

Mr Chris Page

Biodiversity Legislation Review

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**Submission to the Independent Biodiversity Legislation Review Panel**

**Issues Paper August 2014**

Dear Sir/Madam

Please find below comments to the Panel for consideration. This submission has not attempted to comment on all the prompting questions. The key message, however, is to have a single robust methodology to assess impacts upon biodiversity. How the offset will be determined can be a matter for politics/Government as there will always be some stakeholder interest or industry sector looking for or lobbying for some kind of advantage/reduction or flexibility. An impact is an impact regardless of the stakeholder, industry, development type, land use zone or exemption/exclusion. The impact assessment methodology is overly complicated already and this trend seems to be continued by Government with the Framework for Biodiversity Assessment coming online with a fourth methodology.

The need for a single assessment methodology cannot be over emphasised.

Theme 1: Object and principles for biodiversity conservation

There should be an overarching aspirational goal for biodiversity conservation. This goal should be equally carried into the Environmental Planning and Assessment Act so there is no debate about intent between the two central pieces of legislation.

An aspirational goal would be that a “cumulative improvement” to biodiversity result from all relevant decisions. Relevant decisions can be across the spectrum from offsetting clearing from unavoidable impacts arising from State Significant Development down to the use of endemic/local provenance species in landscape plans associated with minor development applications and even in the use of appropriate species in street planting.

Second tier goals would be the standard stuff:

- i. identify and protect biodiversity of high conservation value
- ii. avoid, minimise or mitigate biodiversity impacts
- iii. biodiversity impacts that cannot be avoided or minimised are offset

A key problem in biodiversity conservation is obviously the direct impact (eg unavoidable clearing). A less recognised problem is cumulative impact. This includes indirect impacts associated with development and activities (eg edge effects) as well as the plethora of uncompensated impacts arising from legislated exemptions and exclusions.

Imagine over a decade what the biodiversity ‘balance sheet’ would look like where a cumulative improvement was a requirement for every impact or relevant decision. Where any unavoidable impact or exemption was compensated elsewhere by a minor improvement. Even a 1% degree of compensation of any minor biodiversity impact would cumulatively add-up over time to a landscape of benefit. Currently we end up with landscapes facing the death from a thousand cuts from cumulative impacts ranging from unavoidable impacts associated with major projects to uncompensated exemption/exclusion impacts.

To add to this concept, currently exempt/excluded clearing would be required to offer some kind of offset (even if 1.01:1 hectare or credit is up to the Review (ie 1%)) or a kind of supplementary payment into an Offset Trust Fund based on a sliding scale or standard ratio of impact relevant to conservation value (ie not merit based but set threshold to give certainty). Imagine the biodiversity opportunity afforded by 1000 small decisions per annum that are currently exempt/exclude being required to pay say \$750 into a Trust – and

where the Trust in-turn, every year, is able to acquire one National Park in-holding, establish one more biobank site on a valued private landholding or enable additional grants to Landcare projects. The Offset Trust Fund would be part of a Government program that invests the funds into conservation outcomes based upon priority mapping like BIOMap or the Great Eastern Ranges project. This same Fund would operate for the proposed supplementary payment measure in the Framework for Biodiversity Assessment. The Fund would address offsetting at the big and small end of the spectrum of clearing within the notion of cumulative improvement from all clearing decisions.

## Theme 2 : Conservation action

The Issues Paper does not include the Terms of Reference so it is problematic for the reader to know whether the scope is limited by the four Acts mentioned in the Introduction. In regard to the suite of biodiversity conservation options, and taking account of the Government's objective stated in the Introduction, the Issues Paper seems to overlook discussion of the following to gain biodiversity conservation outcomes: (a) the use of s.88 of the Conveyancing Act and (b) conditions of consent associated with minor development applications under the Environmental and Assessment Act. Both tools are used particularly by local government to gain a biodiversity outcome often associated with land residual to a development proposal. Both biodiversity conservation tools lack the funding, accountability and impetus for compliance compared to other options afforded by government legislation. This Review should legislatively discount the two options as biodiversity conservation tools unless there are additional provisions for funding, accountability/reporting and stronger compliance attributed to both options. Perhaps "Biobank mini" is something to consider for local councils to draw upon to achieve biodiversity conservation outcomes on often smaller parcels of land residual to development applications. Taking account of the aspirational goal of "cumulative improvement" it would be remiss to not address the two abovementioned Acts. Local Government Act rate reduction opportunities are also overlooked by this review. Obviously, a mix of options is needed to improve the state of biodiversity in NSW.

Another aspect is the issue of fines for breaches of legislation. Fines should be increased or an additional levy enabled to carry a component of additional payment from felons that is directed to the Offset Trust Fund. Again, this offers "cumulative improvement" to the pool of funds available for strategic investment in biodiversity conservation.

In relation to Question 3, for compliance/risk factors, non-government organisations should deal with voluntary and/or unfunded conservation outcomes whereas Government should deal with legally binding funded conservation outcomes.

### Theme 3: Conservation in land use planning

Mapping is the key to land use planning. As such, a State agency like Office of Environment and Heritage should be resourced to ground truth current broad scale indicative mapping – particularly for priority areas (such as areas facing development pressure) so that objectivity and certainty of extent and type of vegetation results.

An approved biocertification outcome should also be mandated for any new land release area over a certain size (eg 2ha). Even a back of envelope economic appraisal will indicate that an upfront strategic effort such as biocertification is far more certain to future development and cost efficient (reduced investment of consultants, surveys, etc) than the current pathways. At the same time, other land environmental assessment issues such as flooding, water quality or bushfire can also be undertaken. The costs to a planning authority for biocertification should also be able to be recouped via s.94 of the EP&A Act. Biocertification can only be triggered by a “planning authority” and not by a developer or land owner. The voluntary nature of biocertification warrants re-assessment.

Associated with the above, there needs to be a “biobank reverse” model available where biobank agreements are part of any biocertification process. This is because the Part B component (ie profit) of biobank agreements is not realised until 80% of the total fund deposit is reached. For many (often ageing) landowners in new urban release areas (where biocertification applies), the landowner will currently be waiting to realise the Part B component for many years (up to 25 years or more in the case of biocertification of West Dapto in the Wollongong LGA).

Furthermore, the abovementioned Offset Trust Fund should ‘underwrite’ the Part A component of any biobank agreement sites earmarked by a biocertification outcome. The Fund should also be able to recoup costs via Council/s.94. The savings to developer consultant requirements and improved certainty would out way current processes.

On another aspect, local environmental plans should be enabled/updated to convey biodiversity corridor layers that may be determined by local biodiversity strategies or BIOmap-type processes. Provisions associated with this layer would convey “cumulative improvements” such as appropriate zones and limit inappropriate development. Such a layer would also assist in third party appreciation where conservation investment could/should be directed over time.

### Theme 4 : Conservation in development approval processes

Many comments above are relevant to this Theme.

Again, a single methodology to assess conservation impacts should be a high priority accompanied by a “cumulative improvement” goal in all development approval processes. Compulsory biocertification is also warranted to streamline development approvals and reduce costs to the land development process.

#### Theme 6: Information provisions

A single point of responsibility should be determined. There should be no assumption that a certain agency will have this role under control by a single point of responsibility. Often there are internal ructions regarding resourcing or competing priorities let alone the endless restructuring of agencies that create fractures in the clarity of roles and responsibilities. Someone, somewhere needs to account for the specific responsibility for managing key data/lists etc. Do not assume things are under control.

Regards

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