

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

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## **Background**

This submission has been prepared as part of the community consultation associated with the NSW Government's review of the management, conservation and regulation of biodiversity in NSW and particularly in response to the Independent Biodiversity Legislation Review Panel Issues Paper, dated August 2014.

Whilst I am employed as a [REDACTED] in NSW, I wish that this submission be considered as a private submission. It does not purport to represent the views of [REDACTED] in any way.

## **Over-riding Statement**

The European settlement of NSW and the variety of synergistic and multiplying direct and indirect effects of such settlement has had a profound negative effect on biodiversity.

Clearing and fragmentation of native vegetation and habitat, degradation and modification of ecosystems and ecological processes and the effects of exotic flora and fauna, combined with other threats and pressures have caused extinction, catastrophic population declines and massive range reductions. Significantly, such damage has also impaired the ability of the natural environment to provide critical ecosystem services, such as clean water, clean air, carbon sequestration, productivity values, aesthetic values, support for related economic values (nature tourism, etc).

The NSW Government has an over-riding responsibility and obligation to make and implement decisions to protect, conserve and restore the biodiversity of NSW, including reversing trends in ecosystem and biological impairment. This is a fundamental principle of the responsibility of the Government.

This Review must concede that the efforts of various NSW Governments to preserve biodiversity and native vegetation have not been successful. Various Government and peer-reviewed scientific reports clearly demonstrate that despite some limited successes and some progress of achievements, biodiversity remains in decline, there is an inadequate system of conservation reserves, native vegetation generally has been over-cleared, environmental function has been seriously impaired and the health and productivity of the environment is impaired. Past failings to preserve biodiversity and native vegetation should be considered and should influence the outcomes of this Review.

I understand that the scope of this review covers the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001* and parts of the *National Parks and Wildlife Act 1974*.

I am concerned that an element behind the drive for this review has been based on a politically-driven ideology that espouses a theory that environmental controls are “*excessive*”, that they impede an individual’s “*use*” of their land and their ability to exploit production values and that previous Government’s environmental legislation is too “*green*”. I denounce such views and ask that the Review Panel not entertain the narrow views of the pro-development, anti-environment ideologues.

This Review must find that the NSW Government has a key leadership role in biodiversity conservation.

However, in my opinion, the management of the natural environment has been exploited by the political parties for short-term, media-driven, adversarialist-politics and compromised by development and land use decisions that are unbalanced and prejudiced. Mature and responsible government would:

- Recognise the failings of environmental protections in the past
- Establish (and communicate) clear and consistent standards and principles
- Effect, implement and regulate responsible statutes, policies and plans
- Continuously improve the conservation of biodiversity through monitoring and adaptive management

There should be a continuum of management resulting in positive outcomes for native vegetation, biodiversity, threatened species and ecosystem services. Development and land use must (and can) operate within a mature and responsible framework of native vegetation protection, biodiversity conservation, ecosystem services maintenance, and the restoration of overly damaged assets and values.

When the protection versus exploitation of the natural environment agenda swings like a pendulum between political ideologies, there will always be flawed outcomes, disengagement, adversarialism and negativity. I ask that this Review consider this as a major issue.

Finally, I maintain that native vegetation is such an important asset for management and is such an important surrogate for broader biodiversity and ecosystem outcomes, that it is disingenuous and untenable to attempt to repeal and/ or combine native vegetation legislation into broader biodiversity conservation legislation. SEPP46 and then the native vegetation legislation responded to chronic, cumulative and persistent clearing rates to address a key need. Native vegetation legislation cannot therefore be done away with, but should complement other biodiversity legislation and the protected area framework in NSW.

Therefore, I say, that the future of biodiversity management in NSW be based on a complementary legislative framework comprising:

- A *Native Vegetation Act* in essentially its current form, including the controls on unlawful clearing of native vegetation;
- A *Threatened Species Conservation Act* in essentially its current form;
- A new *Biodiversity Act* that takes the conservation and management of flora and fauna components from the National Parks and Wildlife Act; regulates the protection and use of native wildlife, identifies and protects wildlife corridors and seeks to restore biodiversity and prevent declines in biodiversity on a regional basis;
- A *Land Conservation (National Parks and Reserves) Act* that seeks to consolidate all statutes and instruments that provide for the conservation of nature on public and private tenures using a variety of reservations, covenants, instruments; seeks to recognise such lands in the planning system and provides for complementary initiatives. It should streamline the management of

public reserves for nature conservation and safeguard such areas from inappropriate development;

- A Wetlands and Rainforests Act that replaces SEPP14 and 26 by protecting wetlands and rainforests on all tenures because of their high ecosystem services values and degree of impact since European settlement;
- Enhancing the Environmental Planning and Assessment Act and its protection of native biodiversity and threatened species in the strategic planning and development consent process and through the recognition of the other Acts above. The EP&A Act and Native Vegetation Act should be integrated to avoid the complications of dual consent.
- Vegetation within 40-metres of a watercourse should not be protected in the Water Management Act alone, but in the above mentioned Biodiversity Act.

### **The Form of this Submission**

I have attempted in this submission to reflect on the matters of “*particular interest*” raised in the Issues Paper as well as the stated “*over-arching issues*”. I also make general comments, where relevant.

### **Theme 1: Objects and principles for biodiversity conservation**

The biodiversity legislation in NSW needs to respond to clear, scientifically-valid, effective objects and principles. These objects and principles should be identified as an outcome of this Review.

1. *Should there be an aspirational goal for biodiversity conservation?*

Aspirational goals may provide some guidance, can frame relevant issues and be of guiding relevance, but there is a risk that aspirational goals carry no statutory burden and thus can be ignored. My opinion is that if aspirational goals are adopted, that there should be operational principles to support them or that there should be an attempt to establish operational goals for biodiversity conservation and enshrine such in legislative controls.

2. *Given available evidence about the value and state of the environment, are the existing legislative objects still valid? Do the current objects align with international and national frameworks, agreements, laws, obligations? If not, what objects are required?*

Reading the information presented in the Appendix 2 of the Issues Paper outlining the “*Summary of legislative objectives*” suggests to me that the existing objectives are generally valid and appropriate in their own right.

I would say:

- The objectives of the *Native Vegetation Act 2003* are all very valid and appropriate; especially objective b) that broadscale clearing be prevented unless it improves or maintains environmental outcomes. This is the most important objective as it sets a no net loss management benchmark, which is so critically required given the damage wrought since European settlement and the likely resumption of clearing rates in NSW should the native vegetation legislation be repealed or weakened.
- The objectives of the *Threatened Species Conservation Act 1995* are all valid and appropriate. However, a new objective should be added: g) manage biodiversity such that species at risk of becoming threatened are identified and the causative agents of the decline and impacts of those species are managed and reversed.
- The objectives of the *Nature Conservation Trust Act 2001* appear valid, but private conservation could be managed via a new Land Conservation (National Parks and Reserves) Act that priorities and coordinates protected area management across all tenures in NSW.
- The relevant objectives of the *National Parks and Wildlife Act* appear valid, but also could be revised into a new conservation act.

There are many biodiversity aspirations that are not recognised in the current legislation, despite the obvious value of such. The Review should consider this.

3. *To what extent are the current objects not being met?*

It is evident that the objects of all the identified legislation outlined in Appendix 2 of the Issues Paper are not being met.

Biological diversity is not being conserved, ESD principles are not being met, critical habitats of threatened species are not being protected, threatening processes are not being eliminated or managed, assessment of actions on threatened species is inadequate and co-operative management does not occur (in relation to the TSC Act).

Pursuant to the *Native Vegetation Act*, ESD principles are not being met, native vegetation is not being managed in the environmental interests of the State, broadscale clearing is tolerated or permitted by way of exemptions to the Act and the implementation of the Act, native vegetation of high conservation value is not being protected, the general condition of native vegetation in NSW is not being enhanced.

In relation to the *National Parks and Wildlife Act*, nature (including habitat, ecosystems, ecosystem processes, biological diversity) is not being conserved and the general public appreciation, understanding and enjoyment of nature is not completely fostered.

As documented, the objects are all sound; it is the practice of government in the regulation, exemption or administration of the Acts that fail the objectives.

4. *Could the objects of the current laws be simplified and integrated? If so, how?*

I do not believe that the objectives should be simplified, but there may be a reasonable argument for integration in the manner described elsewhere in this submission.

## **Theme 2: Conservation action**

The reservation of land within a National Park or Nature Reserve is (and should be) recognised as the highest form of conservation status in NSW. There are other public conservation reserves, including Flora Reserves in State Forests and Crown Reserves. There are also catchment lands secured for water quality/ quantity protection (SCA and other regional areas) and there are Council Reserves.

The public reserve system is NOT comprehensive, adequate or representative. In the main, it is residual reservation (the conservation of areas not otherwise useful for utilitarian production purposes).

Strategic action is required to enact systems to create further strategic momentum to build a CAR reserve system.

Further, some Local Government's are actively destroying the Community Land (Natural Areas) conservation system in the interests of the short term economic disposal or development of these critically important green open spaces. These Councils should not be permitted to do such through amendment of the relevant legislation.

Public reserves in different tenures are generally managed in isolation with varying degrees of success, reserves are not strategically planned and there is no overall Protected Area Framework for sub-regions and reserves are often unprotected from synergistic threats and risks. The management of conservation reserves can be absent or even overtly bureaucratic, leading to perverse outcomes.

There might be scope for better coordination of a Protected Area Framework for sub-regions and biogeographic regions. There might be a unified on-reserve conservation agency that oversees the strategic management of National Parks, Nature Reserves, Catchment Areas, Crown Reserves, Council Reserves and other public conservation tenures.

In private tenures, there are and have been a variety of voluntary private conservation instruments, including Registered Property Agreements, Property Vegetation Plans, Voluntary Conservation Agreements, Nature Conservation Trust Agreements, Joint Management Agreements, etc. Many of these have low up-take rates. Given the contribution of private conservation, this Review should consider the

constraints to private conservation and revitalise such. Private conservation should be strategic, it should be worthwhile, it should be recognised in the zoning scheme. There should be a proper incentivised, business case for private conservation.

Further, consent authorities regulate conservation of certain areas through conditions of consent and s88B/E instruments under the *Conveyancing Act 1919*. This is a useful methodology, but the *Conveyancing Act* (and *Real Property Act*) is a cumbersome mechanism. The Panel should review and lead to updated abilities for Council to conserve and manage certain areas efficiently through the Part 4 development assessment process of the EP&A Act.

Offset schemes, such as Biobanking offer potential, but also perversity if compromised. The 13 principles of offsetting as identified by the NSW Government are very sound, but loosening, exemptions, compromise of these principles, particularly for large-scale developments, and the absence of the application of offsetting to small developments (Part 4 matters) means that developments are generally having a net, negative impact on biodiversity. While, development decisions should always follow the Avoid-Mitigate-Compensate hierarchy of decisions, more so we see that developers are offering offsetting as their first and only position. The Maules Creek Coal Mine/ Leards State Forest is significantly catastrophic example of the inherent failure of compromised offsetting. The consultant report of Cumberland Ecology identified a failed offsetting scheme and the interests of biodiversity would have been served only if Leard State Forest was conserved and the coal mine proposal refused or significantly curtailed. It seems that major developments, especially resource projects, have disproportionate power in regards to over-riding biodiversity protections. This disengages rural landholders from the conservation process.

Finally, the work of non-government conservation organisations needs to be better coordinated as part of conservation actions and recognised in the planning scheme.

The Government should have a program of identifying the priority conservation lands within sub-regions to ensure a CAR reserve system and the legislation should permit and indeed strategically coordinate public, private and NGO conservation of these no-go/ non-negotiable areas. This should be a priority of



the legislative review. There should be a proper, mature, coordinated, appreciated and effective public/private conservation framework and strategy in NSW, that is given absolute protection in the planning system.

There should be coordinating legislation for effective, strategic, targeted biodiversity conservation in a sub-regional perspective, in different tenures.

1. *Is the current system effective in encouraging landowners to generate public benefits from their land and rewarding them as environmental stewards? Or are current mechanisms too focussed on requiring private landowners to protect ecosystem services and biodiversity at their own cost?*

In short, the current system is inadequate in encouraging landowners to generate public benefits from their land and rewarding them as environmental stewards. The current mechanisms do require private landowners to carry the burden of the protection of ecosystem services and biodiversity at their own cost. This obviously impedes the rate of delivery of private conservation everywhere. Only very altruistic persons (generally) add their lands to permanent private conservation. Biodiversity protection and the conservation/ restoration of ecosystem services is an essential community service and should be recognised and rewarded as such.

As equally importantly though, Governments need to sell the message of the need for biodiversity protection and MUST not politicise anti-environment or pro-development agendas. They must regulate the control of clearing of native vegetation too. If a landholder speculates that if they hold out, they will be able to clear and develop their land value through negative actions towards biodiversity, the private conservation scheme will be sub-optimal. The Review Panel needs to consider and respond to this.

2. *Are there elements of the current system for private land conservation that raise impediments (for example, the binding nature of agreements and potential loss of production) for individuals who want to manage their land for conservation? If so, what are they? What incentives might be effective, efficient and equitable in promoting biodiversity conservation on private land?*

It is possible that there are inherent impedances in the current private land conservation framework, but I would argue that there should not be any diminishment of the binding nature of agreements. To what point is a 15-year conservation outcome if the land that was conserved for those 15-years is suddenly cleared and developed once the conservation period expires? This is disingenuous. Conservation periods must therefore be binding on title.

I believe the impediments would relate to:

- A lack of appropriate financial or incentivised benefit for binding private conservation through an absence of adequate up-front and ongoing stewardship payments, as well as complementary Land Tax exemptions, general taxation benefits and general rating benefits;
- Adversarial and negative messages on nature conservation from politicians, farmers federations and other stakeholders. This precludes take-up by suggesting to speculators that if they hold out, they will eventually be able to clear their land for exploitative production;
- A lack of a clear business case for conservation by the Government;
- A lack of a systematic, coordinated and effective administrative framework for private conservation and the litany of unrecognised past schemes;
- A lack of a prioritised investment schedule in a CAR reserve system that incorporates privately-held lands;
- A lack of overall conservation leadership by the Government;
- A failure to address the negative connotations put forward to public and private conservation by pro-development and farmers' organisations who say reserves are *"unmanaged fire hazards rampant with weeds and feral pests"* or words to that effect.

This is completely ignorant and wrong, but the Government has no strategic communication program to address such falsehoods; and

- Lack of effective leadership to develop a strategic, high-quality conservation reserve system in NSW by Government.

The Review Panel should focus attention on these impediments and lead the development of a work-class private conservation model in NSW.

3. *What should be the role of organisations and bodies, such as the Nature Conservation Trust, in facilitating and managing private land conservation through mechanisms such as conservation and Biobanking agreements?*

I think there is great scope for such organisations, but am not qualified to explore this further in this submission.

As mentioned, Biobanking principles are being compromised by weakening and exemptions, which needs to be addressed.

4. *How should the government determine priorities for its investment in biodiversity conservation while enabling and encouraging others (eg. community groups) to contribute to their own biodiversity conservation priorities?*

Firstly, there needs to be a sub-regional conservation assessment process undertaken to determine:

- The current extent and types of native vegetation communities;
- The extent of loss of each native vegetation community since 1750;
- The extent of the private and public conservation scheme;
- The adequacy of the private and public conservation scheme to conserve native vegetation communities and native biodiversity;
- The state of fragmentation of habitat;
- Considerations of meta-population analyses and Population Viability Assessments of keynote or umbrella species;

- Strategic high priority lands for native vegetation representation and conservation;
- Strategic high priority lands for native vegetation reinstatement; and
- Strategic high priority lands for wildlife corridors/ connectivity.

I would urge the Panel to review the current work of the Hunter Council's Environment Division to develop a Biodiversity Investment Prospectus (Conservation Lands Priority Assessment) for the Greater Hunter Region. This may be a useful process to review for wider replication.

There is a clear need for a proactive approach to the identification and promotion of strategic conservation priorities and, once identified, the need for proactive implementation of the suite of tools to secure such values.

Community organisations can contribute to or complement the Government-driven goals.

5. *How can the effectiveness of conservation programs be monitored and evaluated?*

Possibly the best opportunity arises from the development of a unit within the NSW Office of Environment and Heritage to over-sight strategic biodiversity conservation in NSW. They could liaise with other agencies to develop sub-regional conservation plans that incorporate:

- The collation of spatial information on all conservation areas;
- Over-sight the conservation assessment process to identify conservation adequacy and conservation priorities;
- Coordinate the regulation of conservation commitments; and
- Develop and implement an MER system in an adaptive framework.

6. *How should any trade-offs be assessed?*

As mentioned previously, the biodiversity offsets scheme in NSW has been compromised and now delivers sub-optimal and even perverse outcomes, by not ensuring that there is no net loss of biodiversity values. The avoid-mitigate-compensate hierarchy must be the fundamental premise of

the system. The 13 offsetting principles of the NSW Government must be fully implemented, in any trade-off assessment regime adopted.

*7. To what extent is the system forward looking or dealing with legacy impacts?*

The current system is neither forward looking or adequate in dealing with legacy impacts. As mentioned, the absence of a systematic and scientific conservation assessment, precludes the proper consideration of the lingering effects of past practice and the adaptive means to deal with emerging risks/ threats (such as that posed by climate change).

*8. To what extent does current practice (rather than the legislation) determine outcomes?*

I have no particular comments on this question.

### **Theme 3: Conservation in land use planning**

The strategic planning process represents a powerful and positive opportunity to identify, protect and subsequently manage areas of high conservation value in NSW, as well as safeguard such areas from inappropriate clearing and development. This process is an essential requirement of ESD and planning and environmental objectives of the legislation of NSW. However, the strategic planning process can also be compromised and lead to perverse or sub-optimal outcomes. In my opinion, there is an unbalanced, prejudicial pro-development agenda associated with many rezonings in NSW.

Further, the North Coast Environmental Zone (EZone) Review discussion paper and NSW Department of Planning response was a negative body of work that (if implemented) would completely unbalance the NSW planning system and undermine the value of the protection and recognition of biodiversity conservation in NSW's planning scheme. The outcomes of the North Coast EZone Review cannot be perpetrated on the planning scheme in NSW.

EZones tend to occupy very low proportions of most Local Government Area Local Environmental Plans, regardless of how extensive lands of high conservation value are. In most LEP's, Rural (RU2) zones pre-dominant, even where there are limited agricultural possibilities and where high conservation value

vegetation occurs. This is a relic of past practice that needs changing in a mature and responsible planning scheme.

EZones, and their application, are an important part of the biodiversity conservation framework in NSW (especially given the inadequacy of the protected area/ reserve system). Less than 10% of NSW is publicly conserved; well-below accepted scientific thresholds and the majority of high conservation value lands are private freehold or leasehold lands. EZoned land can serve to protect threatened and standard biodiversity and their habitats, ecosystem services provisions (such as water quality) that underpin our economies and ways of life, nature-scapes and other areas of scientific, recreational, socio-cultural or scenic importance. They regulate land use and development appropriately by recognising the ecological constraints of certain lands.

It is appropriate that there is adequate, on-ground, spatial accuracy in the conversion of alternate zones to EZones within the planning scheme. Further, it is appropriate that the asset that is being rezoned to an EZone does contain demonstrated features of environmental significance or value. This is without question.

The Panel should recognise the need to reflect high conservation value lands appropriately in the strategic planning scheme. Councils should be encouraged by the NSW Government to achieve conservation outcomes in their LEP schemes. Indeed, there may be some value for targets or aspirations in this regard.

A number of information sources and references can provide the scientific and strategic evidence for EZone adoption. The following studies and strategies can provide sufficient evidence for EZone application:

- Adopted Conservation and Development Strategies, or
- Adopted Structure Plans, or
- Finalised Local Environmental Studies, or
- Other adopted regional or local planning or NRM strategies (eg. Wetland Strategies, etc), or

- Documented findings of the NSW Land and Environment Court in published judgments, or
- Threatened species reports.

The definitions of land appropriate for environmental zoning should be sufficiently broad to encompass the full range of noteworthy and relevant environmental values of landscapes and be flexible enough to be able to respond to specific issues for individual Councils and their communities.

The following attributes should be zoned for protection in the Planning Scheme:

- Very high conservation values (old-growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs)
- High conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- Land with registered BioBanking Agreement
- Land under the care, control and management of another catchment authority or Council for critical town water supply, aquifer or catchment as appropriate,
- Land with significant Aboriginal heritage values
- Coastal foreshores and land subject to coastal hazards
- Land currently zoned for environmental protection where strict controls on development apply (eg. steeply sloping escarpment lands, land slip areas)
- Permanently protected private lands (Property Vegetation Plans, Voluntary Conservation Agreements, Biobanking Agreements, Registered Property Agreements, s88B/E protected areas)
- Lands that provide for important ecosystem services, such as wetlands, vegetated steep lands, riparian zones, etc)
- Wildlife corridors (regional, sub-regional and local)
- Locally and regionally significant wildlife habitats
- SEPP14 and SEPP26 areas
- Koala habitats
- Buffers to sensitive areas
- Scenic landscapes

- Geologically-important landscapes
- Areas required for ecological restoration and the remediation of environmental problems (acid sulphate soils, etc)
- Over-cleared vegetation communities

It is clear that environmental protection has been considered less important than agricultural productivity in the planning scheme in NSW. This situation must be re-dressed through improvements in legislation and practice.

Specifically, responsible and appropriate EZones should be seen as a positive to safeguard areas important for ecosystem services provisions for clean air and water, carbon sequestration and biodiversity protection and restoration. Many NSW Councils rely on nature-based tourism and aquatic industries, which in turn depend on a functional natural environment that is protected from damaging land uses and threats.

Agricultural activities can and do damage natural assets, values and ecosystem services and processes. Clearing for agriculture, suppression of natural regeneration by agriculture, grazing, timber-harvesting, etc, are inherently damaging to the natural environment, causing loss of biodiversity, water pollution, soil loss and degradation. As such, agricultural land protection and environmental protection need to be assessed on an equal-standing basis, utilising appropriate, unbiased, scientifically-credible information, within a consistent and responsive planning system.

I would urge the Review Panel to investigate the rezoning system of Great Lakes Council, which has an excellent record with regards to responsible rezoning assessment processes.

The North Coast E Zone Review Report stated that “Practice Note PN 11-002 therefore expects that EZones should be a ‘closed’ Zone with limited land uses permitted”. Given that EZones are applied to areas of demonstrated environmental value or feature, this statement is true and valid. It should not be undermined as a basic principle of the planning scheme in NSW. If an asset is of such significance to warrant zoning for environmental protection, providing for or permitting damaging land uses or land



uses with associated damaging activities is disingenuous and inappropriate. Maintaining the closed nature of EZones is thus very important.

EZones should be applied on merit regardless of the size or isolation of the particular area.

It is inappropriate that extensive agriculture should be permitted with or without consent in any E2 Zone

It is inappropriate that extensive agriculture should be permitted with or without consent in E3 Zones.

Extensive agriculture is anti-pathetic to the objectives and values of any EZone. If an area (either part or all of a holding) is suitable for agriculture, then those suitable parts should not be zoned as an EZone, but should be a rural zone. Alternately, if an area of land contains attributes or values sufficient to identify that area as an EZone, then agriculture can only undermine and damage those values. There is no rationale or scenario that I can imagine where agriculture could be undertaken in a manner that meets the principal zone objectives and which preserves and protects the ecological values. Grazing, logging, cropping, etc all damage biological attributes. Ecological thinning may be one scenario that could be applied to an EZone for a biological purpose. However, ecological thinning should be subject to a separate definition such as environmental restoration work rather than extensive agriculture.

The NSW Government should be providing assistance for all Councils in NSW to proactively develop and implement Biodiversity Strategies, inclusive of programs to extend EZones.

EZones (other than E1 Zones) represented about 3% of the Great Lakes Local Government Area under the former Great Lakes LEP 1996. Great Lakes Council is probably no different to many other rural and regional NSW Councils in that in comparison with the areas on the ground that have high conservation environmental values, EZones are under-represented in the adopted planning scheme.

Rural zones tend to form the standard base zone and therefore apply to broad areas, including areas of known high conservation value.

That EZones are not well-represented in the planning scheme should be the subject of a separate investigation and response from the Review Panel.

Where there are clear and definite merits associated with the zoning of land as an EZone, it is inappropriate to consider that such meritorious zoning can be suspended or rejected on the basis of a landholder's specific objection. If any EZone application relied on landholder consent, then the planning scheme would not be merit-based and would always be prejudiced to developmental land use zonations.

Great Lakes Council implemented an EZone rezoning program, but found great political difficulty despite the collation of clear evidence to justify the proposal as well as the backing of local and regional planning strategies. One block of land critical to water quality protection and threatened species populations in South Forster had an EZone rezoning process commenced in 2008 and it still has not been positively concluded. It should be easier to zone private land to E2 in NSW.

I do support the Biocertification Scheme, provided that perversities and exemptions do not lead to sub-optimal or compromised outcomes.

- 1. How effective are current arrangements at ensuring biodiversity values are identified early and properly considered in strategic planning systems? How can they be improved?*

As I have discussed above, the strategic planning process of Local Government can play a very important and effective role in biodiversity conservation. The Review Panel should consider the identification and adoption of the means to better protect high conservation value natural areas through the planning scheme.

Effective Councils manage this process very well. Dysfunctional and overtly pro-development (and anti-environment) Councils manage this process poorly and poor biodiversity outcomes eventuate.

The NSW Department of Planning and Environment needs to show leadership on the proper recognition of areas important for biodiversity through rezonings, strategic plans, regional plans and guidelines.

The Review Panel should undertake more in-depth consultation with high-performing Councils, such as Great Lakes Council or Lake Macquarie City Council to further identify improvement opportunities in this regard.

*2. How effective are current arrangements for delivering strategic outcomes for biodiversity and enhancing ecosystem services? How can they be improved?*

As is discussed above, some Councils are reasonably effective at delivering strategic outcomes in the strategic planning process. However, even these Councils are burdened by a pro-agricultural administrative and political regime and a system that is cumbersome, politicised and difficult to achieve ecological outcomes of note.

For the most part, local Councils do not deliver balanced environmental outcomes in rezonings and do no benefit from any leadership by the Department of Planning and Environment in this regard. This is despite the immense potential of the recognition of biodiversity conservation in the strategic process.

I urge the Review Panel to make specific contact with high performing Local Government such as Great Lakes Council to further this conversation. The Review Panel should explore in depth how the strategic planning process in NSW can be amended to deliver effective biodiversity conservation outcomes.

*3. How should the effectiveness of strategic planning approaches be monitored and evaluated?*

There needs to be effective leadership on this in the form of guidelines, policies, targets and empowerment from the NSW Department of Planning and Environment. Councils should be required to effect not just development outcomes from strategies, but the commensurate ecological outcomes. Council performance should be measured by the Department and poor-performing Council's in relation to environmental protection should be censured. Strategic processes should be used to deliver on coordinated, effective biodiversity conservation outcomes in NSW through Voluntary

Planning Agreements, dedication of land to public conservation in development offsets and avoided-clearing and the rezoning of important lands.

This is a significant issue that warrants further attention by the Review Panel.

#### **Theme 4: Conservation in development approvals processes**

The development consent process has great potential to be positively influential in the delivery of effective biodiversity conservation outcomes and the protection of high conservation value areas, but is often compromised by a pro-development agenda of the consent authority and a general failure of many Councils' to deploy effective decision-making and the full suite of relevant assessment and decision-tools. Many Councils' in NSW lack trained ecologists and therefore are incapable of informed decisions on development.

This is a significant issue that warrants the Review Panel from making further targeted consultations with high-performing Councils such as Lake Macquarie or Great Lakes.

Development consents, exemptions, code-assessed standards and legislative exclusions (particularly the new 10/50 Code) in NSW represent the major component of cumulative ecological impact, impairment of ecosystem functions and loss of biodiversity. This need not be the case; if the objects of the legislation were applied and the rules concerning such were regulated so as not to be so prejudicially pro-development.

The issue of cumulative impact consideration in EIA is particularly poor in NSW; even in the major projects regime where there is an explicit requirement to consider cumulative impacts and risks. A better cumulative impact framework is clearly required.

As is noted in the Issues Paper, Government is moving to a more standardised assessment of some forms of development. Small scale developments will remain assessed under Part 4 of the EP&A Act, with consideration of whether or not a significant effect on threatened species will eventuate. The standardised process relies on "black-box" modelled outcomes that can be simplistic, fail to capture on

ground complexities and uncertainties and may not necessarily represent appropriate or best practice outcomes. More often than not, these outcomes deliver offsetting arrangements.

The 10/50 Code is a diabolically poor practice that will have unprecedented biological effects. It is a poorly conceived policy that should be disbanded in favour of s79 and s100 referrals in development applications and s66 directions for bushfire protection (all under the Rural Fires Act), with the RFS obliged to consider the Bushfire Environmental Assessment Code. Council Tree Preservation Orders should have a head of consideration in tree removal applications the removal of a tree to effect bushfire protection.

Decision-making processes in NSW in relation to developments concern whether or not development will likely have a significant impact on threatened species. There tends not to be a wider consideration of the impact of development on biodiversity generally. Decision-making needs to move from the current situation to one where a development is not consented to if it has an unreasonable impact on biodiversity. This needs to be achieved through tightening of regulation and leadership from the NSW Government and its agencies.

Quite often the issue of dual consent in development applications is complicated, onerous and sub-standard (in relation to Part 4 Assessments and the Native Vegetation Act for some forms of development). This should be considered and fixed.

One of the key problems in Part 3A and Part 4 Assessment of biodiversity is that a developer engages a consultant. There is no arms-length independence and some consultants are likely to experience undue influence from their commissioning agent to deliver an outcome that is acceptable to that agent. This is a poor system, open to erroneous conclusions and poor outcomes. Biodiversity assessment should be independent of the commissioning developer to ensure that the process is not unduly influenced and directed to a positive pro-development outcome. Rezoning processes are often funded by a developer but administered by a Council, thus leading to more balanced and appropriate outcomes. This is a model that could be adopted for Development Applications also.

The questions posed in the Issue Paper are very complex and would warrant better consultative processes that expecting a written response.

1. *To what extent has the current framework created inconsistent assessment processes, environmental standards, offset practices and duplicative rules?*

There are inconsistencies in assessment processes, environmental standards, offset practices and there are duplicative rules, which should all be identified and addressed by the Review Panel. The plethora of offsetting rule-sets is mind-boggling alone – BCAM, BBAM and EOAM (PVP Developer), for instance. These lead to perverse outcomes, when a prejudicial pro-development agenda is promulgated by various levels and agencies of Government. Standards, processes, practices and rules should be scientific, merit-based and lead to positive outcomes for biodiversity conservation.

2. *Can we have a single, integrated approach to the approval of all forms of development, including agricultural development, that is proportionate to the risks involved? If yes, should one methodology (or a harmonised methodology) be used to assess all impacts? Does a need remain for some differences in assessment approaches?*

It is possible, I believe, to have a single integrated approach to the approval of all forms of biodiversity-related development impacts, BUT that approach would need to be precautionary, robust, scientific and comprehensive. It must not be corruptible by flawed process. It must be evenly applied and subject to appropriate, independent review. I am not convinced that there is an assessment package that would perform such a role at present. An assessment package may be possibly built, but this would require extensive consultation, research, review and refinement. It would need to be trialled for perverse outcomes. The process would not possibly rely on “modelled” or black-box style predicted outcomes given the simplification and perversities such processes currently deliver.

3. *What are the advantages and disadvantages of the different biodiversity assessment methodologies? Are the rules transparent and consistent? Is the way data is used to underpin decisions transparent? Do the assessment methodologies appropriately accommodate social and economic values?*

A paucity of time precludes a written response to this question in this submission. This should be further explored by the Review Panel through an expert panel or stakeholder session(s).

In terms of the transparency of decision-making, it is very clear that there is a lack of transparency and community satisfaction in the decision-making around resource projects. There is consistency in Native Vegetation decisions, which is excellent and should not be weakened or tampered with. As mentioned, the objectives of the Native Vegetation Act are currently sound,

There should be greater scientific advice collated on the status of biodiversity in each Bioregion, which would help inform conservation priorities, non-negotiable conservation sites as well as offset and restoration priorities. This should be led by the NSW Office of Environment and Heritage using appropriately validated and scientifically credible data.

*4. Does the regulatory system adequately protect listed threatened species, populations and ecological communities? Is there utility in specifically protecting these entities through the regulatory system?*

Quite clearly, the answer to this question is no. Threatened species, populations and ecological communities are not protected by development decisions. These entities are not being recovered, they are trending negatively and new entities are being added to threatened species lists cumulatively and progressively. NSW has not done an adequate job of protecting threatened biodiversity in development decision-making to date and the Review Panel should develop ways to address and counter this.

There is clear utility (and need) in the adequate protection of threatened biodiversity in development decision-making in NSW. The system needs more rigour, more resolve and greater effectiveness, including greater monitoring, evaluation and review.

*5. Are there other models (international or Australian) that regulate activities impacting on biodiversity that may be relevant to NSW?*

I cannot adequately answer this question. There are no such models that I am aware of.

6. *To what extent has the current regulatory system resulted in lost development opportunities and/or prevented innovative land management practices?*

I honestly do not believe the current regulatory system has resulted in lost development opportunities or innovative land management practices, despite what those with narrow, prejudicial and vested interests would have this Review believe. A knee-jerk reaction to unfounded claims of “green tape” restricting development or farming systems would be grossly inappropriate and poor practice. Development and agriculture had unfettered access to the biodiversity of NSW for nearly two-hundred years and contributed to the regrettable biodiversity position that we are in. Regulation and control of these harmful practices is mandatory for a mature and responsible Government. Merit based assessment of appropriate development and sustainable agriculture will permit productive and economic development into the future, within the bounds of nature and natural processes.

7. *Some impacts cannot be offset. What are they? Are these appropriately addressed in approval systems? What is the relevance of social and economic benefits of projects in considering these impacts?*

It is appropriate that some impacts cannot be offset and a panel of experts should set the rules around when this is the case. As I mentioned previously, the Avoid-Mitigate-Compensate decision hierarchy is scientifically-credible. However, more and more, Governments are encouraging or allowing developments to move straight to the Compensate tier. This is inappropriate and must be addressed as part of this Review.

The consideration of social and economic benefits in determining developments is a slippery-slope. Social and economic benefits are relatively straight-forward to evaluate, but what about the social and economic costs of a development? How do we price ecosystem impairment, a loss of social amenity, impacts on neighbouring or future land uses? Social and economic benefits should have very little place in the merits-based scientific assessment of development on biodiversity.

8. *How can offsets be more strategically located?*



Offsets should be local and like for like. The NSW Government authorities should have sub-regional conservation assessment plans, identifying priorities for conservation and restoration. This could help inform strategic location of offsets.

9. *Are there areas currently regulated that would be better left to self-regulatory codes of practice or accreditation schemes?*

NO – self-regulatory codes of practice and accreditation schemes are open to abuse, are always poorly oversights and regulated by the authorities and inevitably lead to perverse or sub-optimal outcomes. There is no place for such.

### **Theme 5: Wildlife management**

I am not an expert in this field and would prefer not to attempt to answer the questions raised in the Issue Paper on this theme.

I would say however that my experience of the wildlife licensing, offences and defences, including for threatened species, are not easily understood and the licensing system is complex. It might be possible to maintain or improve standards of regulation, improve the prosecution of matters and protect wildlife through an amended or improved system, combined with leadership and advertisement.

### **Theme 6: Information provisions**

Information provisions relating to biodiversity are currently inadequately collated, evaluated and disseminated. There is a sub-optimal adaptive framework and the business case for biodiversity conservation is not expressed and little leadership is displayed, individually or collectively by Government agencies. This is an area of potentially significant improvement.

1. *What information should be generated about the different kinds of value (for example, monetary and intrinsic value) of biodiversity and other natural assets in NSW?*

This is a complex and difficult question that should be subject to expert brainstorming and review.

The NSW Government must take a leadership role in promoting biodiversity conservation, but

adversarial politicking has precluded this in the past. This is an area where creative and innovative solutions are required.

2. *What type, quality and frequency of data should be collected about biodiversity? Who should be responsible for such a system?*

Unfortunately, I do not consider myself skilled in collective and coordinated data collection and management. An expert workshop for the Review Panel might be instructive. There does need to be greater academic interest in tools associated with systematic monitoring, evaluation and review of biodiversity in NSW to adaptively inform ongoing management. I am not sure what such data collection would look like. At a base level, I have discussed herein some basic information that is required to inform a conservation assessment for sub-regions in NSW. Obviously, there needs to be appropriate scale vegetation community typing and mapping (but the Greater Hunter Vegetation mapping methods used recently are poor due to critical accuracy constraints). There needs to be applied research on meta-population dynamics and population viability assessment. The work of Veronica Doerr and Brendan Wintle should be examined and these researchers consulted by the Review Panel.

3. *Is current data about biodiversity highly credible and readily accessible? If not, how can quality and access be improved?*

As mentioned above, I am not well informed in regards to biodiversity data handling and accessibility.

4. *How effective is the threatened species listing process (including the listing of key threatening processes) in guiding subsequent conservation actions?*

I believe the threatened species listing process in NSW is very effective and credible and should not be substantially amended. I believe it guides conservation actions well by identifying the species in most need of applied protection and management.

5. *Should threatened species listing decisions be decoupled from decisions on conservation actions (including recovery planning) and regulatory processes?*

I am not sure of the outcomes of the question posed, but am inclined to say no that threatened species listing decisions should not be decoupled from conservation actions and regulatory processes.

6. *To what extent, if any, does having national and state lists of threatened species cause confusion, regulatory burden or duplication of conservation effort? How could national and state lists be rationalised?*

There are eminent organisations such as Birdlife Australia and others that have pertinent views on this. In my opinion, there is no real confusion, regulatory burden or duplication of effort associated with national and state listings of threatened species.

7. *To what extent is the identification of critical habitat an effective tool for biodiversity conservation? Should we list critical habitat for more species where relevant and useful?*

Critical habitat is seriously under-declared in NSW, even though it could be a very effective tool for biodiversity conservation. Scientists, through the SOS program, should determine the minimum long-term viable population size of each threatened species, map such habitats and these areas should be proactively conserved and managed. Veronica Doerr (CSIRO) could inform such analysis. The protection and recovery of landscapes for threatened species could be prioritised and validly effected.

8. *Should private conservation data be collected and how?*

As mentioned, I am not well-skilled in data collection and management to permit me to answer this question.

Thankyou for providing the opportunity to lodge this submission. If anything needs further clarification or expansion, I am more than happy to assist.

Mat Bell

