Consulting Surveyors NSW

BIODIVERSITY LEGISLATION REVIEW

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ACS NSW Submission to the NSW Independent Biodiversity Legislation Review Panel

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1. INTRODUCTION

The Association of Consulting Surveyors (ACS NSW) thanks the Independent Biodiversity Review Panel for their efforts to date in publishing the Issues Paper and for its efforts to reach out to the broader community to achieve the goals of biological diversity, sustainable development and reduction of red-tape. The impact of the legislation and the size and scale of development that it has encompassed has expanded significantly since the original legislation was introduced and we believe it is appropriate to undertake a comprehensive review. There is little doubt that the process of vegetation assessments in the development sector is a critical factor in the timelines associated with development.

The issues paper mentions that the "NSW government role in biodiversity conservation has, over the past 40 years, evolved to reflect changing community concerns and values." We would submit that the evolution of the legislation has not been strategically planned or managed and the rush to make the legislation as punitive as possible has not properly considered the impacts on the various industries sectors including land and property development and the agricultural sector. These industries have been affected by the requirements of legislation including increased compliance costs the need for costly studies and long approval times. Biodiversity legislation needs to recognise that use of the land and the development of the land is an economic pillar in the development of our state

The submission is focused on the role consulting surveying firms have in the land and property development process. We hope to outline the role that surveyors play as natural resource managers both historically and in current practice.

The submission discusses the role local government plays and how in many instances, they are under resourced to cope with the demand to balance growth with natural resource management. Many Councils do not see their role as development consent authorities to include biodiversity assessment yet for many developments they hold this responsibility but they do not possess the resources to effectively carry out this role. Alternatively some Councils are taking on the role of a de facto environmental management organisation and are consolidating significant areas of biodiversity offsets that will require ongoing management. The ongoing management of these assets is requiring the formation of a "natural resources" management unit within Council. The panel should be concerned that this is a fragmented approach that duplicates the role of the state department the Office of Environment and Heritage(OEH).

Though not formally part of the review, we have provided comment on the Commonwealth Environmental Protection and Biodiversity Act 1999 and the confusion caused for many of the smaller developers and Councils who must deal with it.

We trust the comments made herein assist the panel design a natural resource management system that balances the needs of society for the present and future generations of NSW.

We would also welcome any opportunity to meet with the panel to clarify any queries that may arise as a result of their review of the association's submission.

2. THE ROLE OF SURVEYORS

Surveyors since European settlement have been involved in the management of crown lands. They undertook the roles identifying and classifying vegetation for initial crown grants and assessing the suitability of land for agriculture and forestry pursuits. Whilst modern day practices have seen this role being overtaken by specialists within the New South Wales government the surveying profession still maintains a strong link to land and vegetation management that is passed down from generations within our profession.

There is strong knowledge within the surveying profession of this history of land management by surveyors. ACS NSW represents some 200 surveying firms in NSW. These firms provide professional consulting services in surveying, engineering, planning, valuation and environmental assessment. They employ professionals educated, trained and certified to provide these services including ecologists and environmental scientists. They hold a pivotal role in land development in NSW and in rural and regional NSW are actively involved in farm management, mining and forestry pursuits.

Surveyors in NSW are involved in assessing the suitability of a site for redevelopment and undertaking sufficient studies to ensure that the development is both feasible and profitable. The surveyor will assess the feasibility of the proposed development by identifying site constraints, land market value and construction costs. Part of this role is to assess the impacts of any flora and fauna assessment on the character extent and yield of any development.

As local government authorities identify and mandate growth areas for urban expansion it is the highly likely that a consulting surveyor who will be engaged by their client to act as their primary consultant to develop land within growth areas in accordance with local, state and federal legislation and local environmental plans and policies.

3. CONSERVATION IN LAND USE PLANNING AND DEVELOPMENT APPROVAL PROCESS

3.1. Strategic land use planning

The current NSW government has a stated priority to increase economic growth in NSW. Part of that economic growth will involve addressing shortages in residential dwellings and catering for population growth in line with adopted urban growth strategies. The majority of councils in NSW where growth in population will occur are keenly focused on the economic development of their communities

In growth Councils there are usually planning strategies, urban growth strategies and local environmental plans schemes that designate growth areas. The level of ecological assessment undertaken as part of the strategic planning process will vary significantly from Council to Council. Some assessments are only sufficient to gain NSW Planning and Infrastructure approval of the local environmental plan whilst others attempt to get down to development consent levels of detail even prior to rezoning. What is required with a biodiversity review is to obtain a consistent standard across all of the growth centres in metropolitan and rural/ regional NSW.

Biodiversity certification under the NSW Threatened Species Act or strategic assessment under the EPBC Act would provide a good framework to development. It should however be considered to be one part of the strategic planning process. It should be considered in conjunction with the other relevant constraints in planning and it should be focused on achieving performance based outcomes rather than focused on the process alone. Too often the strategic planning process is delayed significantly because of the inability to provide performance-based solutions to the management of vegetation in new release areas. The delays are often exacerbated but OEH considering that the environmental review overrides any other constraint to development of the land. Their review of assessments all too often ends up with either an increase in buffer widths or a reduction in developable area.

We therefore see that the biodiversity certification and flora and fauna assessment generally form an important part of the strategic planning process but it should work in conjunction with the other constraints that produce the best end product. Government departments and indeed Council officers need to be aware of the constraints to development and look for opportunities to provide for increased population as well as vegetation management.

We draw the panel's attention to an entire chapter involved in the NSW government's recent planning review that relates to planning culture. In relation to culture the White Paper states inter alia "a new planning system with a good culture must be one that enables positive change, that supports the ability for professionals to think strategically and partner with communities and industry to create a shared vision and that acts proactively to achieve positive economic, social and environmental outcomes. Furthermore, a planning system with a good culture is one that is considered to be fair, that respects all interests and is underpinned by sound evidence."

We believe this ideal is important when assessing the role of vegetation management in strategic planning. There currently exists an attitude by departments like OEH that their only responsibility is to protect the environment. Clearly this is a high priority but they also must respect the need for the additional pillar of economic growth and the satisfaction of the adopted strategies for the creation of new dwellings. The previous 8 to 10 years in the development industry have suffered abysmally low levels of dwelling production. The recent improvements in these numbers have actually doubled the production rates from 2008/2009. As existing land is fully developed the pressure on new release areas will intensify and without a shift to a cooperative culture within our vegetation management departments there remains significant potential for tension and indeed conflict which often ends up in litigation. In complex matters there is little value in a solution nominated by a court case.

In securing either rezoning or development approval the culture of officers associated with environmental assessment is best characterised by a number of common issues:

- The size and extent of buffers to environmental lands vary greatly between departments and officers in individual regions. There are no definitive specifications for this and it often depends on who is involved rather than the science or any adopted standards.

- Similar comments apply to the need to address dual land uses in buffer areas. This includes things like stormwater quality management and stormwater outfalls and the need to ensure that a bushfire hazard is not created by revegetation practices and it is reasonable to locate a bushfire asset protection zone in a buffer to environmental lands.

- The provision of offset areas and indeed offset tree numbers can vary greatly across regions. It is not uncommon to receive a request for the provision of offset areas 10 times the vegetation area cleared. Additionally tree replanting rates vary from 2 trees per tree removed to 20 trees. The addition of a minimum separation between replanted trees also has significant effects on development yield and quarantines large areas for offsets that could be dual use areas. There is little or no guidance or policy to rely on or refer to when encountering this direction from the consent authorities.

In some local government areas and in particular rural/regional NSW there are lack of experience and knowledge in relation to environmental assessment. There are often gaps between experienced government assessments and the local council environmental planners. Many NSW Councils are under resourced to cope with the demand to balance growth with natural resource management they do not see their role to include development biodiversity assessment as part of their development assessment. They rely on reports or assessment from by the developer in their planning submission. The Environmental Planning and Assessment Act 1979 requires that the planning assessment officer consider ecological matters in their planning review. Councils therefore hold this responsibility by legislation but lack the resources to effectively carry out this role.

Often strategic land use plans and new release areas are significantly delayed because of differences between government departments and local council environmental assessment officers.

3.2. Development approvals

The panel should be aware that residential zoned land in some areas may not have been developed for many years and when a development application is lodged it can often create considerable conflict with vegetation removal. This sort of proposal may comprise a subdivision that was rezoned many years ago at a time there was no flora and fauna assessment involved with the rezoning process. Whilst the rezoning permits a residential use there is little certainty that the land can be fully developed for residential purposes. This is an expectation that is difficult to manage from the point of view of the consultant. Many people who have purchased the land or indeed who have owned the land for many years are confused when confronted with the need to quarantine large sections of the property based on flora and fauna assessment. In an ideal world there are sections of residential zoned land that should have theoretically been back zoned to environmental protection. The current legislation does nothing to pre-empt the conflict that occurs in these situations.

Up until recently councils have had little options for addressing this conflict. As discussed, a refusal often ended up in long and costly litigation. An agreement with the landowner to voluntarily dedicate environmental lands was often difficult to negotiate based on the perception of development yield that relates to the zoned areas or on a preconceived idea of yield based on the purchase that may have occurred well before the impacts associated with the current legislation.
The provision of Voluntary Planning Agreements (VPA) has played a key role in unlocking parcels that were previously quarantined by this sort of conflict. The use of VPA's is however creating the potential for a fragmented approach to biodiversity conservation.

Typically residential development, particularly in rural and regional areas, often involves a parcel of cleared land which forms the residential development area but the property also includes an amount of environmental land that could and should be retained in its present or even in an improved state. Developments of this type have great difficulty in securing an arrangement for who will own and, by definition, manage the environmental lands. VPA's have sought to address this problem but there are some areas of concern with these arrangements.

Government departments and local councils are unwilling to accept dedication of environmental lands because it involves the expenditure of funds to manage the edges, manage fire trails and satisfy the community expectation of revegetation. This is a real impediment to development. Often this land will be proposed to be dedicated to Council or Nationals Parks at no cost. There is however a culture within the consent authorities that as long as this land is zoned for environmental

protection then why is there any benefit to the community to have this in public ownership. We do not agree with this proposition and would see the provision of these areas of environmental lands within public ownership as being a positive outcome that eliminates any possibility of future development within those areas and avoids any improper or detrimental uses or land practices.

3.3. Covenants and Voluntary Planning Agreements and Vegetation Offsets – Who owns and manages them?

Councils have an understanding of covenants created under section 88B of the NSW Conveyancing Act 1919. They also understand voluntary planning agreements under the Environmental Planning and Assessment Act 1919.

Covenants can be either "private" i.e. between land parcels with a dominate and servient tenement or "public" i.e. between a servient tenement and public authority as the dominant tenement. The question then arises of who is the entity responsible for the protection and management of the nominated area and who bears financial responsibility in perpetually. Restrictions on use are difficult to enforce and in fact require a direction from a court if there is non-compliance. Planners in NSW have sought to use the provisions of covenants within section 88B act as de facto planning controls. We see this as something that should be avoided. The full ramifications of using restrictions like this will not be realised until sometime in the future

We have previously mentioned the role of VPA's in dealing with the residue parcels of environmental lands. They have been used extensively throughout new release areas such as Port Macquarie on the mid north coast of NSW. They have provided a vehicle to allow development to proceed but they have created a somewhat skewed approach to regional wide biodiversity conservation in that they:

- Only cover a very small interface with environmental lands associated with the new release areas.
- The amount of money expended on the revegetation and rehabilitation of these edges is vastly out of proportion to the overall vegetation interface that exists within the rest of the municipality.
- The contribution from the new developments far outweighs the contribution from the wider community. Whilst having high expectations the established residences are not directly contributing to revegetation and vegetation management in any significant sense and particularly not when compared to what is contributed from new developments. In our view this is inequitable.
- Councils usually require the developer to undertake up to 3 years maintenance and management but to provide a cash contribution for up to 20 years for the longer term management. The vegetation management department within Council will have significant resources in the development phase but the long-term funding of these activities will reduce significantly as the development matures. There is no mechanism for funding of these areas in perpetuity.
- Using VPA's in this way deals with management practices within a local government area but it is not properly tied to regions or biodiversity areas at a state level.

The interface of environmental lands managed by VPA contributions represents a very small percentage of the interface in the municipality. When this is raised as being somewhat inequitable the response of "well we have to start somewhere" is a poor answer to the strategic plan management of our state biodiversity assets. The VPA's within Port Macquarie all include a clause that the developers contributions will not be required if an "alternate source of funding" is obtained. There is therefore a long-term vision to possibly include a public funding component to environmental management. This is a more equitable arrangement that would likely involve the provision of a vegetation levy applied to ratepayers within the municipality and indeed could be applied to ratepayers statewide bearing in mind some councils have a much larger area of vegetation requiring management than other councils.

We would recommend that the panel properly review alternate sources of funding for vegetation management to allow departments to accept the dedication of environmental lands proposed in developments and to allow them to properly maintain those areas in perpetuity. We believe this is appropriate given that the community values have changed to the point where they see environmental management and conservation as a high priority.

The panel should properly address the attitude within government environmental land managers that it's okay for the land to remain in private ownership as we have de facto control through zoning restrictions and legislative controls. They "can't

do anything on the land anyway so why do we need to get involved" is not a satisfactory way of being a leader in the management of our biodiversity assets.

This is particularly reinforced when the owner of the "protected" environmental areas has to pay rates on the parcel and most likely land tax based on valuation of the parcel. We would submit that whilst the community sees environmental lands as an important and valuable asset that within the focus of commercial development environmental lands are a cost to development rather than something that has value.

The enquiry should seriously consider giving rate and land tax relief to these environmental lands held in private ownership if the government is not willing to accept the ongoing care and maintenance of the asset which the community expects them to protect. This is in our view an indication that the government is proposing a partnering approach rather than a punitive approach to vegetation management in NSW.

The office of OEH has no record of these individual VPA agreements and has no record of control of what is happening with vegetation management in these areas. This is a poor outcome if you are considering statewide management of the asset.

Councils, solicitors and the general public do not have an understanding of bio-banking or offsetting arrangements. Generally, there is not a wide understanding in the community of vegetation offsets or how they work. Where there is doubt, the market will shy away from purchasing land encumbered with a perceived onerous offset covenant unless the market price reflects the economic loss. The bio banking scheme currently run by the government has had little impact in the private sector and indeed large parcels of residue development land have had almost no success in being considered an offset for other projects. A fundamental flaw of this scheme is that private-sector projects would rarely consider venturing into environmental lands rather they would limit their development to being clear of any environmental lands. The scheme is therefore something that operates between the departments concerned with conservation in government and the departments concerned with the provision of government infrastructure.

An example of a development that has significant issues in dealing with the long-term management of an environmental parcel relates to a subdivision in Port Stephens that has implemented a community title scheme to manage and maintain the environmental lands. The estate provided 950 dwellings who share in the community title lot comprising 52 ha of environmentally protected land. Questions would remain about this as a management structure when considering the markets problem with complicated overarching management structure compared to simple Torrens title where there is no ongoing fees or requirements to attend meetings. In this arrangement 950 members of the estate are required to be part of the managing organisation which deals with the environmental lands. The market would see this as being a burden on living in the estate and paying twice for something that is the government's responsibility.

It should be noted that this parcel of land immediately adjoins a conservation area owned by OEH and a State recreation area. We would expect that the developer was advised that no government department would accept the gifting of the land because "we do not have any funds to maintain the parcel"

Both this solution for environmental lands and the VPA solution associated with individual properties create isolated areas that may or may not be connected to significant biodiversity conservation areas. OEH has no record or oversight of these areas that could contribute to biodiversity in NSW. This pincushion approach should be a significant reform coming from the panel's review. It should be a requirement to identify in a systematic approach the vegetation considered as having strategic biodiversity value and move to identify and inform the interested parties and stakeholders in that land. It should identify the existing parcels under VPA or other types of control and map them accordingly.This should be done in a strategic way and properly funded and resourced. We have no doubt that the government departments will counter this suggestion with the idea that there is just too much to do. We believe that it is possible with today's technology and would eliminate much of the land use conflict that currently exists.

Too often environmental assessments deal with individual parcels of vegetation and indeed get right down to individual trees rather than the broader view of biodiversity regions. Individual officers working for government departments and councils need to be made aware of the "bigger" picture in relation to conservation.

3.4. Biodiversity Certification/Strategic Certification

External funding or resource allocation towards the establishment of strategies would provide a framework in which developers could have certainty,

The review refers to the use of strategic assessment through the Biodiversity Certification process as permitted in the Threatened Species Act. It has been implemented in some parts of NSW but not in the growth areas of the "Evo Cities" of inland NSW (except Wagga Wagga) or many of the major regional areas along the North and South coast.

There are perhaps many reasons for this. It is suggested many local government councils do not understand the process. It is also suggested that the cost to do the necessary studies is prohibited and difficult to justify when many are financially imperilled. Many local government councils have no knowledge of natural resource or native vegetation management. They also have no skill in assessing ecological reports. The State government needs to coordinate the roleout of biodiversity certification within the established growth areas and target pressure points for development. This should be properly funded and resourced with experienced personnel to overcome the difficulties that some council have with knowledge on the issues and to assist them with the cost of implementing the certification process.

The duplication with Federal legislation is also of concern to development as it reduces certainty and it affects development timelines. An example may assist in understanding the frustrations in the development community. The approval of a rural-residential subdivision estate at Tamworth was achieved in 2005 under the NSW Environmental Planning and Assessment Act 1979. The estate is located within a designated growth area of Tamworth. The local Council has extended services to the site and has plans for various works in the vicinity to cope with the expansion of the area.

The site is not subject to a biodiversity agreement. The land is located within the White Box – Yellow Box – Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community.

Stage 1 of the estate had been developed and housing sited on the newly created lots. Due to the global financial crisis, the developer became insolvent and, in time, the estate eventually sold by the liquidator to another developer. The new developer lodged a Section 96 amendment for a minor change to the estate layout and the application subsequently approved by Tamworth Regional Council. All existing studies were accepted by Council.

The developer, under recommendation by their surveyors, referred the development to the now Commonwealth Department of the Environment under the EPBC Act in late 2013. As of the date of this submission, the referral is still undergoing assessment. The developer believed he was buying an estate development with full approval under the NSW Environmental Planning and Assessment Act 1979. The development has been able to develop some lots but not the entire estate as proposed. Essentially, whilst the ecological assessment of 2005 was considered valid under the EPBC Act, in 2013 it now does not comply.

The removal of this duplication would remove uncertainty.

4. THE EPBC ACT 1999

4.1. Introduction

Presently, there is a dual system of environmental assessment in operation in NSW: the NSW framework represented by the Threatened Species Act, Native Vegetation Act etc.; and the Commonwealth framework represented by the Environmental Protection Biodiversity Conservation Act 1999 (EPBC Act). Recent experience by some of our member firms is dealing with the two systems has added cost and extended the time to achieve project completion.

In the development example cited, focus was caused to be directed to policy and guideline interpretation matters. These policies and guidelines have been formed under the EPBC Act. Though not a subject of the review, it is important to discuss the importance of the commonwealth legislation and policies and its impact on environmental assessment in NSW and the resulting impact on land and property development.

It is important to emphasise that these issues are not a result of the commonwealth Act per se but the interpretation and implementation of the policies and guidelines.

For inland NSW, the two policies/guidelines in question are:-

- Threatened Species Scientific Committee (2006) White Box – Yellow Box – Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands Policy Statement (the identification guidelines used to determine whether or not assessed vegetation is a part of the Critically Endangered Ecological Community – the "CEEC"); and
- Threatened Species Scientific Committee (2006) White Box – Yellow Box – Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands Listing Advice

4.2. Head of Power

Chapter 5, Part 13, Division 1, Subdivision A, Section 189 of the EPBC Act provides the head of power stating that the Minister must consider advice from Scientific Committee and specifically:-

(1B) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in a particular category, the advice must also contain:

(a) a statement that sets out:
  (i) the grounds on which the species or community is eligible to be included in the category; and
  (ii) the main factors that are the cause of it being so eligible; and

(b) either:
  (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or
  (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community; and

(c) a recommendation on the question whether there should be a recovery plan for the species or community."

The Threatened Species Scientific Committee (TSSC) Policy Statement and Listing Advice have been developed under Section 189 (1B)(b)(i) as detailed above.

4.3. Issue 1 – Head of Power

The key issue which has caused delays are the Commonwealth Department of the Environment's (DotE) interpretation of the classification criteria (policy statement and listing advice) for the Box Gum Woodland CEEC.

DotE's interpretation of the classification criteria necessitates that all native groundcover connected to a patch of Box Gum Woodland CEEC be also considered an aggregate of the CEEC.

While there is no specified link between the policy statement and the listing advice, it would appear that the policy statement has been formed to communicate the contents of the listing advice and provide clear guidance on the classification criteria for the CEEC. Both documents are written by the TSSC and subsequently both are required to be considered under the EPBC Act.

Recommendation 1
That both the Policy Statement and Listing Advice be consistent with NSW policies.

Recommendation 2
That both the Policy Statement and Listing Advice reference one another and state that they should be read in conjunction with one another.

4.4. Issue 1 – Intact Tree Layer

There is confusion surrounding the use of the term 'intact' on page 4 of the policy statement. Page 4 states that:

> Areas that are part of the listed ecological community must have either:
>
> - An intact tree layer and a predominantly native groundcover layer; or
> - And intact native ground layer with a high diversity of native plant species but no remaining tree layer.

While the policy refers to an 'intact tree layer' as one of the criteria, no definition of "intact tree layer" is provided.

'Intact' implies completeness, entirety and unbrokenness. However, in the instance of Rosewood Estate, DotE appear to have considered the sparsely scattered residual Kurrajong trees to comprise an 'intact tree layer'. It should also be noted that Kurrajong trees are not considered a "dominant species" of the Box Gum CEEC but a species that "may occur in association with the ecological community".

Recommendation 3
The policy statement must clearly define the term 'intact tree layer', with reference in particular to species composition and level of acceptable change from the original natural condition of the CEEC.

4.5. Issue 3 - Dominance/Prior Dominance

There is confusion surrounding the context of dominance and prior dominance with reference to paragraph 2 of page 2 of the TSSC policy statement. Whilst both the policy statement and listing advice in different sections refer to dominance or prior dominance it is not explicitly stated on page 2 para 2 of the policy statement whether 'dominance' is inclusive of 'prior' dominance.

In this instance, the lack of clarity has caused DotE to assume that this would include prior dominance, while it does not explicitly state this. Consultants Niche Environment and Heritage in their report to DotE have interpreted this paragraph to not include prior dominance (as the site tree layer is now dominated by Kurrajong trees). There is no clear indication of which interpretation is correct within the document.

Recommendation 4
The policy statement is modified to include 'prior dominance' in paragraph 2 on page 2. Alternatively this matter should be clarified and consistently referred to in both the policy statement and listing advice.

4.6. Issue 4 – Ill-defined relationship between "Patch Definition" & CEEC

There is no clarity on the relationship between ecological community 'patch' and CEEC extent. The policy statement defines 'patch' as:

> A continuous area containing the ecological community

Given that the definition only refers to the 'ecological community' it can be interpreted that vegetation included within the patch will not necessarily be included within the listed ecological community.

In addition, it can be interpreted that the resultant patch area would provide spatial context for where the listed ecological community could potentially occur (and should subsequently be assessed) however, does not explicitly represent the extent of the listed ecological community, as other criteria must also be satisfied.

For example, a farmer could clear a section of this patch through selective fire wood collection and leave another section of the same original patch untouched.

Recommendation 5
That the commonwealth guidelines be reviewed, in consultation with the private sector and NSW equivalents, to provide a clear relationship between patch definition and the specific CEEC.

4.7. Concluding comments for EPBC

4.7.1. Clarification of Guidelines and Policy Documents

The Federal minister and his delegates are required to take advice from the TSSC. This includes information included within publications made by the TSSC under the EPBC Act. The identification guidelines have been developed as a result of the TSSC's requirement to provide information with reference to Section (1B)(b)(i) of the Act. In most cases, there is a clear guide to what is or is not conserved in a Box Gum CEEC. However, there are some areas of the guidelines which need to be clarified and modified to ensure the guidelines clearly reflect the listed advice and vice versa. With these modifications there will be little room for officer and consultant professional interpretation and subsequent dispute.

4.7.2. Quality interpretation

Further concerns are raised with the DotE's interpretation with reference to biodiversity offsetting and the overall conservation of Box Gum CEEC. While within the context of the Rosewood Estate project DotE's interpretation makes for conservative protection of 'CEEC', the same interpretation applied in the quantification of potential offsets would result in extremely low quality vegetation being able to be used to offset potentially more severe ecological impacts in nearby regions within the Box Gum CEEC landscape. This could result in extremely negative conservation outcomes for the Box Gum CEEC and should be seriously considered by both DotE and the TSSC.

It is also important to note that by modifying the policy statement to clearly define what is and what is not Box Gum CEEC does not resolve the broader strategic implications of land development in the New England North West region of NSW and other regions where this community exists. There is an urgent need for governments at all levels to be provided with sufficient funding and resources to adopt a strategic regional approach to this issue.

4.7.3. Strategic Assessment under the EPBC and Biodiversity Certification under the NSW Threatened Species Act

For the EVO-City cities within the Box Gum CEEC landscape (i.e. Armidale, Tamworth, Dubbo, Wagga, Albury, etc), their growth strategies will be affected by developers need to refer all development under the EPBC Act and potential consider implementing significant vegetation offsets.

It has been suggested that Tamworth looks to implementing a Strategic Assessment framework under the EPBC Act. It avoid the need for both State and Commonwealth assessment, it should be implemented in conjunction with NSW Departments of Planning and Environment under the NSW Biodiversity Certification program. The local Council would be involved to ensure the assessment covers the defined growth area.

Simply put, it is another layer of planning a developer will have to consider in their development assessment.

We understand Strategic Assessment has have been implemented elsewhere (lower Hunter Valley) but at considerable cost ($2M). Funding for these programs is beyond the means of most local Councils.

We further understand funding of existing certification/assessment programs has come from the private sector, specifically mining. Funding has possibly been matched by state and federal governments.

This strategic assessment/biodiversity certification approach has merit but probably suitable for only the larger Council areas. External funding will be required to make it work.

4.7.4. The immediate effect of the EPBC on developers

Some developers will have the means to satisfy the offset requirement. Others will take a "slash and burn" approach and actively destroy all vegetation on their land through overgrazing and cultivation well before any consulting ecologist enters the site. The lack of certainty will cause developers to seek a risk-minimisation strategy. To not do so will expose developers to potential additional costs or lose of land to offsets. It will also affect the growth strategy of each regional city and cause the price of land to increase due to supply constraints.

The threat of prosecution, large fines, remediation orders and compensation offsets is not a sound strategy for retention of threatened and endangered box woodland. A strategic approach is need and one that is inclusive of the developer and the wider community

5. CONCLUSION

NSW consulting surveying firms are multidisciplinary and efficient in providing professional land development services. These include surveying, planning, environmental, engineering, project management and construction supervision. Surveyors have been undertaking land development since European settlement and for a considerable period of time were the principal natural resource managers of the crown estate.

The present biodiversity assessment system is too dependent on the individual landowner to assess and protect ecosystems and biodiversity at their own cost that provides a net benefit to the wider community. If land is identified as being of benefit, then the community should consider providing funding to the landowner or in-kind services to mitigate the cost to the landowner. For a land developer, this could be reduced developer contribution charges.

Ideally, the development should be part of an overall strategic assessment of the growth area. Developers crave certainty. Biodiversity certification under the Threatened Species Act provides this. The issue is the lack of areas which have been assessed and certified, particularly in the inland and regional areas of NSW.

Many Councils lack the resources to effectively assess and develop strategic land use plans that incorporate biodiversity. Consequently the landowner and the developer carry this cost. Often the result is disparate assessments and a patchwork of results that fail to achieve the desired balance. The government should ensure that sufficient resources and personnel are available to assist Council in the strategic assessment of biodiversity in their regions prior to any pressure for growth. Assessments should align with a statewide vision and should avoid looking at already developed residential areas and small pockets of vegetation or individual trees.

State government should consider a scheme to provide relief from Council rates and relief from state government land tax for private owners who have environmental lands. This promotes and encourages a cooperative approach for when management.

State government should consider the imposition of environmental levy on all NSW households to fulfil their requirement for vegetation conservation and management. This should be distributed generally in accordance with the amount of interface with vegetated areas that occurs within a municipality. The scheme would also allow acceptance of land dedications and taking on responsibility of maintaining dedicated land.

OEH should undertake a review of lands held by private owners and Council for conservation and it should include the present VPA lands. The areas should be mapped on a GIS available to the public to properly gauge the current lands held for environmental management.

We thank you for the opportunity to lodge a submission and we reiterate our willingness to participate in further meetings to discuss the difficulties we have with dealing with vegetation management in new developments.