their lands to be used for conservation management.

There is currently a lack of appropriate financial mechanisms to receive funds from developable lands and then dispense to conservation lands. In some areas, Special Infrastructure Contributions may be available but this is not always the case. Special Infrastructure Contributions were used in the Western Sydney Growth Centres and Warnervale Town Centre biodiversity certification projects and offsets funds are to be managed by the NSW Environmental Trust.

Box 3
Role of offset funds

The Western Sydney Growth Centres SEPP was certified on the basis that a $530-million conservation fund (in 2005–06 dollar values and subject to indexing) would be established by the NSW Government over a 30–40 year period. This funding is derived partly from a Special Infrastructure Contribution applying to development in the Growth Centres and partly from general government revenue.

Three-quarters of the conservation fund ($397.5 million) is used to implement the Growth Centres Biodiversity Offset Program, which is administered by the NSW Environmental Trust. Funding for the Program is allocated annually to the NSW Environmental Trust – at the same rate at which development is expected to occur within the Growth Centres. The NSW Environmental Trust provides OEH with an annual grant to implement the Program by way of purchasing reserves or establishing conservation agreements (e.g. biobanking agreements) in accordance with the criteria specified in the certification.

The Warnervale Town Centre biodiversity certification was unique in that the offset requirements will be delivered entirely by financial contributions of $4 million. The Department of Planning and Environment discounted the Special Infrastructure Contribution by 50% with the remaining $2 million to be funded by NSW Treasury. The NSW Environmental Trust will administer the funds in accordance with a business plan. OEH will implement the program and be responsible for securing the offsets, as it does with the Growth Centres Biodiversity Offset Program.

The Upper Hunter Strategic Assessment under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 is being undertaken with respect to a biodiversity plan for coal mining in the Upper Hunter. The impact assessment has been undertaken using a modified version of the Biodiversity Certification Assessment Methodology. It has been agreed that an Upper Hunter offsets fund will be established to allow mining companies to pay a sum calculated to be the equivalent of their offset obligations. The offsets fund is yet to be created.

The development of the Offsets Fund for Major Projects may be an opportunity to explore whether such a fund can administer offset arrangements at both a site-scale (Biodiversity Offsets Policy for Major Projects and BioBanking) and multi-site-scale (biodiversity certification).

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17 The remaining $132.5 million is used for the purchase of land identified in the Growth Centres SEPP (administered by the Department of Planning and Environment).
**Length of biodiversity certification**

Biodiversity certification remains in force indefinitely or for such a period as the Minister for the Environment determines and specifies in the order conferring certification. This provides certainty for developers and the community.

The Minister must also undertake periodic reviews of a biodiversity certification. This requirement only arises at 15-year intervals.

**Strategic assessments**

The *Environment Protection and Biodiversity Conservation Act 1999* provides for strategic planning via two main mechanisms: strategic assessments and bioregional plans (see Appendix E for further information on bioregional plans).

A strategic assessment can be undertaken with respect to the impacts of a policy, plan or program on matters of national environmental significance. A policy, plan or program may include (but is not limited to) a local government plan, strategic land-use plan, infrastructure plans and policies. The process is designed to be flexible and provide the opportunity to reach a negotiated outcome.

The Commonwealth Government prefers to undertake strategic assessments where the policy, program or plan is developed as part of the strategic assessment process, rather than being finalised before the start of a strategic assessment. There also needs to be a clear link with a state or territory process to ensure that integration of outcomes can be achieved\(^\text{18}\).

In determining whether to endorse a policy, program or plan, the Commonwealth Minister for the Environment will have regard to the extent to which the policy, program or plan is consistent with the objectives of the *Environment Protection and Biodiversity Conservation Act 1999*. The Minister may consider such matters as the manner in which the policy, program or plan:

- avoids impacts on matters of national environmental significance or areas of high biodiversity value
- mitigates and offsets these impacts
- contributes to the enhancement of the existing environment and management of existing threats
- provides a management, monitoring, auditing and public reporting framework\(^\text{19}\).

**Strategic assessments in New South Wales**

There are currently four strategic assessments completed or underway in New South Wales (Appendix F). All of these have been for major urban release areas and large-scale mining development. Appendix G provides a case study of the Upper Hunter Strategic Assessment.

An example of a strategic assessment that has resulted in a process similar to biodiversity certification is the Melbourne Strategic Assessment, which applies in Melbourne’s growth areas.


\(^{19}\) Ibid.
Box 4

Strategic assessment: Melbourne’s urban growth boundary

The Victorian and Australian Governments commenced a strategic assessment of Melbourne’s growth corridors in 2009. This approach involved the strategic assessment of the potential impact of a program seeking to expand Melbourne’s urban growth boundary on matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*.

The outcome of the Melbourne Strategic Assessment was the approval of three conservation strategies which address all relevant matters of national environmental significance and matters of State significance. The strategies ensure the long-term protection of biodiversity in the growth areas and set out the conservation measures required to satisfy the commitments to the Australian Government.

The Biodiversity Conservation Strategy is the overarching strategy for the protection of biodiversity in the growth corridors. The Biodiversity Conservation Strategy addresses all relevant matters of State significance as well as matters of national environmental significance; sets up a network of conservation areas; and sets out conservation measures to protect important biodiversity outside Melbourne to complement actions within growth areas.

The Biodiversity Conservation Strategy removes the need for Australian Government ‘prescriptions’ for each specific ecological community and threatened species in the area, by identifying exactly which land will be protected for conservation. The Biodiversity Conservation Strategy also sets out survey, salvage and translocation and offset requirements that apply to land located within the area covered by the Strategy that may be cleared of native vegetation. The Biodiversity Conservation Strategy is being implemented through a number of statutory planning mechanisms, including planning scheme amendments.

Do strategic assessments streamline regulatory processes?

The primary purpose of strategic assessments is to reduce the regulatory duplication of actions that impact threatened species, ecological communities and their habitat and migratory species that are listed under the *Environment Protection and Biodiversity Conservation Act 1999* by removing the need for future referrals and approvals under this Act.

It is estimated that the Western Sydney Growth Centres strategic assessment has streamlined assessment and approval processes by removing the need for the individual assessment of approximately 500 future referrals under the *Environment Protection and Biodiversity Conservation Act 1999*.

Commonwealth strategic assessments do not remove requirements under State law for development-specific assessment and approval.

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20 Pope, J & Moore, SA 2013, *Planning and assessment for biodiversity conservation at a landscape-scale: an evaluation of current approaches and opportunities in Australia*, University of Tasmania, Hobart
Multi-Property Vegetation Plans

Key policy origins for native vegetation conservation and management in New South Wales are outlined in Appendix H.

In addition to allowing a single landholder to submit a Property Vegetation Plan, the Native Vegetation Act 2003 provides for a group of landholders to submit a Property Vegetation Plan covering multiple properties. The same rules apply to both single property and multi-Property Vegetation Plans. If a Property Vegetation Plan proposes broadscale clearing, it can only be approved if the clearing will improve or maintain environmental outcomes as determined by the Environmental Outcomes Assessment Methodology. The process of approving a Property Vegetation Plan is described in Biodiversity Legislation Review OEH Paper 5: Conservation in Development Approval Processes.

To date, there has been limited utilisation of multi-Property Vegetation Plans, with only one example – the Walgett Landscape Plan. Some of the key issues preventing up-take appear to be the challenge of obtaining agreement between landholders on clearing areas, location of offsets, coordinated management actions, funding and how to maintain the agreement in the long term. Most landholders, when given the choice, have preferred to create their own individual Property Vegetation Plans.
4. Conclusion

The NSW Government has a solid framework for incorporating biodiversity considerations in land-use planning under the *Environmental Planning and Assessment Act 1979*. However, it faces challenges in meeting the requirements and expectations of planning authorities and other stakeholders. The main conclusions from this paper are:

- The objectives and priorities that are articulated in the planning system should be aligned and closely related to the outcomes of the biodiversity legislation review.
- In order to be effectively integrated into the strategic planning system, biodiversity considerations, including the identification of assets of high conservation value, need to be incorporated into regional strategic land-use plans rather than being part of separate conservation plans.
- There are considerable benefits for biodiversity from upfront strategic planning. Consideration of the impacts of future development on biodiversity as early as possible in the planning system should be encouraged.
- Statutory referrals under the *Environmental Planning and Assessment Act 1979* are a key mechanism to ensure that Local Environmental Plans provide appropriate protection for biodiversity and other natural assets. OEH provides advice relating to the protection of natural assets, including environmentally sensitive areas and biodiversity.
- Biodiversity certification under the *Threatened Species Conservation Act 1995* and strategic assessments under the *Environment Protection and Biodiversity Conservation Act 1999* are two mechanisms that can result in streamlined development assessment processes by ‘switching off’ site-based assessments. The key benefits of these mechanisms are:
  - improved transparency and predictability of land-use decisions
  - certainty for development proponents and the broader community about where future development will be located
  - avoidance of development in environmentally sensitive areas and certainty that development impacts will be offset
  - cost and time savings at the development assessment stage as site-by-site assessments are not required.
- Some of the challenges that biodiversity certification faces include:
  - rules underpinning the Biodiversity Certification Assessment Methodology can sometimes constrain outcomes particularly where a region has a significant number of high biodiversity conservation values ('red flags') across the landscape
  - a significant upfront investment of time and money by planning authorities is required to implement the process
  - the length of time taken to complete assessments means they are often not compatible with the Department of Planning and Environment or local council land-use planning timeframes
  - a lack of financial mechanisms to secure offsets limits its application and attractiveness to planning authorities.
- Biobanking agreements are used as a standard offset mechanism under the Biodiversity Offsets Policy for Major Projects and BioBanking itself. The Biodiversity Offsets Policy for Major Projects provides for developers to satisfy their offset requirement by paying a financial contribution into a fund. Such streamlining could be considered in biodiversity certification to ensure the development of a robust market in environmental offsets.
• Multiple offset fund arrangements (e.g. Western Sydney Growth Centres, Warnervale Town Centre, Upper Hunter Strategic Assessment) may lead to confusion and overlap. Opportunities to align these arrangements could be explored as part of the work being undertaken to explore a Biodiversity Offsets Fund under the Biodiversity Offsets Policy for Major Projects.

• The land-use planning system has not sufficiently responded to biodiversity issues, including the management of native vegetation, on rural and agricultural lands. Consideration could be given to how to address pressures from clearing for new agricultural activities through strategic planning, particularly in regions where there are strong economic incentives to clear.

• Multi-Property Vegetation Plans have not been successfully adopted under the Native Vegetation Act 2003 with most landholders pursuing individual Property Vegetation Plans.
## Appendix A: State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) concerned with the management and conservation of natural assets

<table>
<thead>
<tr>
<th>Title:</th>
<th>Abstract</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SEPP No. 44 – Koala Habitat Protection</strong></td>
<td>Encourages the conservation and management of native vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range. The policy applies to 107 local government areas. Local councils cannot approve development in an area affected by the policy without an investigation of core koala habitat.</td>
</tr>
<tr>
<td><strong>SEPP No. 39 – Spit Island Bird Habitat</strong></td>
<td>Enables a bird habitat at Spit Island at Towra Point, Kurnell to be created and protected without the need for development consent. Such work is still subject to Part 5 of the <em>Environmental Planning and Assessment Act 1979</em>. The wading birds for which the nesting habitat is to be created are covered by international agreements. It is needed because the construction of the third runway at Sydney Airport substantially reduced the habitat for little terns, an endangered species, as well as several other species of migratory wading birds.</td>
</tr>
<tr>
<td><strong>SEPP No. 19 – Bushland in Urban Areas</strong></td>
<td>Protects and preserves bushland within certain urban areas, as part of the natural heritage or for recreational, educational and scientific purposes. The policy is designed to protect bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when Local Environmental Plans for urban development are prepared.</td>
</tr>
<tr>
<td><strong>SEPP No. 26 – Littoral Rainforests</strong></td>
<td>Protects littoral rainforests, a distinct type of rainforest well-suited to harsh, salt-laden and drying coastal winds. The policy requires that the likely effects of proposed development be thoroughly considered in an environmental impact statement. The policy applies to ‘core’ areas of littoral rainforest as well as a 100-metre wide ‘buffer’ area surrounding these core areas, except for residential land and areas to which SEPP No. 14 – Coastal Wetlands applies. Eighteen local government areas are affected from Tweed in the north to Eurobodalla in the south.</td>
</tr>
<tr>
<td><strong>SEPP No. 14 – Coastal Wetlands</strong></td>
<td>Ensures coastal wetlands are preserved and protected for environmental and economic reasons. Identifies over 1300 wetlands of high natural value from Tweed Heads to Broken Bay and from Wollongong to Cape Howe. Land clearing, levee construction, drainage work or filling may only be carried out within these wetlands with the consent of the local council and the agreement of the Secretary of the Department of Planning and Environment. Such development also requires an environmental impact statement to be lodged with a development application.</td>
</tr>
<tr>
<td><strong>SEPP No. 71 – Coastal Protection</strong></td>
<td>Ensures that development in the NSW coastal zone is appropriate and suitably located, provides a consistent and strategic approach to coastal planning and management and ensures there is a clear development assessment framework for the coastal zone.</td>
</tr>
<tr>
<td><strong>SEPP (Mining, Petroleum Production and Extractive Industries) 2007</strong></td>
<td>Provides for the management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State.</td>
</tr>
</tbody>
</table>
## State Environmental Planning Policies (SEPPs) concerned with the management and conservation of natural assets

<table>
<thead>
<tr>
<th>Title:</th>
<th>SEPP (Infrastructure) 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract:</td>
<td>Provides a consistent planning regime for infrastructure and the provision of services across New South Wales, along with providing for consultation with relevant public authorities during the assessment process.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title:</th>
<th>SEPP (Major Development) 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract:</td>
<td>Defines certain developments that are major projects and provides planning provisions for State-significant sites. Identifies the council consent authority functions that may be carried out by joint regional planning panels and classes of regional development to be determined by joint regional planning panels. Formerly known as the SEPP (Major Projects) 2005.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title:</th>
<th>SEPP (Sydney Region Growth Centres) 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract:</td>
<td>Provides for the coordinated release of land for residential, employment and other urban development in the North West and South West Growth Centres of the Sydney Region.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title:</th>
<th>SEPP (State and Regional Development) 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract:</td>
<td>Identifies development that is State-significant development, State-significant infrastructure and critical State-significant infrastructure. Confers functions on joint regional planning panels to determine development applications.</td>
</tr>
</tbody>
</table>
## Appendix B: Regional Conservation Plans

<table>
<thead>
<tr>
<th>Plan</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Far North Coast Regional Conservation Plan</strong></td>
<td>Describes the biodiversity values of the region; assesses potential biodiversity impacts of development identified in the Regional Strategy; analyses biodiversity values at a landscape scale; identifies regional priority focus areas to offset impacts; encourages use of conservation investment mechanisms that protect and enhance biodiversity to ensure future development will not further deplete the region's biodiversity; guides local council planning on biodiversity, including the determination of development applications, development of local conservation strategies and preparation of new Local Environmental Plans; and provides a framework to assist those councils considering applying for biodiversity certification.</td>
</tr>
<tr>
<td><strong>Draft Mid North Coast Regional Conservation Plan</strong></td>
<td>Describes the biodiversity values of the region; assesses the potential biodiversity impacts of development identified in the Regional Strategy; analyses the biodiversity values at a landscape scale; identifies regional priority focus areas to offset impacts; ensures that future development will not further deplete the region's biodiversity; guides local council planning on biodiversity, including the determination of development applications, development of local conservation strategies and preparation of new Local Environmental Plans; and provides a framework to assist those councils considering applying for biodiversity certification.</td>
</tr>
<tr>
<td><strong>South Coast Regional Conservation Plan</strong></td>
<td>Identifies priorities for environmental protection and restoration and guides the implementation of the Regional Strategy’s conservation objectives by identifying areas of high conservation value that will be protected; verifying important wildlife corridors and providing a consistent approach to their protection and enhancement across local government areas; and identifying the coastal lakes and estuaries that will be protected by requiring a neutral or beneficial effect on water quality for development in these areas.</td>
</tr>
<tr>
<td><strong>Lower Hunter Regional Conservation Plan</strong></td>
<td>Identifies areas with high conservation values and the potential biodiversity impacts of the Regional Strategy, outlines a biodiversity investment guide with regional conservation priorities, and proposes a range of mechanisms to protect these areas for the future, including new conservation reserves and biodiversity offsetting.</td>
</tr>
</tbody>
</table>
Appendix C: Regional Conservation Plan case study

Translating the South Coast Regional Strategy and South Coast Regional Conservation Plan into the Bega Valley Local Environmental Plan

The South Coast Regional Strategy was prepared in 2006 for the Shoalhaven, Eurobodalla and Bega Valley local government areas. It identified key growth centres, employment opportunities, infrastructure requirements, and areas of high conservation value outside the public reserve system.

The South Coast Regional Conservation Plan supported the strategy and provides greater detail on the high conservation values mapped in the strategy. The Regional Conservation Plan also gave direction on how Local Environmental Plans should avoid development on land with high conservation values.

The Regional Strategy and Regional Conservation Plan guided the development of the Bega Valley Local Environmental Plan 2013. New development zones have largely been placed in areas that avoid land mapped and verified as high conservation value, and the Local Environmental Plan introduced a range of provisions to appropriately protect high conservation value land. These include a combination of environmental zonings, environmental overlays and appropriate minimum lot sizes.

The Office of Environment and Heritage (OEH) worked with Bega Valley Shire Council to translate information in the Regional Conservation Plan into appropriate application of zonings and other environmental provisions in the Local Environmental Plan.

Council and OEH adopted a risk-assessment approach to the consideration of environmental zonings (E-zonings). In the areas more likely to be subject to development pressure, particularly the coastal strip, detailed zonings were considered and land verified as high conservation value was zoned E2 or E3. In the rural hinterland areas, where development pressure is less and rural industries are critical, environmental overlays, rather than E-zones, were used as the mechanism to manage high conservation value lands. Overlays are only triggered in the event that a development application is lodged. This leads to greater public acceptance of the Local Environmental Plan, as rural activities can continue unchanged in the RU1 and RU2 zones, but other development would need further consideration if it occurred within the areas identified in the overlays.

Areas mapped as high conservation value were verified through workshops with government agencies (OEH, Southern Rivers Catchment Management Authority, NSW Office of Water, Department of Primary Industries, Department of Planning), Landcare and council staff. The presence of multiple agencies allowed for a ‘whole-of-government’ position on the Local Environmental Plan, reducing conflict over different points of view. The process of verifying mapped high conservation value land was made transparent by providing the local community with the opportunity to comment on its accuracy through a public consultation process. This strengthened public confidence in the final Local Environmental Plan including the environmental overlays.

By incorporating the Regional Conservation Plan and providing an opportunity for stakeholder involvement, the Local Environmental Plan effectively balances protection of the environment, the use of productive rural land and the development of coastal urban areas in sustaining the local economy.
## Appendix D: Biodiversity loss and gain from conferred certifications

| Proposal                          | Loss                                      | Biodiversity gain                                                                                                                                                                                                 |
|----------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
| **Sydney Growth Centres**        | 1800 ha of native vegetation              | Permanent protection of 2000 hectares of high quality vegetation in Growth Centres, identified through the precinct planning process for each Growth Centre, acquired for public ownership and protected through planning provisions. $530-million for conservation of Cumberland Plain Woodland in the catchment/bioregion. |
| **Wagga Wagga Local Environmental Plan** | 96 ha of native vegetation, all in patches <4 ha | 933 hectares of native vegetation, including:  
  - 148 ha of native vegetation subject to a voluntary planning agreement and transferred to Wagga Wagga City Council as a conservation reserve  
  - a further 785 ha of native vegetation protected by E2 and E3 zoning, and declared ‘protected regrowth’ under the *Native Vegetation Act 2003*. |
| **Albury Local Environmental Plan** | 282 ha of native vegetation, all in patches <4 ha | 5270 ha of native vegetation including:  
  - 651 ha of land transferred to Crown Lands for environmental reserves subject to a conservation management plan  
  - a further 4619 ha of native vegetation protected by E2 and E3 zones, and declared ‘protected regrowth’ under the *Native Vegetation Act 2003*. |
| **Warnervale Town Centre**        | 68 ha of native vegetation                | $4m financial contribution paid to the NSW Environmental Trust to acquire offsets which will achieve a credit requirement of 2191 ecosystem credits and 1754 species credits. |
| **Broulee and Moruya Airport**    | 77 ha of native vegetation                | 405 ha of native vegetation protected through biobanking agreements and additional 8 ha protected by E2 zones. |
Appendix E: Bioregional planning

Commonwealth – bioregional plans

Bioregional plans are a landscape-scale approach to biodiversity conservation under the Environment Protection and Biodiversity Conservation Act 1999. Bioregional plans can be prepared for regions within a Commonwealth area, which includes both Commonwealth land and the Commonwealth marine environment. The Commonwealth can also develop bioregional plans collaboratively with state and territory governments that extend beyond Commonwealth land and waters. The preparation of a bioregional plan is voluntary and is initiated at the discretion of the Commonwealth Government.

Bioregional plans provide a mechanism for identifying the biodiversity, heritage, social and economic values of a particular area, the management objectives and priorities in relation to those values, and strategies and actions for achieving those objectives. Bioregional plans can address the cumulative effects of various actions which may impact identified values, provide clarity for the context in which environmental impact assessments occur, and inform the location and management of protected areas.

If a bioregional plan is endorsed under the Environment Protection and Biodiversity Conservation Act 1999, actions taken in accordance with the plan can be exempted from separate or individual approval. In this way bioregional plans function as conservation management plans and can also be used to streamline the environmental assessment and approval process.

To date, no terrestrial bioregional plans have been developed. This may be because strategic assessments and bilateral agreements have been used to streamline assessment and approval processes to remove regulatory duplication with state and territory processes.

Queensland – biodiversity planning assessments

The Queensland Government has undertaken biodiversity planning assessments for approximately 80 per cent of Queensland. The assessments are an information source for governments, members of the community and landholders in making planning decisions about appropriate land use.

A biodiversity planning assessment identifies the terrestrial ecological values in a bioregion, according to their conservation significance. Assessments contain spatial datasets, expert panel reports and summary reports (where available) and are accessible online. They are non-social and non-economic assessments, and are produced without regard to land tenure.

To generate biodiversity planning assessments, the Department of Environment and Heritage Protection uses a Biodiversity Assessment and Mapping Methodology. The Biodiversity Assessment and Mapping Methodology provides a consistent approach for assessing biodiversity values at the landscape scale using vegetation mapping data generated or approved by the Queensland Herbarium as a fundamental basis. The methodology has application for identifying areas with various levels of significance for biodiversity reasons.

There is no statutory requirement to prepare biodiversity planning assessments. They do not turn off any regulatory requirements, though where they exist they constitute government policy and are required to be considered in a range of assessments, including by referral agencies as appropriate under the Sustainable Planning Act 2009. Similar to statutory and non-statutory advices described above, this approach does not guarantee a conservation outcome.
## Appendix F: Case studies – Commonwealth strategic assessments

<table>
<thead>
<tr>
<th>NSW agency or organisation</th>
<th>Program, plan or policy</th>
<th>Details</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Western Sydney Growth Centres</strong></td>
<td>NSW Government, represented by Minister for the Environment and Minister for Planning</td>
<td>Sydney Growth Centres Program</td>
<td>Permanent protection of 2000 hectares of high quality vegetation identified through precinct planning for each Growth Centre. $530 million for conservation of Cumberland Plain Woodland in the catchment/bioregion</td>
</tr>
<tr>
<td><strong>Heathcote Ridge, West Menai</strong></td>
<td>Department of Planning and Environment and Gandangara Local Aboriginal Land Council</td>
<td>Heathcote Ridge Program Report</td>
<td>849 ha mostly undeveloped land. Site to be identified as a State-significant site and rezoned to allow 566 ha of conservation land, 182.7 ha of residential land, 70 ha of employment land; and new roads and community facilities.</td>
</tr>
<tr>
<td><strong>Upper Hunter</strong></td>
<td>NSW Government, represented by Minister for Planning and Minister for the Environment</td>
<td>Biodiversity Plan for Coal Mining in the Upper Hunter Valley</td>
<td>See case study, Appendix G</td>
</tr>
<tr>
<td><strong>Lower Hunter</strong></td>
<td>NSW Government, represented by Minister for Planning and Minister for the Environment</td>
<td>Assessment of impacts of actions under a program for the protection of matters of national environmental significance in the Lower Hunter Region</td>
<td>To include in the Lower Hunter Regional Growth and Infrastructure Plan, a program to set out how affected matters of national environmental significance will be protected and enhanced; a report to describe cumulative impacts, and a biodiversity plan to map priority habitat areas and biodiversity values and outline offset requirements.</td>
</tr>
</tbody>
</table>
Appendix G: Case study – Upper Hunter Strategic Assessment

Strategic Assessment of a Biodiversity Plan for Coal Mining in the Upper Hunter Valley

The Upper Hunter Strategic Assessment is a joint initiative between the NSW Government and Australian Government in collaboration with eleven mining companies.

Preparation of a biodiversity management plan

The subject of the strategic assessment is a biodiversity plan for coal mining in the Upper Hunter Valley. The plan was developed by the NSW Government and provides a detailed assessment of the biodiversity values on lands proposed for mining over the next 25 years.

The impact assessment of the mine project areas is being assessed using an amended version of the Biodiversity Certification Assessment Methodology.

As part of the process of developing the biodiversity plan, OEH has undertaken a broadscale assessment of biodiversity values, including both NSW and Commonwealth listed species and their habitat across the strategic assessment study region. This assessment provides the information base for determining how future impacts of mining can be offset. The regional study also identifies priority locations for biodiversity offsets.

The plan will establish a coordinated strategy for avoiding, mitigating, offsetting and adaptively managing impacts on biodiversity from future coal mining activities. Avoidance and mitigation measures will be promoted as the primary strategies for managing the potential impact of proposed mining activities.

The detailed mine planning process required for a development application will be guided by the Biodiversity Certification Assessment Methodology assessments in order to avoid direct impacts wherever practicable, as each assessment will provide a clear picture of the biodiversity values present including any endangered or critically endangered ecological communities and potential habitat for threatened species.

The biodiversity plan will also provide guidelines for mitigating impacts. The mine proponent will be expected to refer to the mitigation guidelines in preparing its environmental impact statement and mine operations plan as part of the development application process.
Appendix H: Native vegetation policy origins

State Environmental Planning Policy 46

State Environmental Planning Policy 46 (SEPP 46) was introduced in August 1995 as an environmental planning instrument under the Environmental Planning and Assessment Act 1979. It was repealed in 1998 by the Native Vegetation Conservation Act 1997.

In summary, SEPP 46 when introduced prohibited the clearing of native vegetation without development consent by the Director General of the Department of Land and Water Conservation. Restrictions on the granting of consent applied. These restrictions were prescribed in the SEPP and included that the area did not have high biological diversity. In determining an application for consent, the Director General of the Department of Land and Water Conservation had to consider whether there was any need for the conservation of all or some of the vegetation based on a number of factors prescribed in the SEPP. These factors included consideration of the vegetation’s unusually good condition or integrity as a sample of its type.

The SEPP applied to native vegetation defined as that indigenous to the State including trees, shrubs, understorey plants and specified native grasslands. Land on which specified native grasslands occurred and associated local government areas was listed in Schedule 2 and included grasslands on the Hay Plains, Liverpool Plains and the Monaro.

Certain exemptions applied including:

- clearing of up to 2 hectares per year for any contiguous land holding in the same ownership
- cutting of no more than seven trees per hectare in any period of one year for on-farm uses, including fence posts and firewood
- lopping of native vegetation for stock fodder in any period of declared drought if the vegetation’s continued health is not affected
- clearing to a minimum extent of native vegetation if it is necessary for the construction, operation and maintenance of farm structures
- removal of native vegetation, whether seedlings or regrowth, of less than 10 years of age if the land has been previously cleared for cultivation, pastures or forestry plantation purposes
- clearing of noxious weeds
- clearing for vermin control
- private native forestry.

In December 1995, the SEPP was amended to require the Director General of the Department of Land and Water Conservation, when determining an application, to consider the likely social and economic consequences of granting or refusing to grant the consent and to balance these interests with environmental factors.

Amendments were also made to provide that the clearing of specified native grasslands for which a plan of management had been approved by the Minister for Land and Water Conservation did not require development consent.

In July 1997, the SEPP was amended to permit the clearing of native vegetation without the need to obtain development consent where the clearing was carried out in accordance with
an interim regional vegetation management plan approved by the Minister for Land and Water Conservation or a code of practice.

SEPP 46 relied purely on a regulatory approach to manage vegetation clearing.

**Native Vegetation Conservation Act 1997**

The *Native Vegetation Conservation Act 1997* commenced on 1 January 1998 and was later replaced by the *Native Vegetation Act 2003*. It provided a regional land-use planning approach to native vegetation management through Regional Vegetation Management Plans. The *Native Vegetation Conservation Act 1997* provided for Regional Vegetation Management Plans with the status of an environmental planning instrument under the *Environmental Planning and Assessment Act 1979*.

Regional Vegetation Management Plans were intended to provide certainty to landholders by specifying the circumstances when clearing required development consent and could be undertaken without consent if undertaken in accordance with the plan, as well as detailing measures for the protection of high conservation value vegetation, and strategies to meet the objects of the Act.

Regional Vegetation Committees were to develop Regional Vegetation Management Plans for 22 designated regions throughout New South Wales. However, there were considerable delays in the implementation of the regime envisaged under the Act. By late 2002, 13 Regional Vegetation Management Plans were drafted with only two gazetted by 2003 – Mid Lachlan and Riverina Highlands Regional Vegetation Management Plans.

In 2002, the NSW Auditor General undertook an audit of the regulation of land clearing of native vegetation by the then Department of Land and Water Conservation. The audit followed a series of reports auditing government activities affecting the environment. The audit made a number of findings:

- there was little guidance in terms of the results Regional Vegetation Management Plans were expected to produce
- there was a lack of comprehensive information about the status of, and changes to, native vegetation across rural New South Wales
- policies, including a national commitment to no net loss, and concepts such as inappropriate clearing, had been interpreted and applied differently in different regions; these differences were seen by landholders as unfair and lacking transparency
- many Regional Vegetation Management Plans were being developed without the guidance of a strategic framework, objectives or targets.

A report by the Natural Resources Commission in 2007 states that the Regional Vegetation Management Plan process contributed to the ultimate demise of the *Native Vegetation Conservation Act 1997*. Factors that appear to have contributed to the slow development of Regional Vegetation Management Plans included:

- difficulties in Regional Vegetation Committee members reaching consensus
- members lacking appropriate skills
- a lack of quality data on which to base decisions, including appropriate mapping
- limited access to appropriate technical knowledge to develop the plans
- a perception that government wanted a ‘one-size-fits-all’ approach.