

# **SUBMISSION ON THE REVIEW OF NSW BIODIVERSITY LEGISLATION**

## **1) Introduction**

This submission provides comments on aspects of the Review of relevance to the Wollondilly Local Government Area (LGA) and Council's activities. In this regard, it largely provides comments in regard to the *Threatened Species Conservation Act 1995 (TSC Act)* and *Native Vegetation Act 2003 (NVA)* which have the greatest relevance to the management and regulation of biodiversity within the LGA. The submission also refers to Sections of the *National Parks and Wildlife Act 1974* under review of relevance to biodiversity regulation. It further provides a range of comments on the *Environmental Planning and Assessment Act 1979 (EP& A Act)* given its intricate links to the legislation subject of the Review

The submission focuses on terrestrial biodiversity, as Fisheries Management Act 1994 is not under review. However, it refers riparian vegetation given the relevance of Acts subject of the Review.

Specifically, the submission provides comments in terms of the following:

- The activities and experiences of Officers in the protection and enhancement of biodiversity within the existing policy and legislative framework.
- Identified deficiencies of the regulatory framework that hinder the carrying out of Council's legislative responsibilities by Officers.
- Suggestions for the addressing of identified deficiencies in the existing policy and legislative framework by a revised framework.

The timeframe provided for lodgement of submissions has prevented consideration and formal endorsement of this submission at a Council meeting. The submission has as a result been prepared based on previously endorsed positions of Council and should be viewed as an operational document

It should be noted that the failure to accommodate and recognise the necessity for this endorsement process is viewed as unacceptable particularly given that biodiversity management is a core responsibility of Council. The Panel should note that the Department of Local Government has also expressed dissatisfaction in regard to this matter

The timeframe is also considered inadequate given the complexity as well as the level of detail of comment being sought. This submission is consequently restricted to matters raised in the **Terms of Reference document**. However, Environmental officers would be available to discuss matters raised in the **Issues Paper** from a localised perspective with members of the Panel.

## **PART A BACKGROUND INFORMATION**

The following provides an overview of the Wollondilly LGA its natural values and resources as well as threats to these values. It also provides an overview of broad identified issues associated with the current legislative and policy framework for the information of the Panel.

### **1) Overview of the Wollondilly LGA and its natural features**

The Wollondilly Local Government Area (LGA) contains a variety of landscapes and a diverse range of flora, fauna and vegetation. The dominant land use within the LGA has been historically dominated by rural agricultural activities. However, it is increasingly becoming a peri-urban area as a result of its location on the periphery of the Greater Sydney Metropolitan Area.

Approximately 97 percent of the Wollondilly LGA is located within the Nepean River Catchment with the remainder located in the upper reaches of the Georges River Catchment. The LGA contains a number of important tributaries of various orders with associated riparian corridors.

More than half of the 2557 square kilometres of the LGA are either within a National Park, or Conservation Reserve or protected catchment lands. In this regard, Council has responsibilities in association with the Sydney Catchment Authority (SCA) in its delivery of a water supply to the Greater Metropolitan Region by protecting natural areas within the catchment lands. Approximately a third of the remaining portion of the LGA is currently zoned for Environmental Protection Purposes with a further approximately half zoned for rural use purposes.

The key natural values of the LGA based on available information from broadscale mapping and the NSW Atlas of Wildlife is comprised of::

- The LGA contains 52 fauna species and 38 flora species listed in either Schedule 1 or 2 of the TSC Act at the State level
- Six locations “Registered” and five “indicative” locations listed on the EEC’s Threatened species area of bushland
- Nine Endangered Ecological Communities (EEC’s) listed at the State level based on available mapping.
- There are also several other ecological communities not listed as EEC’s but with high conservation value (such as Hinterland Woodland on Transitional on soils).

## **2) Overview of development and other threats to biodiversity within the LGA**

The Wollondilly LGA is becoming a peri-urban type LGA due to its location on the periphery of the Greater Sydney Metropolitan area. There is as a consequence, competing pressures on biodiversity from a wide range of land use types including green-field and in-fill development, agricultural activities as well as longwall mining and coal seam gas extraction. There has been a gradual shift from grazing to more intensive activities such as poultry and market gardening.

The following provides an overview of current threats to biodiversity experienced by Council within the LGA that are requested to be considered and investigated by the Panel as part of the Review.

### *(i) Overview of urban growth and associated impacts on biodiversity*

The Wollondilly LGA is viewed as being unique in regard to other peri-urban type LGA’s due to its location outside the Growth Centre boundaries. Planning proposals are therefore

assessed on an individual basis without the overall coordination associated with a growth centre process.

The 2011 Wollondilly Growth Management Strategy (GMS 2011) was adopted by Council at its meeting of 21st February 2011. This Strategy identified the potential for 10,750 new homes by 2036 in Wollondilly, which is reflected in the State Government's Draft Metropolitan Strategy for Sydney – "A Vision For Sydney in 2031".

Nine further sites within the Wollondilly local government area for future housing development were identified in response to the NSW Government's Potential Homesites Program, launched in late 2011. The development of these sites would potentially provide up to 25,500 additional dwellings in the medium to long term within the LGA. The NSW Department of Planning and Environment has asked Council to undertake strategic investigation of these sites as part of the current review of the 2011 Growth Management Strategy in recognition of the regional significance of these proposals.

The location of the major planning proposals in relation to the mapped extent of Shale/Sandstone Transition Forest (SSTF) and Cumberland Plain Woodland (CPW) is presented on Map 1. The layout of planning proposals and associated level of vegetation clearance is yet to be finalised. However, two of the larger proposals (based on available information) propose to remove approximately 188 ha of SSTF.

(ii) *Vegetation clearance in rural areas*

Council does not hold specific data on vegetation types impacted and level of vegetation clearance. However, Council receives on a continual basis requests for clearance of native vegetation on rural or semi-rural properties for a range of reasons such as clearance for grazing purposes. Council also responds periodically to vegetation clearance in rural areas that has occurred without the necessary approvals in association with the NSW OEH.

In addition, the Wollondilly LGA has been situated within the Central West Local Land Services Region which permits clearing within 10 metres either side of perimeter fencing, 3 metres either side of internal facing and 6 metres either side of roads without consent for properties over 10 hectares in size. Clearing to this extent within the LGA was previously not permitted under the former arrangement without demonstrating compliance with exemptions under the NVA.

Council has acknowledged the intent of the **10/50 Vegetation Clearing Code of Practice**. However, Council's submission expressed the view the Code is contrary to the Objects of Acts subject of the Review as well as the *EPA& Act* and the *Local Government Act 1993*.and also raised deficiencies in regard to the implementation and monitoring compliance with the Code. The introduction of the Code without the addressing of deficiencies identified by a range of stakeholders is viewed as being likely to result in increased levels of vegetation clearance.

**3) Key issues of Council in regard to the management and regulation of biodiversity in NSW**

Subsequent sections of this submission provide detailed comments on issues encountered by Officers in regard to individual Terms of Reference. However, key issues and efficiencies

encountered by Council Officers on the adequacy of the current framework in regard to the management and regulation of biodiversity within the Wollondilly LGA is summarised in Table 1 for the information of the Panel:

**Table 1: Encountered issues and deficiencies of the TSC Act and NVA**

<b>Encountered issue/deficiency</b>	<b>TSC</b>	<b>NVA</b>
The Native Vegetation Act 2003 permits clearance of native vegetation that is not permitted by the <i>Threatened Species Conservation Act 1995</i> .	√	√
There is an absence of requirements to assess the impacts of proposed development species and ecological communities that are not listed under the TSC or EPBC Acts but are of high conservation significance	√	
The implementation of measures to conserve and enhance areas of high biodiversity significance clearance of native vegetation is viewed as being impeded by initiatives introduced at the State level such as Offsets, the Biobanking Scheme and classification of projects as State Significant Developments.	√	√
The BioCertification of LEP approach requires extensive surveys and ground-truthing of broad scale mapping that entails costs which are prohibitive for smaller councils such as Wollondilly Council.	√	

### **Summary of issues for consideration by the Panel**

The following viewpoints of Council regarding development within the Wollondilly LGA and associated threats to biodiversity are requested to be considered and investigated as part of the Review:

- The significant landscapes and a diverse range of flora and fauna of significance within the Wollondilly LGA are vulnerable to increasing pressure from development.
- The effectiveness of the TSC and NVA in restricting impacts on biodiversity within the LGA is questionable based observations and experiences of Council Officers with these Acts.
- Biodiversity within the Wollondilly LGA is vulnerable to any provisions within a new legislation framework that facilitates increased development given the application of both the TSC and NV Acts and the projected increased level of development.

## **PART B: COUNCIL'S POSITION**

### **1) Council's position regarding the management, conservation and regulation of biodiversity**

Council's position can be overall summarised as encouraging development in an ecological sustainable manner whilst protecting biodiversity of significance in recognition of the finite nature of this resource. In this regard, Council's adopted following Mission Statement in 2006 that has been incorporated into all its strategic documents including the Community Strategic Plan:

*"To create opportunities in partnership with the Community and to enhance the quality of life and the environment, by managing growth and providing sustainable services and facilities"*

In 2010 Wollondilly Council endorsed its Wollondilly Community Strategic Plan. Of particular interest for this submission is the following desired outcomes expressed by the community that Council must ensure its activities are compatible with:

- *A community that is surrounded by a built and natural environment that is valued and preserved.*
- *A community that has opportunity to engage with and actively care about their natural environment.*

Council has also recognised the need to facilitate development in accordance with Ecological Sustainable Development (ESD) principles whilst conserving and enhancing the significant biodiversity within the Wollondilly LGA.

Council has had an ongoing interest in the equity and outcomes of both the Native Vegetation Act and also protecting biodiversity. An example can be seen in the following Notices of Motion;

*NOM6 Notice of Motion No.6 submitted on 12 February 2010; that Council write to the Minister for Climate Change and the Environment, The Hon Frank Sartor, and the Shadow Minister for Climate Change and Environmental Sustainability, Catherine Cusack, expressing concern over the impacts of the NSW Native Vegetation Act and Threatened Species Conservation Act on agriculture and the property rights of farmers.*

*NOM Notice of Motion No. submitted on 17 April 2014; That Council shall support National Parks and Wildlife in the investigation of threatened Species program trial areas within the Wollondilly Local Government Area, particularly those within the Greater Blue Mountains World Heritage Area and Tharawal National Park, as this will benefit both tourism and the environment in our shire.*

*1. That Council Officers prepare a report before the next Appin Threshold Investigation Meeting addressing the impact of including the land west of the Nepean River into the West Appin Precinct Area due to:*

- a) The importance of appropriately balancing development with the protection of important rural uses and landscapes*
- b) The importance of protecting the threatened ecological communities in this area, particularly the areas of the remnant Shale Sandstone Transition Forest*
- c) This area's proximity to the river and associated riparian corridors.*

*2. That a high-level threshold report on the environmental attributes of this area be prepared and submitted to Council.*

*3. That Council write to the West Appin Proponents Walker Corporation, Mir Group and Ingham Rural Properties Group advising them of the above.*

Since electronic record systems were implemented in Council in 2005 there are 246 combined Notices of Motion, Community forum questions relating specifically to environmental outcomes.

These NOM's provide a quick snapshot of some of the issues brought to the Council level in regards to biodiversity protection and outcomes, as well as balancing these outcomes with acceptable farming practice that allows people to establish use of their land other than biodiversity protection.

**The comments provided in subsequent sections of this submission and requested issues for investigation by the Panel are consistent with the above Council position. It is requested that this position be incorporated into the updated biodiversity legislative framework arising from the Review.**

## **2) Support for the Biodiversity Legislation Review**

The Review is recognised as being appropriate in ensuring the maximum effectiveness of legislation and relevance to current issues associated with the management and regulation of biodiversity in NSW. The provision of any support to the review process is dependent on comprehensive demonstration of full consistency of an updated policy and legislative framework with Council's endorsed position outlined above.

A number of comments in produced information (such as those reproduced below) are however considered to raise questions over the intent and likely outcome of the Review that prevent the provision of any support to the Review from Council at this stage:

*"Government considers that such a review is necessary to achieve the Government's goals and policy objectives".*

*"The Review will test whether the current institutional, policy and legislative framework is delivering outcomes for government, business and the community".*

The introduction of the **10/50 Vegetation Clearing Code of Practice** and the manner in which it was introduced is also considered to raise questions over the intent and likely outcomes of the Review. The Panel should note in this regard that sentiments expressed in the Media release from the Department of Local Government regarding significant deficiencies in the consultation process associated with exhibition and introduction of this Code are strongly supported.

**The likelihood of the Review resulting in the enhanced protection and regulation of biodiversity is therefore questioned. Council would appreciate a prompt response by Senior Management of the OEH to this viewpoint.**

## PART C: COMMENTS ON ASPECTS OF THE REVIEW APPLICABLE TO THE WIOLLONDILLY LGA

### 1) General comments on the adequacy of the Review

#### (i) *The focus and broad aims of the Review*

The intention of the Review to establish simpler, streamlined and more effective legislation that will, 'support sustainable development' and 'reduce re-tape' is acknowledged. However, the generic nature of the stated broad aims of a revised framework raises concerns over the adequacy of the outcome of the Review and objects and content of the updated legislation.

Consequently, alternatives to each of the broad aims to better reflect Council's position in regard to the management and regulation of biodiversity are as follows:

- ***Facilitate the conservation of biological diversity: It is recommended that the Review should aim to develop legislation that will conserve (rather than facilitate) biological diversity based on defined binding targets and within a Policy framework at the International, National, State and local level.***
- ***Support sustainable development: It is recommended the Review should aim to establish legislation that supports Ecological Sustainable Development based on recognised definitions rather than be restricted to 'sustainable development'.***
- ***Reduce red tape: It is recommended the Review should aim to establish legislation (to the effect) that removes inefficiencies and duplicities of the current framework at the local, State and National level whilst retaining the intent of the Objects of this current framework.***

It is requested that the Panel note the concerns of Council regarding the intended aims and incorporate the above suggested alternate aims into the Objects and provisions of the revised legislative framework.

#### (ii) *Policy and legislative context of the Review*

##### (a) National context

It is important that the Review be carried out within the existing International/State framework for the management and regulation of biodiversity. In this regard, the implications of the draft Bilateral Agreement between the NSW and Commonwealth Governments to the Review and its outcomes are acknowledged.

However, the Terms of Reference and Issues document are noted to have only a tenuous reference to the current implications of the *Environmental Protection and Biodiversity Conservation Act 1999*. There is also noted to be an absence of reference to the relevance and implications of documents and initiatives at the Commonwealth level including the **National Biodiversity Strategy** and **National Vegetation Framework**. Both these documents are viewed as having a high level of merit and consistent with Council's position outlined previously in Council's submission.

(b) Relationship of the Review to the State planning system

The Introduction to the Issues Paper is noted to state that the Review “*will also look at how this system interacts with the planning system*”. It is recognised in this regard that amendments to Parts 4 and/or Part 5 of the EPA& Act may occur as part of the proposed reforms to the planning system.

However, it is considered the Issues Paper has not adequately described issues associated with the planning system to be investigated as well as the intended methodology of this investigation given the close correlation between a number of Objects of the current version of the EP&A Act with Objects of the TSC Act and NVA. The following broad comments are provided in this regard for consideration and investigation by the Panel:

- It is noted with strong concern that the Issues document does not list assessment under Part 4 and 5 of the *Environmental Planning and Assessment Act 1979* as one of the methodologies currently used in NSW to assess the impacts of biodiversity. In this regard, it is also noted with strong concern there is an absence of reference to the activation of Sections of the TSC Act by Sections of the EP&A Act (such as Section 5A in Part 1 regarding the Assessment of Significance).
- There is an absence of any specific reference to the planning system within the Terms of Reference document despite the apparent intention for the interaction between the regulatory framework and the planning system to be examined by the Review.
- In light of the above, the inclusion of a specific item regarding this matter for consideration by the Panel as part of its investigation into Term of Reference 1 is viewed as being warranted.

(iii) *Recognition of the responsibilities of local government*

The overall management and regulation of biodiversity within NSW is recognised as being the responsibility of the OEH. However, the Charter for Local Government contained in Section 8 of the *Local Government Act 1993* requires councils to:

*“Properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development”.*

It is therefore extremely disappointing to note that a review of the Issues Paper did not identify any reference to ‘local government’ or its responsibilities under the NVA, TSC Act, LGA and EPA& Act apart from an indirect reference strategic planning and ‘development assessment processes. The Terms of Reference and Issues Paper are consequently not considered to have adequately recognised:

- The current legislative requirement for councils to prepare local planning instruments that define permitted land use and development activities within LGA’s.
- The assessment and determining responsibilities of local government under the NVA, TSC and EP&A Acts.

- The responsibilities and issues encountered by local government in regard to regulation as well as monitoring compliance of developments with consent conditions.
- The land management responsibilities of local government based on the Statement on Page 1 of the Issues Paper that “*the management of national parks or other public lands will not be assessed in this Review*”.

The inclusion of a specific item regarding this matter for consideration by the Panel as part of its investigation into Term of Reference I is therefore viewed as being warranted in light of the above observations. The Panel is requested to note the view of Officers that a revised biodiversity legislation framework (as well as the planning system) should contain direct reference to local government given its significant responsibilities. In this regard, a review of the *Queensland Offset legislation 2014* identified 33 references to ‘local government’.

### **Requested issues for investigation**

**The Panel is required to investigate the following as part of the Review for incorporation into the revised legislative framework:**

- **The issues and experiences of local government in carrying out their legislative requirements in regard to the regulation and management of biodiversity.**
- **The direct and indirect relationship between the existing planning system and the regulation and management of biodiversity within NSW and the involvement of local government in this process.**
- **The investigation of appropriate provisions for a revised legislative framework that provides for an integrated assessment and regulation process with the planning system and also fully recognises the responsibilities of local government.**

### **2) Comments on specific Terms of Reference**

The following discussion outlines issues that are requested to be investigated by the Panel and incorporated into the revised legislation and policy framework. The issues raised are consistent with the adopted position of Council outlined in preceding sections of this submission.

## **TERM OF REFERENCE 1 EVALUATION OF THE EFFECTIVENESS OF THE CURRENT REGULATORY FRAMEWORK**

### **The objectives of the current legislation and whether they remain valid**

#### *(i) Validity of the Objectives and related provisions*

The Objectives of the Acts are considered to be broadly appropriate and sound in intent terms of outcomes for the management and regulation of biodiversity within NSW. They are therefore considered broadly suitable for adaption and retention by a revised legislative framework. However, the following broad observations are provided for the information of the Panel:

- There is a conflict between the intent and objectives of the TSC Act and NVA in regard to the protection and regulation of biodiversity.
- The Objectives of both Acts do not reflect or recognise recent policy reforms such as Biodiversity Certification.(discussed in a subsequent section of this submission).
- The inclusion of economic and social factors in the Objectives of a revised Biodiversity legislative framework is not considered necessary as these factors are currently addressed and should be addressed by the planning system.

The requested consideration by the Panel that commences with “ *To what extent the current policy framework sufficiently...*” is recognised as having relevance to the specific Objectives of the TSC Act and NVA.. However, there is an apparent absence of any requirement or intention by the Panel to specifically investigate the current adequacy of these Acts in achieving these Objectives. The carrying out of such an investigation is considered important in the formulation of Objects for the replacement legislative framework.

In this regard, the Panel is requested to note the view of Officers that the TSA Act is consequently viewed as not adequately achieving any of its Objectives. Officers are also of the view that the NVA is also not adequately achieving its objectives apart from potentially Objective a). This viewpoint is based on the following observations of Officers in carrying out biodiversity management and regulatory responsibilities:

- The complexity of the mechanisms by which both Acts are adopted, implemented and regulated leading to frustration from landholders developers and applicants when utilising the Act.
- Inadequacies in financial and personnel resources for the preparation and implementation of strategies designed to achieve positive outcomes in regard to the regulation and management of biodiversity.
- Inadequacies of resources for the monitoring and regulating of any non-compliance of vegetation clearance under both Acts.
- The decline and extent of biodiversity within the existing legislative framework that is considered to be a consequence of
  - Exemptions within the NVA that allows for clearance of native vegetation under certain circumstances
  - A range of Policies and initiatives AM that permit removal of biodiversity of high consequence subject to the identification of offsets in accordance with OEH Guidelines such as the Biodiversity Certification Assessment Manual (BCAM).
  - The application of less stringent assessment requirements under the TSC Act for State Significant Developments compared to applications lodged under Part 4 or Part 5 of the EPA&A.

### **Requested issues for noting and consideration by the Panel**

- **The Panel is requested to note that the view of Officers that the Objects of both the NVA and TSC Act remain valid and suitable for incorporation into a revised framework.**
- **The Panel is requested to include provisions in a revised framework that will ensure the Objects are adequately achieved.**

#### *(iii) Issues experienced by Council*

The following discussion outlines Council's broad position regarding the Acts under Review as well as general comments regarding their adequacy based on experiences and observations by Officers during the carrying out of their responsibilities. The discussion also provides comments on aspects of the EP&A Act given its high level of relevance to the Review.

#### **(a) General issues associated with the Regulatory framework**

##### Threatened Species Conservation Act

This Act has been recognised by Council as being an important legislation in providing requirements for the conservation and management of threatened ecological communities and species within the LGA. However, the sentiments expressed by the issues Paper that the condition and extent of biodiversity is in decline despite the merits of this Act are supported.

The current Objectives and provisions of the Act are recognised as having potential adverse implications to the carrying out of activities by current landholders as well as development applicants that warrant appropriate compensation. The intent of recently introduced Policy reforms such as the Biobanking Scheme to provide clarification in this regard is therefore also acknowledged. However, Council has strong concerns over the adequacy of these initiatives in achieving long-term beneficial outcomes for the protection and conservation of biodiversity as discussed in a subsequent section of this submission.

Recent programs introduced by the OEH such as the Save our Species Program are considered to be of merit in achieving beneficial biodiversity outcomes. However, their introduction would appear to infer recognition over deficiencies of aspects of the legislation as well as the recently introduced policy reforms.

##### Native Vegetation Act

The broad intent of the NVA in enabling vegetation clearance for the carrying of rural activities is acknowledged. The importance of provisions within the Act for the carrying of activities by rural landholders for the maintenance of income is also acknowledged. In this regard, it is also recognised that adequate incentives and compensation is required in relation to adverse impacts to agricultural activities as a result of the implementation of the Act.

There is however a range of provisions and exemptions in the Act that permits the clearance of vegetation for rural activities such as Routine Agricultural Maintenance Activities (RAMAS)

as well as regrowth (as defined by the Act). Officers are also aware of a number of vegetation clearances that are contrary to these provisions..

In this regard, land covered by the Act can be heavily vegetated both with remnant vegetation and defined regrowth given the complexity of rurally zoned land. The Panel is requested to note that many of these areas are modelled by OEH mapping as supporting Endangered Ecological communities and recorded threatened species which are viewed as being vulnerable as a result of exemptions under the Act..

Consequently clearance of rural land in regard to provisions of the NVA has the potential to result in impacts on biodiversity. As an example in this regard is the impacts of RAMAs on threatened flora in instances where species such as *Persoonia hisuta*, *Persoonia glaucescens* as well as *Grevillea parviflora* are present in regrowth defined under the Act. but are vulnerable as a result of the exemptions under the Act. A further observed issue regarding this matter is the adverse implications to SEPP 44 Koala Habitat by the fragmentation and removal of feeding habitat for this species as a consequence of exemptions under the Act..

#### National Parks and Wildlife Act

Council normally has indirect involvement in the activation of the Sections of this Act subject of the Review such as provision of information in regard to regulatory action coordinated by the OEH. However, it would appear unnecessarily cumbersome for provisions regarding the issuing of offences to be contained within a separate Act, the *National Parks and Wildlife Act 1974*.

#### Environmental Planning and Assessment Act 1979

Provisions of this Act such as Section 79 (c) and associated regulations into a wide variety of aspects of Council's DCP as well as its LEP. Flora and Fauna reports associated with Applications received by Council have been predominately viewed as being inconsistent with a wide variety of aspects of these provisions.

The Wollondilly LGA also contains current coal seam gas and longwall mining projects assessed and approved under the former Part 3A of this Act. It also contains a current mining application that has been lodged under the new State Significant Development Section of the Act. These types of applications have been observed to have been approved with surveys and assessments at a significantly reduced level than Council would require for applications where it is the determining authority. An example in this regard, is the Bulli Seam Project (approved on 22 December 2011) not being required to precisely define vegetation clearance associated with surface works Council therefore has strong concerns over n the assessment and approval processes associated with these types of applications..

**The Panel is requested to consider all issues raised in the above discussion and ensure that they are adequately addressed by the revised legislative framework.**

#### *(b) Issues associated with Assessment and determining responsibilities*

It is recognised that Council is not the regulatory authority for any of the Acts under review. However, Council applies a range of provisions of these Acts as part of the undertaking of its responsibilities in regard to the regulation and management of biodiversity. The following

summarises issues encountered as part of these responsibilities in regard to the TSC and NV Acts.

### The Threatened Species Conservation Act

Council's DCP contains requirements that are consistent with requirements of the TSC Act and related OEH Guidelines. In this regard, Council Officers have identified the following issues associated with the assessment process within the TSC Act and related provisions within the EP&A Act for consideration and investigation by the Panel:

- The absence of baseline data means that Officers largely need to rely on broad – scale mapping and the NSW Atlas of Wildlife to verify reports received by consultants engaged by applicants.
- There is an absence of site specific targets or areas of high conservation that require protection from any development to assist Council Officers in achieving positive outcomes in regard to biodiversity management.
- Flora and Fauna reports associated with applications are generally not in accordance best practice principles. In this regard, applications have been observed to either provide cursory reference or no reference to Recovery Plans or Best Practice Guidelines such as **Recovering bushland on the Cumberland Plain: best practice guidelines for the management and restoration of bushland**
- The assessment of cumulative impacts associated with developments or activities on biodiversity are not specifically required to be assessed by the legislation and policy framework.
- Council's Development Services Officers have advised that proponents often express the viewpoint that no assessment for vegetation clearance is required if a site does not contain threatened species or EEC's.
- The requirements for Applications of Significance (AoS) are viewed as being subjective and open to misinterpretation. This has resulted in disagreements between consultants regarding the likely significant impact of a development. In this regard, the Panel should note that overwhelming majority of AoS'S reviewed by Council's Environmental Officers have significant inconsistencies with OEH Guidelines.
- There is potential for \requirements of the TSC Act to be overridden in favour of a development in response to lobbying by a proponent at a political level.
- The determining powers of Council has been removed or partially removed in regard to the assessment and approval of large planning proposals. In this regard, the Panel should note that the Department of Planning and Environment has determined that the Wilton Junction planning proposal be prepared pursuant to a State Environment Policy. The Panel is requested to further note the OEH has supported significant deficiencies in the Flora and Fauna Report associated with this Proposal identified by Council's Environmental Officers. .

Council is not in possession of data that allows for accurate assessments regarding the extent and nature impacts on biodiversity within the LGA. However, the above matters are

viewed as being contributing factors to the observed gradual decline of biodiversity in a piece meal pattern within the LGA (death by a thousand cuts) it is therefore imperative that all of the above issues identified by Council Officers be adequately addressed by a revised legislative framework.

### The Native Vegetation Act

The current exemptions for vegetation clearance under this Act significantly restrain the ability of Council to conserve and enhance biodiversity on rural and zonings land through the assessment and approval process. Council has however historically required the lodgement of development applications for vegetation clearance proposals that do not satisfy these exemptions.

In this regard, the dual consent provisions for Council under planning system (through the LEP) and NVA create difficulty in assessing and approving applications where both Acts apply due to the differences in objectives. In this regard, Council has elected to reflect clearing provisions of the NVA into its LEP and DCP into zones affected by the Act. to reduce the level of complexity and confusions for landholders. However, the current framework would permit the alternative approach of requiring development applications for vegetation clearance and review compliance with the assessment provisions as part of the assessment process.

It should be noted that there is a loss of biodiversity through the provisions of RAMA's and clearing of regrowth vegetation and that these provisions do not adequately consider the Threatened Species Conservation Act. It is one of the known weaknesses in the current framework, as it may have conservation significance and habitat value. It is also accepted though, that by amending these current exemptions to consider the TSC Act, will potentially complicate the current intent of this Act.

**It is requested that the Panel consider all issues raised above based on the experiences of Officers in the application of the TSC Act and NVA as part of the undertaking of their assessment and determining responsibilities. It is also requested that the Panel ensure that these issues are adequately addressed by the revised legislative and policy framework.**

#### (c) Regulation responsibilities

Council has developed a collaborative relationship with the OEH in regard to the management and regulation of biodiversity. However, there has been observed to be a level of confusion over the defining of responsibilities in regard to the investigation and enforcement of breaches of the TSC and NV Acts particularly given the potential for investigations to become complex where NVA exemptions apply.

Council has outlined how the Routine Agricultural Management Activities apply to permissible uses within its LEP, additionally, reference has made to these in the Development Control Plan Volume 1. Council has responsibilities to enforce any breaches of the NVA by these activities as a result of provisions within the LEP to enforce the preservation of trees and vegetation as long as the intent is in accordance with the approved zoning and landuse. In addition, it is considered there is complexity associated with the

regulation under the NVA of minor breaches of vegetation clearance associated with these activities.

**It is requested that the Panel investigate means of clarifying and addressing the issues raised above as part of the Review.**

(d) Biodiversity management responsibilities

Programs to enhance biodiversity

Council has legislative responsibilities (primarily under the *Local Government Act 1993*) to carry out programs and prepare strategies that are designed to enhance the condition of biodiversity. In this regard, Council adopted a Biodiversity Strategy in 2004 (which is currently under review) that is consistent with documents prepared under previous versions of the current Policy framework such as Recovery Plans and Threat Abatement Plans.

The stated reasoning behind the introduction of the Priority Statement (and associated SOS) by the OEH is recognised. However, the delays in traducing site specific actions on a local and regional scale has resulted in difficulties in obtaining overall targets and a policy framework for the preparation of Council's strategic documents as well as their implementation.

In a related matter, Council carried out a "Vegetation Prioritisation Analysis' to obtain a criterion based prioritisation of remnant vegetation including habitat corridors, which has been incorporated into its DCP in the form of a biodiversity layer. This mapping was viewed as having consistency with the Core and Support Areas by mapping carried out in 2002 as part of the preparation of a preliminary draft Cumberland Plain Recovery Plan. However, the Priority Investment Areas identified by the adopted Recovery Plan for Cumberland Plain Vegetation is viewed as having significant less consistency with Council's mapping due to its fragmented nature. In this regard, the Panel should note that Council's submission on the associated Bio mapping project requested that local habitat corridors be incorporated into the final mapping.

Protection of biodiversity as part of asset management

Council has legislative responsibilities to manage its own assets in a manner that conserves and enhances biodiversity. In this regard, it is noted with concern that the issues Paper states that the management of national parks or other public lands (assumed to include Council owned land) will not be assessed by the Review. Urgent Application is therefore being sought regarding this matter given the direct relationship legislative relationship between the *Local Government Act 1993* and the TSC Act for the management of public land classified as 'Community Land' containing threatened species and/or ecological communities..

**The Panel is requested to consider means of addressing the above experiences of Council Officers in regard to aspects of the NVA and TSC Acts of relevance to**

## **Council's biodiversity management activities by the revised framework as part of the Review.**

*(II) Approaches and experiences of other states and territories, and relevant jurisdictions overseas*

The intention of the Panel to consider the approaches and experiences of other jurisdictions approach to the management and regulation of biodiversity is supported. This support is however dependent on any incorporated aspects of other jurisdictions into an updated biodiversity legislative framework being consistent with the position and issues of Council outlined in preceding sections of this submission.

In this regard, it is requested that the approaches and experiences of local government be considered by the Panel given the wide variety of legislative responsibilities for this level of government. The Panel is requested to note that Council officers would be available to participate in such consultation.

*(iv) Whether current arrangements appropriately deal with new and emerging policy frameworks in NSW*

(a) Comments and support for aspects of the new and emerging policy framework

The overall philosophy of the various components of this framework listed in the ToR document in providing clarification to proponents regarding requirements for the management and regulation of biodiversity within NSW is recognised. Initiatives specifically associated with biodiversity such as Biodiversity Certification and the Biobanking Scheme are also recognised as having benefits in simplifying assessment requirements (with associated costs) for sub-division and large planning proposals.

It is also recognised that the Biobanking Scheme in particular presents potential for beneficial biodiversity outcomes in terms of being utilised as sources of offsetting credits for vegetation clearance in other parts of the Cumberland Plain. The Panel should note that however that potential offset site are overwhelmingly located on privately owned land which restricts the ability of Council to obtain positive outcomes.

The following outlines a number of concerns regarding the listed initiatives of major relevance to Council's activities as well as comments on the considered adequacy of the addressing of each initiative by the current framework. . It is considered that the **10/50 Vegetation Clearing Code of Practice** should be added to the list of recent policies initiatives given its relevance to both the TSC and NV Acts.

### Biodiversity Offset related initiatives

Proponents of large proposals in particular have been almost universally observed to adopt an Offset Strategy at the early stages of the application process. This is viewed as being inconsistent with the basic principle of the OEH that offsets should only be pursued if impacts cannot be adequately avoided or mitigated. The Panel should note that Council has incorporated this basic principle into its LEP.

The Biobanking Scheme and associated Biodiversity Certification Operational Manual are noted to contain a number of requirements such a vegetation types being offset by similar

vegetation types of merit. However, this benefit is viewed as being significantly negated by procedures such as applications for 'Red Flag' variations. In this regard, the BCAM is noted to [permit the removal of a certain vegetation type to be offset with another vegetation type be a red flag variation application if there are similarities of species in the two areas.

These Schemes are therefore viewed as resulting in a fragmented approach rather than a strategic approach informed by baseline data and modelling. The fragmented nature of the recently exhibited draft Bio Mapping as part of the implementation of the Cumberland Plain Recovery Plan is considered to validate this viewpoint.

#### Regional service delivery models and associated strategic plans

It is assumed that this item refers to regional planning frameworks introduced as well as Strategic documents introduced at the State and Regional level. The following comments based on previous expressed positions by Council and experiences of Officers in regard to these matters are provided for the information of the Panel:

- Documents prepared by the OEH at the State level such as the Biodiversity Strategy are considered to be of benefit in terms of achieving positive outcomes of the management and regulation of biodiversity. However, there are concerns over the adequacy of resources for the implementation of such documents.
- The Joint Regional Planning Panels have benefits in the review of large and complex applications. However the minority representation of local government has been observed to result in adverse biodiversity outcomes.
- The Strategic Regional Land Use Policy has been observed to be deficient in achieving its intended purpose to protect valuable residential and agricultural land across the State from the impacts of mining and Coal Seam Gas (CSG) activity.
- Council's submission on the proposed reforms to the planning system expressed concerns that the focus of planning had shifted towards development and housing supply and that protections afforded to the environment could be watered down

#### Bi lateral Agreement

Council has not adopted a formal position in regard to the Bi Lateral Agreement between the Commonwealth and State Governments exhibited in May 2014. However, a review by Officers has identified concern that the level of scrutiny and assessment of developments with the potential for significant impacts on Matters of National Environmental Importance may be reduced as a result of the Agreement. There are also concerns that any reduction of rigour of the existing NSW legislation arising from the Review will further reduce the level of assessment given the intention by the Agreement for this process to occur under NSW law.

- (b) Addressing of the new and emerging policy framework by the current framework

The TSC Act is recognised (by necessity) to have been amended to allow for the introduction and implementation of the reforms referred to above. It is recognised the implementation of the NVA does not require specific reference to the planning reforms. In this regard, the inclusion of Offsetting measures for vegetation clearance under an updated legislative framework is not opposed in principle. However, any support would be dependent

on the adequate addressing of identified deficiencies associated with Offsetting and the consistency of the updated framework being consistent with Council's position regarding the management of biodiversity

The Objectives of both the TSC Act and NVA are viewed as being similar to when the Acts was gazetted and have therefore not been updated. The incorporation of aspects of the policy framework into these Objectives is also not opposed in principle. However, as stated previously, the intent of the Objectives for both Acts remain valid and should be retained.

### **Summary of issues associated with Term of Reference 1**

**Council requests that the following overview of issues and concerns of Officers regarding the current legislative framework discussed above be investigated by the Panel.**

- The objectives of the TSC Act and NPW Act are viewed as being compromised by the objectives of the NVA. This creates difficulties for the assessment, determination and regulation activities of both Councils in regard to the zonings in the LGA where both the NVA and TSC apply
- The assessment process under the TSC Act is subjective and open to misinterpretation and the approval process is complicated where both the TSC Act and NVA due to the differences in intent and objectives of the legislations.
- Exemptions for vegetation clearance and dual consent provisions associated with the NVA hinder the ability and effectiveness of Council's assessment, determination and regulation responsibilities on rural zoned land.
- The new policy mechanisms have merit particularly in regard to large scale planning proposals as well as sub-divisions. However, developers are noted to be adopting an offset approach at the onset of the application process resulting in a net decline in biodiversity.

**The addressing of the identified deficiencies in the existing framework as a result of the Review would be supported on the strict condition that its overall intent and objectives of the existing framework maintained and the new framework is consistent with Council's position.**

### **TERM OF REFERENCE 2: CONSIDERATION OF THE EVIDENCE BASE FOR GOVERNMENT INTERVENTION**

#### *(i) General position regarding the Term of Reference item*

The investigation in regard to this Terms of Reference is viewed as having potential benefits for the development of a revised legislative framework. However, there are doubts over the likelihood of these outcomes being achieved given the absence of 'environment' in the stated aim of the Review to *"test whether the current institutional, policy and legislative framework is delivering efficient outcomes for government, business and the community"*

In addition the 10/50 **Vegetation Clearing Code of Practice** is noted to permit vegetation clearance without approval and consideration of the TSC Act. The introduction of the Code

therefore has resulted in a reduction in provisions for government intervention. The view could therefore be expressed that the introduction of the Code (to a certain extent) compromises the identification of the need for government intervention by the Review.

*(ii) Comments on items required to be considered by the Panel*

It is noted there is an absence of requirement for the Panel to specifically investigate implications to biodiversity as a result of inadequate or no government intervention. The evidence basis for adverse outcomes in this regard is recognised as being very strong for a wide variety of reasons. However, it is considered the investigation of this matter is important to assist in the formulation of aims and objectives that will enable the revised legislation to deliver positive outcomes for the environment, community, business and government (including local government).

The discussion below provides comments in regard to the listed items for consideration for consideration and investigation by the Panel.

*(a) Status, trends and pressures on native vegetation*

Preceding sections of this submission have outlined the need for the carrying out of an audit and undertaking of mapping and modelling to accurately identify the status of biodiversity in NSW and the impacts of pressures on this biodiversity. However, the condition and extent of biodiversity within the context of the Wollondilly LGA is viewed as being adversely affected by a wide variety of factors outlined in preceding sections of this submission. This decline is considered to provide strong evidence for government intervention in regard to the management and regulation of biodiversity to reverse this decline.

*(b) The relationship between healthy ecosystems and sustainable development*

This submission has recommended that the Review should aim to establish legislation that supports Ecological Sustainable Development (ESD) based on accepted definitions rather than be restricted to 'Sustainable Development'. The recommendation is based on the recognition of the relationship between healthy ecosystems and sustainable development in a number of accepted definitions of ESD.

It has been the experience of officers, that the development of government initiatives is necessary to encourage the adaption of sustainable development principles by development proposals as well as the community. It is therefore considered appropriate that initiatives be developed at the State level to encourage and/or require the adaption of these principles and achieve related beneficial environmental outcomes.

*(c) Likely future environmental conditions given existing and emerging threats, including climate change*

The major threat to biodiversity within the Wollondilly is impacts associated with vegetation clearance for urban growth in the form of large planning proposals, sub-divisions and in-fill development. A further major threat is vegetation clearance on rural lands which is exacerbated by current exemptions under the NVA as previously discussed. This submission has referred to the extent of current and proposed clearing that has occurred and is occurring within the Wollondilly LGA despite a range of provisions within the existing policy

and legislative framework that designed to restrict impacts on biodiversity. The evidence for enhanced government intervention in this regard is therefore strong.

A further major threat is impacts on biodiversity including the movement of fauna as a result of impacts associated with climate change. The addressing of these impacts requires government intervention at the International, National, State and local government and community level.

Other major future threats to biodiversity within the LGA are considered to be climate change, large scale developments including mining and coal seam gas activity, infestations of weeds, impacts of feral animals, and light pollution and 'heat island' effects from increased urban areas. The addressing of these threats requires government intervention at the National, State and local level.

### **Summary of issues requested for investigation by the Panel**

**The Panel is requested to consider the following as part of its investigation:**

- **It is imperative that the Panel consider the evidence base for government intervention to achieve effective and efficient environmental outcomes.**
- **The Panel should investigate adverse implications to biodiversity as a result of no or inadequate government intervention.**
- **Provided comments within a localised perspective regarding the required considerations by the Panel listed in the Terms of Reference document.**

### **TERM OF REFERENCE 3: PROPOSED NEW LEGISLATIVE ARRANGEMENTS FOR BIODIVERSITY CONSERVATION**

The Terms of Reference document is noted to list ten considerations for the Panel as part of its investigation into a proposed new legislative arrangement for biodiversity within NSW. It is outside the scope of this submission to provide detailed comment regarding each of these considerations.

However, this submission has outlined a range of issues associated with the existing framework that are within the overall context of the Wollondilly LGA and consistent with Council's adopted position regarding the management and regulation of biodiversity. The following lists suggested components and features of a revised legislative framework that are consistent with these previously raised issues:

- Greater incentives for landholders and developers to comply with the current objectives of the Act as well as associated compensation as a result of any monetary loss for the use of the land.
- Clear distinction regarding the regulation responsibilities at the local and State level under the TSC, NVA and NPW Acts particularly where exemptions under the NVA apply.
- More relevant modelling of EECs and vegetation corridors to provide direction on effective ways to integrate the legislation for better effectiveness and efficiency and

stronger direction from the state in regards to target setting for species or areas of retention for EECs.

- Greater recognition of threatened species by the NVA including the possible inclusion of provisions for Offsetting in the Act as part of a new legislative framework.
- Consistent penalties and compliance initiatives that deter breaches of the Act.
- Accreditation Scheme for consultants.
- Revamped guidelines for the assessment and approval of applications with potential significant impact on biodiversity
- Revision of the TSC Act by the EP&A Act 1979 creates uncertainty
- Definitive targets for protection of threatened species and/or ecological communities which results in difficulties in implementing and enforcing targets at a localised level.

Council Officers would be available to discuss any of the above matters with members of the Panel at an appropriate time and forum.

## **PART D CONCLUSION**

In conclusion, there needs to be some restructuring and refocus on the gathering of data to ensure that the changes in the Act are appropriately applied at a State and Local Government Level. Council suggests the following;

- (a) Sound engagement with local government and state agencies to ensure that any changes proposed capture and resolve any of the overlap and confusion through the administration of planning and enforcement processes.
- (b) Landscape targets need to be applied and appropriately funded either through incentives or biobanking/biocertification processes
- (c) Additional resources need to be applied at a state level to assist in the gathering of data, ground trothing of mapping as well as delivering incentive funding and appropriate enforcement for breaches of the Acts.
- (d) Appropriate fines need to be created to ensure that compliance is met with the objectives of the act.
- (e) Opportunities to support eco-tourism and other positive intrinsic environmental outcomes for biodiversity need to be explored to provide additional opportunity to retaining biodiversity.
- (f) Consistent approach between both state and local government needs to be undertaken in regards to planning decisions and the protection of biodiversity needs to be strengthened through this pathway by having consistent outcomes for biodiversity protection.

- (g) The Native Vegetation Act may need to review some of its exemptions to reflect the objectives of the TSC Act, however appropriate solutions need to be provided for rural activities so that genuine agricultural pursuits are not impacted by an over complicated process (this is some flexibility).
- (h) Standardised assessment and monitoring approach to be applied throughout the State and Local Government to ensure that any changes can be appropriately reviewed and compared throughout the State.

## **SUBMISSION ON THE REVIEW OF NSW BIODIVERSITY LEGISLATION**

### **1) Introduction**

This submission provides comments on aspects of the Review of relevance to the Wollondilly Local Government Area (LGA) and Council's activities. In this regard, it provides comments in regard to the *Threatened Species Conservation Act 1995 (TSC Act)* and *Native Vegetation Act 2003 (NVA)* which are considered to have the greatest relevance to the management and regulation of biodiversity within the LGA. The submission also refers to Sections of the *National Parks and Wildlife Act 1974* under review which are of relevance to biodiversity regulation. It further provides a range of comments on the *Environmental Planning and Assessment Act 1979 (EP& A Act)* given its intricate links to the legislation subject of the Review

The submission focuses on terrestrial biodiversity, as the *Fisheries Management Act 1994* is not under review. However, it refers to riparian vegetation given the relevance of Acts subject of the Review.

Specifically, the submission provides comments in terms of the following:

- The activities and experiences of Council Officers in the protection and enhancement of biodiversity within the existing policy and legislative framework.

- Identified deficiencies of the regulatory framework that hinder the carrying out of Council's legislative responsibilities by Council Officers.
- Suggestions for the addressing of identified deficiencies in the existing policy and legislative framework by a revised framework.

The timeframe provided for lodgement of submissions has prevented consideration and formal endorsement of this submission at a Council meeting. The submission has as a result been prepared based on previously endorsed positions of Council and should be viewed as an operational document.

It should be noted that the failure of this review to accommodate and recognise the necessity for this endorsement process is viewed as unacceptable particularly given that biodiversity management is a core responsibility of Council. The Panel should note that the Department of Local Government has also expressed dissatisfaction in regard to this matter.

The timeframe is also considered inadequate given the complexity as well as the level of detail of comment being sought. This submission is consequently restricted to matters raised in the **Terms of Reference document**. However, Council Environmental officers would be available to discuss matters raised in the **Issues Paper** from a localised perspective with members of the Panel.

## **PART A BACKGROUND INFORMATION**

The following provides an overview of the Wollondilly LGA its natural values and resources as well as threats to these values. It also provides an overview of broad identified issues associated with the current legislative and policy framework for the information of the Panel.

### **4) Overview of the Wollondilly LGA and its natural features**

The Wollondilly Local Government Area (LGA) contains a variety of landscapes and a diverse range of flora, fauna and vegetation. The dominant land use within the LGA has been historically dominated by rural agricultural activities. However, it is increasingly becoming a peri-urban area as a result of its location on the periphery of the Greater Sydney Metropolitan Area.

Approximately 97 percent of the Wollondilly LGA is located within the Nepean River Catchment with the remainder located in the upper reaches of the Georges River Catchment. The LGA contains a number of important tributaries of various orders with associated riparian corridors.

More than half of the 2557 square kilometres of the LGA are either within a National Park (including areas of the Greater Blue Mountains World Heritage Area), or Conservation Reserve or protected catchment lands. In this regard, Council has responsibilities in association with the Sydney Catchment Authority (SCA) in its delivery of a water supply to the Greater Metropolitan Region by protecting natural areas within the catchment lands. Approximately a third of the remaining portion of the LGA is currently zoned for Environmental Protection Purposes with a further approximately half zoned for rural use purposes.

The key natural values of the LGA based on available information from broadscale mapping and the NSW Atlas of Wildlife is comprised of

- The LGA contains 52 fauna species and 38 flora species listed in either Schedule 1 or 2 of the TSC Act at the State level
- Six locations “Registered” and five “indicative” locations listed on the EEC’s Threatened species area of bushland
- Nine Endangered Ecological Communities (EEC’s) listed at the State level based on available mapping.
- There are also several other ecological communities not listed as EEC’s but with high conservation value (such as Hinterland Woodland on Transitional soils).

## **5) Overview of development and other threats to biodiversity within the LGA**

The Wollondilly LGA is becoming a peri-urban type LGA due to its location on the periphery of the Greater Sydney Metropolitan area. There is as a consequence, competing pressures on biodiversity from a wide range of land use types including green-field and in-fill development, agricultural activities as well as longwall mining and coal seam gas extraction. There has been a gradual shift from grazing to more intensive activities such as poultry and market gardening.

The following provides an overview of current threats to biodiversity experienced by Council within the LGA that are requested to be considered and investigated by the Panel as part of the Review.

### *(iv) Overview of urban growth and associated impacts on biodiversity*

The Wollondilly LGA is viewed as being unique in regard to other peri-urban type LGA’s due to its location outside the Growth Centre boundaries. Planning proposals are therefore assessed on an individual basis without the overall coordination associated with a growth centre process.

The 2011 Wollondilly Growth Management Strategy (GMS 2011) was adopted by Council at its meeting of 21st February 2011. This Strategy identified the potential for 10,750 new homes by 2036 in Wollondilly, which is reflected in the State Government’s Draft Metropolitan Strategy for Sydney – “A Vision For Sydney in 2031”.

Nine further sites within the Wollondilly local government area for future housing development were identified in response to the NSW Government’s Potential Home sites Program, launched in late 2011. The development of these sites would potentially provide up to 25,500 additional dwellings in the medium to long term within the LGA. The NSW Department of Planning and Environment has asked Council to undertake strategic investigation of these sites as part of the current review of the 2011 Growth Management Strategy in recognition of the regional significance of these proposals.

The location of the major planning proposals in relation to the mapped extent of Shale/Sandstone Transition Forest (SSTF) and Cumberland Plain Woodland (CPW) is presented on Map 1. The layout of planning proposals and associated level of vegetation clearance is

yet to be finalised. However, two of the larger proposals (based on available information) propose to remove approximately 188 ha of SSTF.

(v) *Vegetation clearance in rural areas*

Council does not hold specific data on vegetation types impacted and level of vegetation clearance. However, Council receives on a continual basis requests for clearance of native vegetation on rural or semi-rural properties for a range of reasons such as clearance for grazing purposes. Council also responds periodically to vegetation clearance in rural areas that has occurred without the necessary approvals in association with the NSW OEH.

In addition, the Wollondilly LGA has been situated within the Sydney Metropolitan Land Services however the Native Vegetation Act places Wollondilly LGA in the Central West Local Land Services Region which permits greater clearing within 10 metres either side of perimeter fencing, 3 metres either side of internal facing and 6 metres either side of roads without consent for properties over 10 hectares in size. Clearing to this extent within the LGA was previously not permitted under the former arrangement without demonstrating compliance with exemptions under the NVA.

Council has acknowledged the intent of the **10/50 Vegetation Clearing Code of Practice**. However, Council's submission expressed the view the Code is contrary to the Objects of Acts subject of the Review as well as the *EPA& Act* and the *Local Government Act 1993*.and also raised deficiencies in regard to the implementation and monitoring compliance with the Code. The introduction of the Code without the addressing of deficiencies identified by a range of stakeholders is viewed as being likely to result in increased levels of vegetation clearance.

**6) Key issues of Council in regard to the management and regulation of biodiversity in NSW**

Subsequent sections of this submission provide detailed comments on issues encountered by Officers in regard to individual Terms of Reference. However, key issues and efficiencies encountered by Council Officers on the adequacy of the current framework in regard to the management and regulation of biodiversity within the Wollondilly LGA is summarised in Table 1 for the information of the Panel:

**Table 1: Encountered issues and deficiencies of the TSC Act and NVA**

<b>Encountered issue/deficiency</b>	<b>TSC</b>	<b>NVA</b>
The Native Vegetation Act 2003 permits clearance of native vegetation that is not permitted by the <i>Threatened Species Conservation Act 1995</i> .	√	√
There is an absence of requirements to assess the impacts of proposed development species and ecological communities that are not listed under the TSC or EPBC Acts but are of high conservation significance	√	
The implementation of measures to conserve and enhance areas of high biodiversity significance clearance of native vegetation is viewed as being impeded by initiatives introduced at the State level such as Offsets, the Biobanking Scheme and classification of projects as State Significant Developments.	√	√
The BioCertification of LEP approach requires extensive surveys and ground-truthing of broad scale mapping that entails costs which are prohibitive for smaller councils such as Wollondilly Council.	√	

## Summary of issues for consideration by the Panel

The following viewpoints of Council regarding development within the Wollondilly LGA and associated threats to biodiversity are requested to be considered and investigated as part of the Review:

- The significant landscapes and a diverse range of flora and fauna of significance within the Wollondilly LGA are vulnerable to increasing pressure from development.
- The effectiveness of the TSC and NVA in restricting impacts on biodiversity within the LGA is questionable based on observations and experiences of Council Officers implementing these Acts.
- Biodiversity within the Wollondilly LGA is vulnerable to any provisions within a new legislation framework that facilitates increased development given the application of both the TSC and NV Acts and the projected increased level of development.

## PART B: COUNCIL'S POSITION

### 3) Council's position regarding the management, conservation and regulation of biodiversity

Council's position can be overall summarised as encouraging development in an ecologically sustainable manner whilst protecting biodiversity of significance in recognition of the finite nature of this resource. In this regard, Council's adopted following Mission Statement in 2006 that has been incorporated into all its strategic documents including the Community Strategic Plan:

*"To create opportunities in partnership with the Community and to enhance the quality of life and the environment, by managing growth and providing sustainable services and facilities"*

In 2010 Wollondilly Council endorsed its Wollondilly Community Strategic Plan. Of particular interest for this submission is the following desired outcomes expressed by the community that Council must ensure its activities are compatible with:

- *A community that is surrounded by a built and natural environment that is valued and preserved.*
- *A community that has opportunity to engage with and actively care about their natural environment.*

Council has also recognised the need to facilitate development in accordance with Ecological Sustainable Development (ESD) principles whilst conserving and enhancing the significant biodiversity within the Wollondilly LGA.

Council has had an ongoing interest in the equity and outcomes of both the *Native Vegetation Act* and also protecting biodiversity. An example can be seen in the following Notices of Motion;

*NOM6 Notice of Motion No.6 submitted on 12 February 2010; that Council write to the Minister for Climate Change and the Environment, The Hon Frank Sartor, and the Shadow*

*Minister for Climate Change and Environmental Sustainability, Catherine Cusack, expressing concern over the impacts of the NSW Native Vegetation Act and Threatened Species Conservation Act on agriculture and the property rights of farmers.*

*NOM Notice of Motion No. submitted on 17 April 2014; That Council shall support National Parks and Wildlife in the investigation of threatened Species program trial areas within the Wollondilly Local Government Area, particularly those within the Greater Blue Mountains World Heritage Area and Dharawal National Park, as this will benefit both tourism and the environment in our shire.*

*1. That Council Officers prepare a report before the next Appin Threshold Investigation Meeting addressing the impact of including the land west of the Nepean River into the West Appin Precinct Area due to:*

*a) The importance of appropriately balancing development with the protection of important rural uses and landscapes*

*b) The importance of protecting the threatened ecological communities in this area, particularly the areas of the remnant Shale Sandstone Transition Forest*

*c) This area's proximity to the river and associated riparian corridors.*

*2. That a high-level threshold report on the environmental attributes of this area be prepared and submitted to Council.*

*3. That Council write to the West Appin Proponents Walker Corporation, Mir Group and Ingham Rural Properties Group advising them of the above.*

Since electronic record systems were implemented in Council in 2005 there are 246 combined Notices of Motion, Community forum questions relating specifically to environmental outcomes.

These NOM's provide a quick snapshot of some of the issues brought to the Council level in regards to biodiversity protection and outcomes, as well as balancing these outcomes with acceptable farming practice that allows people to establish use of their land other than biodiversity protection.

**The comments provided in subsequent sections of this submission and requested issues for investigation by the Panel are consistent with the above Council position. It is requested that this position be incorporated into the updated biodiversity legislative framework arising from the Review.**

#### **4) Support for the Biodiversity Legislation Review**

The Review is recognised as being appropriate in ensuring the maximum effectiveness of legislation and relevance to current issues associated with the management and regulation of biodiversity in NSW. The provision of any support to the review process is dependent on comprehensive demonstration of full consistency of an updated policy and legislative framework with Council's endorsed position outlined above.

A number of comments in produced information (such as those reproduced below) are however considered to raise questions over the intent and likely outcome of the Review that prevent the provision of any support to the Review from Council at this stage:

*"Government considers that such a review is necessary to achieve the Government's goals and policy objectives".*

*"The Review will test whether the current institutional, policy and legislative framework is delivering outcomes for government, business and the community".*

The introduction of the **10/50 Vegetation Clearing Code of Practice** and the manner in which it was introduced is also considered to raise questions over the intent and likely outcomes of the Review. The Panel should note in this regard that sentiments expressed in the Media release from the Department of Local Government regarding significant deficiencies in the consultation process associated with exhibition and introduction of this Code are strongly supported.

**The likelihood of the Review resulting in the enhanced protection and regulation of biodiversity is therefore questioned. Council would appreciate a prompt response by Senior Management of the OEH to this viewpoint.**

## **PART C: COMMENTS ON ASPECTS OF THE REVIEW APPLICABLE TO THE WIOLLONDILLY LGA**

### **3) General comments on the adequacy of the Review**

#### *(v) The focus and broad aims of the Review*

The intention of the Review to establish simpler, streamlined and more effective legislation that will, *'support sustainable development' and 'reduce red-tape'* is acknowledged. However, the generic nature of the stated broad aims of a revised framework raises concerns over the adequacy of the outcome of the Review and objects and content of the updated legislation.

Consequently, alternatives to each of the broad aims to better reflect Council's position in regard to the management and regulation of biodiversity are as follows:

- ***Facilitate the conservation of biological diversity: It is recommended that the Review should aim to develop legislation that will conserve (rather than***

***facilitate) biological diversity based on defined binding targets and within a Policy framework at the International, National, State and local level.***

- ***Support sustainable development: It is recommended the Review should aim to establish legislation that supports Ecological Sustainable Development based on recognised definitions rather than be restricted to ‘sustainable development’.***
- ***Reduce red tape: It is recommended the Review should aim to establish legislation (to the effect) that removes inefficiencies and duplicities of the current framework at the local, State and National level whilst retaining the intent of the Objects of this current framework.***

**It is requested that the Panel note the concerns of Council regarding the intended aims and incorporate the above suggested alternate aims into the Objects and provisions of the revised legislative framework.**

(vi) *Policy and legislative context of the Review*

(b) National context

It is important that the Review be carried out within the existing International/State framework for the management and regulation of biodiversity. In this regard, the implications of the draft Bilateral Agreement between the NSW and Commonwealth Governments to the Review and its outcomes are acknowledged.

However, the Terms of Reference and Issues document are noted to have only a tenuous reference to the current implications of the *Environmental Protection and Biodiversity Conservation Act 1999*. There is also noted to be an absence of reference to the relevance and implications of documents and initiatives at the Commonwealth level including the **National Biodiversity Strategy** and **National Vegetation Framework**. Both these documents are viewed as having a high level of merit and consistent with Council’s position outlined previously in Council’s submission.

(b) Relationship of the Review to the State planning system

The Introduction to the Issues Paper is noted to state that the Review “*will also look at how this system interacts with the planning system*”. It is recognised in this regard that amendments to Parts 4 and/or Part 5 of the EPA& Act may occur as part of the proposed reforms to the planning system.

However, it is considered the Issues Paper has not adequately described issues associated with the planning system to be investigated as well as the intended methodology of this investigation given the close correlation between a number of Objects of the current version of the EP&A Act with Objects of the TSC Act and NVA. The following broad comments are provided in this regard for consideration and investigation by the Panel:

- It is noted with strong concern that the Issues document does not list assessment under Part 4 and 5 of the *Environmental Planning and Assessment Act 1979* as one of the methodologies currently used in NSW to assess the impacts of biodiversity. In this regard, it is also noted with strong concern the absence of reference to the

activation of Sections of the TSC Act by Sections of the EP&A Act (such as Section 5A in Part 1 regarding the Assessment of Significance).

- There is an absence of any specific reference to the planning system within the Terms of Reference document despite the apparent intention for the interaction between the regulatory framework and the planning system to be examined by the Review.
- In light of the above, the inclusion of a specific item regarding this matter for consideration by the Panel as part of its investigation into Term of Reference 1 is viewed as being warranted.

(vii) *Recognition of the responsibilities of local government*

The overall management and regulation of biodiversity within NSW is recognised as being the responsibility of the OEH. However, the Charter for Local Government contained in Section 8 of the *Local Government Act 1993* requires councils to:

*“Properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development”.*

It is therefore extremely disappointing to note that a review of the Issues Paper did not identify any reference to ‘local government’ or its responsibilities under the NVA, TSC Act, LGA and EPA& Act apart from an indirect reference strategic planning and ‘development assessment processes. The Terms of Reference and Issues Paper are consequently not considered to have adequately recognised:

- The current legislative requirement for councils to prepare local planning instruments that define permitted land use and development activities within LGA’s.
- The assessment and determining responsibilities of local government under the NVA, TSC and EP&A Acts.
- The responsibilities and issues encountered by local government in regard to regulation as well as monitoring compliance of developments with consent conditions.
- The land management responsibilities of local government based on the Statement on Page 1 of the Issues Paper that *“the management of national parks or other public lands will not be assessed in this Review”.*

The inclusion of a specific item regarding this matter for consideration by the Panel as part of its investigation into Term of Reference I is therefore viewed as being warranted in light of the above observations. The Panel is requested to note the view of Officers that a revised biodiversity legislation framework (as well as the planning system) should contain direct reference to local government given its significant responsibilities. In this regard, a review of the *Queensland Offset legislation 2014* identified 33 references to ‘local government’.

**Requested issues for investigation**

The Panel is required to investigate the following as part of the Review for incorporation into the revised legislative framework:

- The issues and experiences of local government in carrying out their legislative requirements in regard to the regulation and management of biodiversity.
- The direct and indirect relationship between the existing planning system and the regulation and management of biodiversity within NSW and the involvement of local government in this process.
- The investigation of appropriate provisions for a revised legislative framework that provides for an integrated assessment and regulation process with the planning system and also fully recognises the responsibilities of local government.

#### 4) Comments on specific Terms of Reference

The following discussion outlines issues that are requested to be investigated by the Panel and incorporated into the revised legislation and policy framework. The issues raised are consistent with the adopted position of Council outlined in preceding sections of this submission.

### **TERM OF REFERENCE 1 EVALUATION OF THE EFFECTIVENESS OF THE CURRENT REGULATORY FRAMEWORK**

#### **The objectives of the current legislation and whether they remain valid**

##### *(i) Validity of the Objectives and related provisions*

The Objectives of the Acts are considered to be broadly appropriate and sound in intent terms of outcomes for the management and regulation of biodiversity within NSW. They are therefore considered broadly suitable for adaption and retention by a revised legislative framework. However, the following broad observations are provided for the information of the Panel:

- There is a conflict between the intent and objectives of the TSC Act and NVA in regard to the protection and regulation of biodiversity.
- The Objectives of both Acts do not reflect or recognise recent policy reforms such as Biodiversity Certification.(discussed in a subsequent section of this submission).
- The inclusion of economic and social factors in the Objectives of a revised Biodiversity legislative framework is not considered necessary as these factors are currently addressed and should be addressed by the planning system.

The requested consideration by the Panel that commences with “*To what extent the current policy framework sufficiently....*” is recognised as having relevance to the specific Objectives of the TSC Act and NVA. However, there is an apparent absence of any requirement or intention by the Panel to specifically investigate the current adequacy of these Acts in achieving these Objectives. The carrying out of such an investigation is considered important in the formulation of Objects for the replacement legislative framework.

In this regard, the Panel is requested to note the view of Officers that the TSC Act is consequently viewed as not adequately achieving any of its Objectives. Officers are also of the view that the NVA is also not adequately achieving its objectives apart from potentially Objective a). This viewpoint is based on the following observations of Officers in carrying out biodiversity management and regulatory responsibilities:

- The complexity of the mechanisms by which both Acts are adopted, implemented and regulated leading to frustration from landholders developers and applicants when utilising the Act.
- Inadequacies in financial and personnel resources for the preparation and implementation of strategies designed to achieve positive outcomes in regard to the regulation and management of biodiversity.
- Inadequacies of resources for the monitoring and regulating of any non-compliance of vegetation clearance under both Acts.
- The decline and extent of biodiversity within the existing legislative framework that is considered to be a consequence of
  - Exemptions within the NVA that allows for clearance of native vegetation under certain circumstances
  - A range of Policies and initiatives that permit removal of biodiversity of high consequence subject to the identification of offsets in accordance with OEH Guidelines such as the Biodiversity Certification Assessment Manual (BCAM).
  - The application of less stringent assessment requirements under the TSC Act for State Significant Developments compared to applications lodged under Part 4 or Part 5 of the EPA&A.

#### **Requested issues for noting and consideration by the Panel**

- **The Panel is requested to note that the view of Officers that the Objects of both the NVA and TSC Act remain valid and suitable for incorporation into a revised framework.**
- **The Panel is requested to include provisions in a revised framework that will ensure the Objects are adequately achieved.**

(vi) *Issues experienced by Council*

The following discussion outlines Council's broad position regarding the Acts under Review as well as general comments regarding their adequacy based on experiences and observations by Officers during the carrying out of their responsibilities. The discussion also provides comments on aspects of the EP&A Act given its high level of relevance to the Review.

(c) General issues associated with the Regulatory framework

### Threatened Species Conservation Act

This Act has been recognised by Council as being an important legislation in providing requirements for the conservation and management of threatened ecological communities and species within the LGA. However, the sentiments expressed by the issues Paper that the condition and extent of biodiversity is in decline despite the merits of this Act are supported.

The current Objectives and provisions of the Act are recognised as having potential adverse implications to the carrying out of activities by current landholders as well as development applicants that warrant appropriate compensation. The intent of recently introduced Policy reforms such as the Biobanking Scheme to provide clarification in this regard is therefore also acknowledged. However, Council has strong concerns over the adequacy of these initiatives in achieving long-term beneficial outcomes for the protection and conservation of biodiversity as discussed in a subsequent section of this submission.

Recent programs introduced by the OEH such as the Save our Species Program are considered to be of merit in achieving beneficial biodiversity outcomes. However, their introduction would appear to infer recognition over deficiencies of aspects of the legislation as well as the recently introduced policy reforms.

### Native Vegetation Act

The broad intent of the NVA in enabling vegetation clearance for the carrying of rural activities is acknowledged. The importance of provisions within the Act for the carrying of activities by rural landholders for the maintenance of income is also acknowledged. In this regard, it is also recognised that adequate incentives and compensation is required in relation to adverse impacts to agricultural activities as a result of the implementation of the Act.

There is however a range of provisions and exemptions in the Act that permits the clearance of vegetation for rural activities such as Routine Agricultural Maintenance Activities (RAMAS) as well as regrowth (as defined by the Act). Officers are also aware of a number of vegetation clearances that are contrary to these provisions..

In this regard, land covered by the Act can be heavily vegetated both with remnant vegetation and defined regrowth given the complexity of rurally zoned land. The Panel is requested to note that many of these areas are modelled by OEH mapping as supporting Endangered Ecological communities and recorded threatened species which are viewed as being vulnerable as a result of exemptions under the Act.

Consequently clearance of rural land in regard to provisions of the NVA has the potential to result in impacts on biodiversity. As an example in this regard is the impact of RAMAs on threatened flora in instances where species such as *Persoonia hisuta*, *Persoonia glaucescens* as well as *Grevillea parviflora* are present in regrowth defined under the Act. but are vulnerable as a result of the exemptions under the Act. A further observed issue regarding this matter is the adverse implications to SEPP 44 Koala Habitat by the fragmentation and removal of feeding habitat for this species as a consequence of exemptions under the Act.

### National Parks and Wildlife Act

Council normally has indirect involvement in the activation of the Sections of this Act subject of the Review such as provision of information in regard to regulatory action coordinated by the OEH. However, it would appear unnecessarily cumbersome for provisions regarding the issuing of offences to be contained within a separate Act, the *National Parks and Wildlife Act 1974*.

#### Environmental Planning and Assessment Act 1979

Biodiversity assessment provisions are included in this Act such as Section 79 (c) and associated regulations and parts of Council's DCP as well as its LEP. Flora and Fauna reports associated with Applications received by Council have been predominately viewed as being inconsistent with a wide variety of aspects of these provisions.

The Wollondilly LGA also contains current coal seam gas and longwall mining projects assessed and approved under the former Part 3A of this Act. It also contains a current mining application that has been lodged under the new State Significant Development Section of the Act. Many of these applications have been observed to have inadequate surveys and assessments below the standard that Council would require for applications where it is the determining authority. An example in this regard, is the Bulli Seam Project (approved on 22 December 2011) which was not required to precisely define vegetation clearance associated with surface works. Council therefore has strong concerns over the assessment and approval processes associated with these types of applications..

**The Panel is requested to consider all issues raised in the above discussion and ensure that they are adequately addressed by the revised legislative framework.**

#### *(b) Issues associated with Assessment and determining responsibilities*

It is recognised that Council is not the regulatory authority for any of the Acts under review. However, Council applies a range of provisions of these Acts as part of the undertaking of its responsibilities in regard to the regulation and management of biodiversity. The following summarises issues encountered as part of these responsibilities in regard to the TSC and NV Acts.

#### The Threatened Species Conservation Act

Council's DCP contains requirements that are consistent with requirements of the TSC Act and related OEH Guidelines. In this regard, Council Officers have identified the following issues associated with the assessment process within the TSC Act and related provisions within the EP&A Act for consideration and investigation by the Panel:

- The absence of baseline data means that Officers largely need to rely on broad – scale mapping and the NSW Atlas of Wildlife to verify reports received by consultants engaged by applicants.
- There is an absence of site specific targets or areas of high conservation that require protection from any development to assist Council Officers in achieving positive outcomes in regard to biodiversity management.
- Flora and Fauna reports associated with applications are generally not in accordance with best practice principles. In this regard, applications have been observed to either

provide cursory reference or no reference to Recovery Plans or Best Practice Guidelines such as ***Recovering bushland on the Cumberland Plain: best practice guidelines for the management and restoration of bushland***

- The assessment of cumulative impacts associated with developments or activities on biodiversity are not specifically required to be assessed by the legislation and policy framework.
- Council's Development Services Officers have advised that proponents often express the viewpoint that no assessment for vegetation clearance is required if a site does not contain threatened species or EEC's.
- The requirements for Applications of Significance (AoS) are viewed as being subjective and open to misinterpretation. This has resulted in disagreements between consultants regarding the likely significant impact of a development. In this regard, the Panel should note that overwhelming majority of AoS'S reviewed by Council's Environmental Officers have significant inconsistencies with OEH Guidelines.
- There is potential for requirements of the TSC Act to be overridden in favour of a development in response to lobbying by a proponent at a political level.
- The determining powers of Council has been removed or partially removed in regard to the assessment and approval of large planning proposals. In this regard, the Panel should note that the Department of Planning and Environment has determined that the Wilton Junction planning proposal with potential housing sites for 10,000 dwellings is being prepared pursuant to a State Environment Policy. The Panel is requested to further note the OEH has supported the significant deficiencies identified by Council's Environmental Officers in the Flora and Fauna Report associated with this Proposal.

Council is not in possession of data that allows for accurate assessments regarding the extent and nature of impacts on biodiversity within the LGA. However, the above matters are viewed as being contributing factors to the observed gradual decline of biodiversity in a piece meal pattern within the LGA (death by a thousand cuts) it is therefore imperative that all of the above issues identified by Council Officers be adequately addressed by a revised legislative framework.

#### The Native Vegetation Act

The current exemptions for vegetation clearance under this Act significantly restrain the ability of Council to conserve and enhance biodiversity on rural land zonings land through the assessment and approval process. Council has however historically required the lodgement of development applications for vegetation clearance proposals that do not satisfy these exemptions.

In this regard, the dual consent provisions for Council under planning system (through the LEP) and NVA create difficulty in assessing and approving applications where both Acts apply due to the differences in objectives. In this regard, Council has elected to reflect clearing provisions of the NVA into its LEP and DCP into zones affected by the Act to reduce the level of complexity and confusion for landholders. For Example if Local Government chose to not adopt the exemptions of the act and have concurrent approvals this would

make the process more cumbersome requiring development applications for vegetation clearance and review compliance with the assessment provisions as part of the assessment process

It should be noted that there is a loss of biodiversity through the provisions of RAMA's and clearing of regrowth vegetation and that these provisions do not adequately consider the *Threatened Species Conservation Act*. It is one of the known weaknesses in the current framework, as it may have conservation significance and habitat value. It is also accepted though, that by amending these current exemptions to consider the TSC Act, will potentially complicate the current intent of this Act.

**It is requested that the Panel consider all issues raised above based on the experiences of Officers in the application of the TSC Act and NVA as part of the undertaking of their assessment and determining responsibilities. It is also requested that the Panel ensure that these issues are adequately addressed by the revised legislative and policy framework.**

(c) Regulation responsibilities

Council has developed a collaborative relationship with the OEH in regard to the management and regulation of biodiversity. However, there has been observed to be a level of confusion over the defining of responsibilities in regard to the investigation and enforcement of breaches of the TSC and NV Acts particularly given the potential for investigations to become complex where NVA exemptions apply.

Council has outlined how the Routine Agricultural Management Activities apply to permissible uses within its LEP, additionally, reference has made to these in the Development Control Plan Volume 1. Council has responsibilities to enforce any breaches of the NVA by these activities as a result of provisions within the LEP to enforce the preservation of trees and vegetation as long as the intent is in accordance with the approved zoning and landuse. In addition, it is considered there is complexity associated with the regulation under the NVA of minor breaches of vegetation clearance associated with these activities.

**It is requested that the Panel investigate means of clarifying and addressing the issues raised above as part of the Review.**

(e) Biodiversity management responsibilities

Programs to enhance biodiversity

Council has legislative responsibilities (primarily under the *Local Government Act 1993*) to carry out programs and prepare strategies that are designed to enhance the condition of biodiversity. In this regard, Council adopted a Biodiversity Strategy in 2004 (which is currently under review) that is consistent with documents prepared under previous versions of the current Policy framework such as Recovery Plans and Threat Abatement Plans.

The stated reasoning behind the introduction of the Priority Statement (and associated SOS) by the OEH is recognised. However, the delays in introducing site specific actions on a local and regional scale has resulted in difficulties in obtaining overall targets and a policy framework for the preparation of Council's strategic documents as well as their implementation.

In a related matter, Council carried out a "Vegetation Prioritisation Analysis' to obtain a criterion based prioritisation of remnant vegetation including habitat corridors, which has been incorporated into its DCP in the form of a biodiversity layer. This mapping was viewed as having consistency with the Core and Support Areas by mapping carried out in 2002 as part of the preparation of a preliminary draft Cumberland Plain Recovery Plan. However, the Priority Investment Areas identified by the adopted Recovery Plan for Cumberland Plain Vegetation is viewed as having significant less consistency with Council's mapping due to its fragmented nature. In this regard, the Panel should note that Council's submission on the associated Bio mapping project requested that local habitat corridors be incorporated into the final mapping.

#### Protection of biodiversity as part of asset management

Council has legislative responsibilities to manage its own assets in a manner that conserves and enhances biodiversity. In this regard, it is noted with concern that the issues Paper states that the management of national parks or other public lands (assumed to include Council owned land) will not be assessed by the Review. Urgent Application is therefore being sought regarding this matter given the direct relationship legislative relationship between the *Local Government Act 1993* and the TSC Act for the management of public land classified as 'Community Land' containing threatened species and/or ecological communities..

**The Panel is requested to consider means of addressing the above experiences of Council Officers in regard to aspects of the NVA and TSC Acts of relevance to Council's biodiversity management activities by the revised framework as part of the Review.**

*(II) Approaches and experiences of other states and territories, and relevant jurisdictions overseas*

The intention of the Panel to consider the approaches and experiences of other jurisdictions approach to the management and regulation of biodiversity is supported. This support is however dependent on any incorporated aspects of other jurisdictions into an updated biodiversity legislative framework being consistent with the position and issues of Council outlined in preceding sections of this submission.

In this regard, it is requested that the approaches and experiences of local government be considered by the Panel given the wide variety of legislative responsibilities for this level of government. The Panel is requested to note that Council officers would be available to participate in such consultation.

*(viii) Whether current arrangements appropriately deal with new and emerging policy frameworks in NSW*

(a) Comments and support for aspects of the new and emerging policy framework

The overall philosophy of the various components of this framework listed in the ToR document in providing clarification to proponents regarding requirements for the management and regulation of biodiversity within NSW is recognised. Initiatives specifically associated with biodiversity such as Biodiversity Certification and the Biobanking Scheme are also recognised as having benefits in simplifying assessment requirements (with associated costs) for sub-division and large planning proposals.

It is also recognised that the Biobanking Scheme in particular presents potential for beneficial biodiversity outcomes in terms of being utilised as sources of offsetting credits for vegetation clearance in other parts of the Cumberland Plain. The Panel should note that potential offset sites are overwhelmingly located on privately owned land which restricts the ability of Council to obtain positive outcomes.

The following outlines a number of concerns regarding the listed initiatives of major relevance to Council's activities as well as comments on the adequacy of the of each initiative by the current framework. . It is considered that the 10/50 **Vegetation Clearing Code of Practice** should be added to the list of recent policies initiatives given its relevance to both the TSC and NV Acts.

Biodiversity Offset related initiatives

Proponents of large proposals in particular have been almost universally observed to adopt an Offset Strategy at the early stages of the application process. This is viewed as being inconsistent with the basic principle of the OEH that offsets should only be pursued if impacts cannot be adequately avoided or mitigated. The Panel should note that Council has incorporated this basic principle into its LEP.

The Biobanking Scheme and associated Biodiversity Certification Operational Manual are noted to contain a number of requirements such as vegetation types being offset by similar vegetation types of merit. However, this benefit is viewed as being significantly negated by procedures such as applications for 'Red Flag' variations. In this regard, the BCAM is noted to permit the removal of a certain vegetation type to be offset with another vegetation type be a red flag variation application if there are similarities of species in the two areas.

These Schemes are therefore viewed as resulting in a fragmented approach rather than a strategic approach informed by baseline data and modelling. The fragmented nature of the recently exhibited draft Bio Mapping as part of the implementation of the Cumberland Plain Recovery Plan is considered to validate this viewpoint.

Regional service delivery models and associated strategic plans

It is assumed that this item refers to regional planning frameworks introduced as well as Strategic documents introduced at the State and Regional level. The following comments based on previous expressed positions by Council and experiences of Officers in regard to these matters are provided for the information of the Panel:

- Documents prepared by the OEH at the State level such as the Biodiversity Strategy are considered to be of benefit in terms of achieving positive outcomes of

the management and regulation of biodiversity. However, there are concerns over the adequacy of resources for the implementation of such documents.

- The Joint Regional Planning Panels have benefits in the review of large and complex applications. However the minority representation of local government has been observed to result in adverse biodiversity outcomes.
- The Strategic Regional Land Use Policy has been observed to be deficient in achieving its intended purpose to protect valuable residential and agricultural land across the State from the impacts of mining and Coal Seam Gas (CSG) activity.
- Council's submission on the proposed reforms to the planning system expressed concerns that the focus of planning had shifted towards economic development and housing supply and that protections afforded to the environment could be watered down

### Bi lateral Agreement

Council has not adopted a formal position in regard to the Bi Lateral Agreement between the Commonwealth and State Governments exhibited in May 2014. However, a review by Officers has identified concern that the level of scrutiny and assessment of developments with the potential for significant impacts on Matters of National Environmental Importance may be reduced as a result of the Agreement. There are also concerns that any reduction of rigour of the existing NSW legislation arising from the Review will further reduce the level of assessment given the intention by the Agreement for this process to occur under NSW law.

#### (d) Addressing of the new and emerging policy framework by the current framework

The TSC Act is recognised (by necessity) to have been amended to allow for the introduction and implementation of the reforms referred to above. It is recognised the implementation of the NVA does not require specific reference to the planning reforms. In this regard, the inclusion of Offsetting measures for vegetation clearance under an updated legislative framework is not opposed in principle. However, any support would be dependent on the adequate addressing of identified deficiencies associated with Offsetting and the consistency of the updated framework being consistent with Council's position regarding the management of biodiversity.

The Objectives of both the TSC Act and NVA are viewed as being similar to when the Acts was gazetted and have therefore not been updated. The incorporation of aspects of the policy framework into these Objectives is also not opposed in principle. However, as stated previously, the intent of the Objectives for both Acts remain valid and should be retained.

### **Summary of issues associated with Term of Reference 1**

**Council requests that the following overview of issues and concerns of Officers regarding the current legislative framework discussed above be investigated by the Panel.**

- The objectives of the TSC Act and NPW Act are viewed as being compromised by the objectives of the NVA. This creates difficulties for the assessment, determination

and regulation activities of both Councils in regard to the zonings in the LGA where both the NVA and TSC apply

- The assessment process under the TSC Act is subjective and open to misinterpretation and the approval process is complicated where both the TSC Act and NVA due to the differences in intent and objectives of the legislations.
- Exemptions for vegetation clearance and dual consent provisions associated with the NVA hinder the ability and effectiveness of Council's assessment, determination and regulation responsibilities on rural zoned land.
- The new policy mechanisms have merit particularly in regard to large scale planning proposals as well as sub-divisions. However, developers are noted to be adopting an offset approach at the onset of the application process resulting in a net decline in biodiversity.

**The addressing of the identified deficiencies in the existing framework as a result of the Review would be supported on the strict condition that its overall intent and objectives of the existing framework maintained and the new framework is consistent with Council's position.**

## **TERM OF REFERENCE 2: CONSIDERATION OF THE EVIDENCE BASE FOR GOVERNMENT INTERVENTION**

### *(j) General position regarding the Term of Reference item*

The investigation in regard to this Terms of Reference is viewed as having potential benefits for the development of a revised legislative framework. However, there are doubts over the likelihood of these outcomes being achieved given the absence of 'environment' in the stated aim of the Review to "*test whether the current institutional, policy and legislative framework is delivering efficient outcomes for government, business and the community*

In addition the 10/50 **Vegetation Clearing Code of Practice** is noted to permit vegetation clearance without approval and consideration of the TSC Act. The introduction of the Code therefore has resulted in a reduction in provisions for government intervention. The view could therefore be expressed that the introduction of the Code (to a certain extent) compromises the identification of the need for government intervention by the Review.

### *(iii) Comments on items required to be considered by the Panel*

It is noted there is an absence of requirement for the Panel to specifically investigate implications to biodiversity as a result of inadequate or no government intervention. The evidence basis for adverse outcomes In this regard is recognised as being very strong for a wide variety of reasons. However, it is considered the investigation of his matter is important to assist in the formulation of aims and objectives that will enable the revised legislation to deliver positive outcomes for the environment, community, business and government (including local government).

The discussion below provides comments in regard to the listed items for consideration for consideration and investigation by the Panel.

(d) Status, trends and pressures on native vegetation

Preceding sections of this submission have outlined the need for the carrying out of an audit and undertaking of mapping and modelling to accurately identify the status of biodiversity in NSW and the impacts of pressures on this biodiversity. However, the condition and extent of biodiversity within the context of the Wollondilly LGA is viewed as being adversely affected by a wide variety of factors outlined in preceding sections of this submission. This decline is considered to provide strong evidence for government intervention in regard to the management and regulation of biodiversity to reverse this decline.

(e) The relationship between healthy ecosystems and sustainable development

This submission has recommended that the Review should aim to establish legislation that supports Ecological Sustainable Development ESD based on accepted definitions rather be restricted to 'Sustainable Development'. The recommendation is based on the recognition of the relationship between healthy ecosystems and sustainable development in a number of accepted definitions of ESD.

It has been the experience of officers, that the development of government initiatives is necessary to encourage the adaptation of sustainable development principles by development proposals as well as the community. It is therefore considered appropriate that initiatives be developed at the State level to encourage and/or require the adaptation of these principles and achieve related beneficial environmental outcomes.

(f) Likely future environmental conditions given existing and emerging threats, including climate change

The major threat to biodiversity within the Wollondilly is impacts associated with vegetation clearance for urban growth in the form of large planning proposals, sub-divisions and in-fill development. A further major threat is vegetation clearance on rural lands which is exacerbated by current exemptions under the NVA as previously discussed. This submission has referred to the extent of current and proposed clearing that has occurred and is occurring within the Wollondilly LGA despite a range of provisions within the existing policy and legislative framework that designed to restrict impacts on biodiversity. The evidence for enhanced government intervention in this regard is therefore strong.

A further major threat is impacts on biodiversity including the movement of fauna as a result of impacts associated with climate change. The addressing of these impacts requires government intervention at the International, National, State and Local Government and community level.

Other major future threats to biodiversity within the LGA are considered to be climate change, large scale developments including mining and coal seam gas activity, infestations of weeds, impacts of feral animals, and light pollution and 'heat island' effects from increased urban areas. The addressing of these threats requires government intervention at the National, State and local level.

**Summary of issues requested for investigation by the Panel**

**The Panel is requested to consider the following as part of its investigation:**

- **It is imperative that the Panel consider the evidence base for government intervention to achieve effective and efficient environmental outcomes.**
- **The Panel should investigate adverse implications to biodiversity as a result of no or inadequate government intervention.**
- **Provided comments within a localised perspective regarding the required considerations by the Panel listed in the Terms of Reference document.**

### **TERM OF REFERENCE 3: PROPOSED NEW LEGISLATIVE ARRANGEMENTS FOR BIODIVERSITY CONSERVATION**

The Terms of Reference document is noted to list ten considerations for the Panel as part of its investigation into a proposed new legislative arrangement for biodiversity within NSW. It is outside the scope of this submission to provide detailed comment regarding each of these considerations.

However, this submission has outlined a range of issues associated with the existing framework that are within the overall context of the Wollondilly LGA and consistent with Council's adopted position regarding the management and regulation of biodiversity. The following lists suggested components and features of a revised legislative framework that are consistent with these previously raised issues:

- Greater incentives for landholders and developers to comply with the current objectives of the Act as well as associated compensation as a result of any monetary loss for the use of the land.
- Clear distinction regarding the regulation responsibilities at the local and State level under the TSC, NVA and NPW Acts particularly where exemptions under the NVA apply.
- More relevant modelling of EECs and vegetation corridors to provide direction on effective ways to integrate the legislation for better effectiveness and efficiency and stronger direction from the state in regards to target setting for species or areas of retention for EECs.
- Greater recognition of threatened species by the NVA including the possible inclusion of provisions for Offsetting in the Act as part of a new legislative framework.
- Consistent penalties and compliance initiatives that deter breaches of the Act.
- Accreditation Scheme for consultants.
- Revamped guidelines for the assessment and approval of applications with potential significant impact on biodiversity
- Revision of the TSC Act by the EP&A Act 1979 creates uncertainty
- Definitive targets for protection of threatened species and/or ecological communities which results in difficulties in implementing and enforcing targets at a localised level.

Council Officers would be available to discuss any of the above matters with members of the Panel at an appropriate time and forum.

## **PART D CONCLUSION**

In conclusion, there needs to be some restructuring and refocus on the gathering of data to ensure that the changes in the Act are appropriately applied at a State and Local Government Level. Council suggests the following;

- (i) Sound engagement with local government and state agencies to ensure that any changes proposed capture and resolve any of the overlap and confusion through the administration of planning and enforcement processes.
- (j) Landscape targets need to be applied and appropriately funded either through incentives or biobanking/biocertification processes
- (k) Additional resources need to be applied at a state level to assist in the gathering of data, ground truthing of mapping as well as delivering incentive funding and appropriate enforcement for breaches of the Acts.
- (l) Appropriate fines need to be created to ensure that compliance is achieved the objectives of the act.
- (m) Opportunities to support eco-tourism and other positive intrinsic environmental outcomes for biodiversity need to be explored to provide additional opportunity to retaining biodiversity.
- (n) Consistent approach between both state and Local Government needs to be undertaken in regards to planning decisions and the protection of biodiversity needs to be strengthened through this pathway by having consistent outcomes for biodiversity protection.
- (o) The Native Vegetation Act may need to review some of its exemptions to reflect the objectives of the TSC Act, however appropriate solutions need to be provided for rural activities so that genuine agricultural pursuits are not impacted by an over complicated process (this is some flexibility).
- (p) Standardised assessment and monitoring approach to be applied throughout the State and Local Government to ensure that any changes can be appropriately reviewed and compared throughout the State.

If you have any further enquires please do not hesitate to contact [REDACTED]  
[REDACTED]

