

Independent Biodiversity Legislation Review Panel

Issues paper

August 2014

Theme 1: Objects and principles for biodiversity conservation	Hornsby Shire Council Comments
Question 1	<p>Hornsby Shire Council deals with the <i>Threatened Species Conservation (TSC) Act 1995</i> and the <i>National Parks and Wildlife (NPW) Act 1974</i>. Council supports the current objects of both Acts and is concerned that impacts on endangered species, populations and ecological communities and ecological processes are mostly irreversible or difficult to remediate, and in practice remediation never achieves the pre-impact condition.</p> <p>Both the TSC and the NPW Act should have the following aspirational goals -</p> <ul style="list-style-type: none"> • To achieve a net improvement in biodiversity outcomes • To maintain and improve ecological processes.
Question 2	<p>Hornsby Shire Council deals with the <i>TSC Act</i> with regards to assessment of Development Applications. It also deals with the <i>NPW Act</i> with regards to breaches ('picking and harming offences' referrals to OEH) and scientific licensing for Bush regeneration contractors working in EECs and consultants undertaking assessment for DAs. Also, adjacent land tenure issues with regards to encroachments on Nationals Parks.</p> <p>The <i>TSC Act</i> should integrate better with Commonwealth <i>Environment Protection and Biodiversity Conservation (EPBC) Act 1999</i> particularly with regard to EECs listing and assessment. It would seem logical to include CAMBA and JAMBA migratory species into the <i>TSC Act</i>.</p> <p>Council is concerned that the newly amended <i>RF Amendment (Vegetation Clearing) Act 2014 (10-50)</i> overrides the NSW <i>TSC Act</i> and considers that threatened species, populations and communities listed under the <i>TSC Act</i> should require assessment when considering bush fire hazards.</p>
Question 3	<p>The objects appear to be contrary to the current planning legislative decisions (<i>RF Act</i> amendments) that have the greatest implications' and contradiction to achieving the objects.</p> <p>These goals are generally not being met.</p>
Question 4	<p>The current objects could be amalgamated if the <i>TSC Act</i> was to be integrated into the <i>NPW Act</i>.</p> <p>There is a concern that simplification would lead to their 'watering' down in the process.</p>
Theme 2: Conservation action	
Question 1	<p>No the current system is not effective. Funding sources to enable landowners such as Council's and private landowners that are stewards of 90% of Endangered Ecological Communities, are sparse, sporadic, highly competitive and are skewed away from local action that can conserve significant vegetation on the ground.</p> <p>Local Land Services grants (sources of funding for Council's Rural Lands Incentive Program) that encouraged and provided funding for private landholders to maintain and improve biodiversity on their land is no longer or readily</p>

	<p>available. Voluntary Conservation Agreements (VCA) don't provide significant incentives. For local action projects that cumulatively provide significant on-ground restoration, there are no other legal mechanisms available in urban Local Government Areas Council, other than s.88b instrument on title of land created as part of a subdivision application. All costs and lost opportunity costs of 'tying up' land to conservation are borne by a select few that want to do the right thing at their own cost. Councils are at the front line that could provide this support network given adequate resources from the State. NSW Government initiatives such as Biobanking, whilst successful where the vegetation type is in demand to offset that being developed, have the barriers of high setup costs and administrative burden and don't apply where the vegetation type is not in demand as an offset for development.</p>
Question 2	<p>Yes there are impediments to signing up for a VCA. The binding nature of land agreements is a disincentive to participation. Council's Rural Lands Incentives Program had a letter of agreement that enabled modest funding that delivered capacity building, restoration plans and on-ground vegetation restoration. One option may be incentives that allow a mixed use on land that could seek to vary permissible uses of the land contrary to zoning requirements as compensation for conservation areas. For example one consideration may be, for conserving an area there may be an additional development right i.e. allowing undersize subdivision/ re-zoning. A Local Environment Study could be considered as not being required if the landowner wishes to down zone to conserve their land. Incentives that might be effective are better promotion and resourcing of the Community Environment Network Model (Land for Wildlife) which provides expert advice and support. Another option would be endorsement and support for Council's Rural Lands Incentives Scheme. Landowners with high conservation land should be approached by government bodies and invited to take part in relevant schemes. Resources should be provided LGAs to assist implementing state programs.</p>
Question 3	<p>Provide expert advice and support – possibly audit/compliance too. The Nature Conservation Trust does not tend to be involved in urban Council conservation, however Council is a full partner to Land for Wildlife with the Community Environment Network.</p>
Question 4	<p>Priorities should be determined based on a combination of the listing status, the environmental values, threats and the Council or community commitment/ involvement in restoration. Priorities should be reviewed every 5 years. A suggested framework is for State Government to provide broad objectives and local Councils/ community groups providing fine-tuned more specific objectives, to fund and achieve the conservation outcomes and objectives that are common at both State and Local levels. It is suggested that a bottom up approach would get maximum involvement from local landowners, community groups and local Councils to undertake biodiversity conservation and restoration. Councils' undertaking biodiversity conservation, community Bushcare and Landcare groups could be specifically targeted and engaged to see what the identified needs are as they deliver many of the on-ground outcomes. Market research, online fora and focus groups could expand into other sectors of the community to ascertain whether they would be willing to participate and under</p>

	what circumstances. Understand the range of drivers and barriers for the community and how to address them. Funding is an important issue for Local government to deliver biodiversity outcomes and this is an issue for private landowners.
Question 5	Effectiveness can be monitored through standard baseline monitoring and rapid assessment techniques via pre-determined methodologies. Relevant social and economic elements could be included in the measurement of outcomes.
Question 6	Trade-offs need to be investigated very early in the process and given weightings relevant to the local area to result in a net biodiversity improvement. It is considered important that social research is undertaken to identify the range of trade-offs that are likely to be feasible. Council's response to Question 2 partially addressed tradeoffs.
Question 7	Minimal – it's not forward looking and no compliance is undertaken to deal with legacy impacts
Question 8	Legacy issues include that the system is essentially self –regulating, with no unified body documenting environmental performance, restoration, offsets etc. There is no transparency and a lack of information provided to the Public and other stakeholders. This could be partially met by a very good mapping system. There is no unified body documenting environmental damage other than particular Local Government officers undertaking initiative or good will actions/ compliance. More State Government involvement to Local Government is required. Council's already under-resourced in this area. Legislation could require financial performance guarantees or bonds are required where relevant – this would ensure follow through of conditions of approval.
Theme 3: Conservation in land use planning	
Question 1	Differs from Council to Council. Hornsby Council has good vegetation mapping which has been used in the Standard Instruments for the Hornsby LEP and DCP. The system then requires sound implementation by practioners including private certifiers and Councils. Exempt and complying development does not appear to provide adequate biodiversity conservation as there are issues with no accountability of the assessment. These are checked by private certifiers after potential impacts may have occurred. More accountability needs to be built in to on the private certifier system.
Question 2	Similar to above. Some Councils don't have good or adequate biodiversity inventory or tools (e.g. vegetation mapping). OEH should provide financial support to get this to the required standard that allows consistent strategic planning across the state (inter-LGA).
Question 3	Could be monitored through State of Environment Reporting – the State could provide template with benchmarks and objectives. This reporting needs to be more accurate.
Theme 4: Conservation in development approval processes	
Question 1	Newly amended RF Amendment (Vegetation Clearing) Bill 2014 Act (10-50) grossly inconsistent with EPA and A Act and TSC Act. The amendment will lead to significant biodiversity losses. Each LGA could have its own Offset Policy or state government should create one that is simpler than Biobanking for small-scale developments that still have cumulative impacts. Biobanking is acceptable for larger developments. Biocertification is acceptable for smaller land releases. The inconsistency in offsetting rules is acceptable as there are different reasons for this.
Question 2	Single integrated approach is unlikely to work because Local Government Areas differ in their conservation assets.

	Assessments will have to remain on a site by site basis
Question 3	For the Hornsby Council regular Development Application process, Biocertification is too broad and Biobanking not relevant to smaller scale developments that contribute to 'death by a thousand cuts' situation. Under these methodologies the rules are transparent and consistent for the situations they were set up for. Biocertification's lesser offsets may be a concern if inadequate biodiversity conservation outcomes occur.
Question 4	No. Newly amended RF Amendment (Vegetation Clearing) Bill 2014 Act (10-50) is inconsistent with EPA and A Act and TSC Act. Land-clearing is a major threat and continues at a high rate, and often occurs under Tree Preservation Approvals, bushfire matters and breaches. Protection of threatened biota should be regularised via merit based approach where there is a conservation outcome or a net benefit via an offset.
Question 5	Yes refer to what cities overseas like Sweden, Germany and Seattle are doing. They are far in advance of NSW, even though the cost of living is nearly the same.
Question 6	To a very minor extent. The last 10 years of development assessment has seen very few occurrences where the regulatory system resulted in lost development opportunities. Innovative land management practices are seriously considered as conditions of consent and often contested against post DA approval. Pure environmental reasons for refusing a DA are non-existent. Environmental issues are usually brought in as a contention if there are other reasons for DA refusal. TSC Act legislation does not appear clear cut to achieve biodiversity conservation in the Court situation.
Question 7	Loss of hollow-bearing trees are close to being near impossible to offset due to the amount of time taken for this critical habitat to form especially in an urban context where there is limited recruitment/ regeneration and these resources are already limited. Also impacts to catchment/ creeks are difficult as there are limitations to ensuring compliance due to cross tenure across varying land-holders. These can never really be appropriately offset as part of approval system despite attempts good intentioned officers. This is compounded by lacking resources to ensure compliance with conditions of consent. Socio- economic benefits are always considered and are the primary driver to why most proposals are supported by consent authorities in a local government context – through the Council meeting process political decisions are made and merit based assessment is only part of the decision. Perhaps some merit based calculator should be provided by OEH & DoP that incorporates socio-economic factors to provide transparency/ consistency may assist in the decision making process.
Question 8	BioMap is to identify state and regional corridors as is the new Save our Species Program. Priorities should also meet identified biodiversity requirements in local Biodiversity Conservation Strategies where they exist. Offsets should be 'like for like' for the vegetation/ species/ communities being removed. Ideally offsets in same locality as impact area.
Question 9	No. The Complying Development/ PCA model does not appear to be successful from an environmental perspective. Legislation needs to make specific reference to the role of PCAs and their responsibilities and consider penalties imposed for lack of adherence to biodiversity conditions or considerations.
Theme 5: Wildlife management	
Question 1	No comment
Question 2	No comment
Question 3	No comment
Question 4	It would appear that accreditation of ecologists should be linked to s.132c licensing. Offences as defined under the NPW act appear confusing (i.e. 'knowingly picking or harming') and are difficult to collect sufficient evidence for prosecution. Delegation to respond to breaches should be included 'authorised officers' in local government where

	breaches of the NPW Act is encountered. NPW Act should follow the framework of the POEO Act for restoration orders, prevention notices and stop works orders.
Question 5	No comment
Theme 6: Information provisions	
Question 1	The importance of ecosystem systems services and quantifying them in terms of economic values so these assets appreciated by the public in that sense – particularly with the inevitability of climate change. The Biobanking methodology is a good method to quantify the values and costs of biodiversity; a similar methodology would be useful for consideration for smaller Das.
Question 2	Weed mapping, vegetation cover and threatened species & community updates using regular photo series such as Nearmap and possibly drone technology – particularly important in the peri-urban fringes of major regional centres and other localities where significant land development activities are occurring and areas identified as zoned for development that currently contains mapped remnant bushland, creek lines and other environmental features. Consultants should continue to contribute their data as part of licensing requirement. Grants from OEH should be provided for Local Government to update their vegetation mapping. Research grants provided to Universities/ private funded research organisations to obtain important baseline data for Local Government.
Question 3	Data is credible and getting better but there needs to be more records, metadata and research undertaken to assist with assessors to accurately determine whether a significant impact upon local population is likely. This specific habitat information should be collected for specific catchments similar to what has been undertaken for the Biobanking methodology in determining species credits. This information should be accessible. Access could be improved via Bionet, VIS and OEH profile website updates.
Question 4	Listing process is good - the use of an independent scientific committee is robust and endorsed.
Question 5	Regulatory process should be separate to listing process as they have different outcomes and functions. However they should more tightly linked i.e. be more quantitative to determine how much clearing or species loss per site/ area is considered to breach thresholds for local populations of threatened species' survival. A feedback loop should consider the regulatory processes required to prevent extinction.
Question 6	Turpentine Ironbark Forest and Blue Gum High Forest listings are duplicated and inconsistent at state and federal level.
Question 7	Critical habitat is useful tool. Yes- list it for more species especially in high development growth areas where there is greatest pressure and little is known of the ecology of some of these species.
Question 8	This is already done by the Bionet process where the public can contribute records.