



Biodiversity Legislation Review
PO Box A290
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4 September 2014

Submission to the Biodiversity Legislation Review

WWF-Australia welcomes the opportunity to make a submission to the Biodiversity Legislation Review.

Theme 1: Objects and principles for biodiversity conservation

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

Yes. The aspirational goal for biodiversity conservation should be – “By 2021 the people of NSW have established healthy and resilient populations of all species of native animals, plants and ecological communities, which are indigenous to NSW.”

As a matter of practicality, this aspirational goal could be taken to be achieved if: (a) no species, population or ecological community presently not listed as threatened are placed on the threatened species list; (b) no species, population or ecological community presently listed as threatened are shifted to a more threatened category; and (c) all existing species, populations and ecological communities listed as critically endangered or endangered are recovered to the extent that they are listed as vulnerable.

Healthy and resilient native biodiversity requires healthy and resilient water and soil resources and a moderate local and regional climate. Accordingly, biodiversity goals must be embedded in goals that apply to the landscape generally. This will require effective implementation at the local, regional and catchment level of *State-wide Targets for Natural Resource Management* that improve environmental outcomes with respect to water and soil resources, native biodiversity and local, regional and global climate and the landscape.

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

The existing legislative objectives are generally still valid but should be supplemented in four respects:

- Firstly, to enshrine a principle that developments should have near-zero net environmental impact. That is to say, all developments should either “*improve or maintain*” the environment. The native vegetation assessment tools (NVAT)¹ under the *Native Vegetation Act 2003* provide an effective and efficient approach to achieve near-zero net environmental impact in the case of clearing of remnant native vegetation, though in the interests of equity and reducing the environmental impact of development more generally, the test should be applied also to coastal, industrial and urban development. Adopting a near-zero net environmental impact objective would mean that NSW

¹ The native vegetation assessment tools (NVAT) are objective, computer based, decision support programs which are used to determine the impact that clearing or conservation will have on salinity, water quality, biodiversity (including threatened species) and soils: see <http://www.environment.nsw.gov.au/vegetation/nvat.htm> (accessed 21 August 2014).

would take its place next other world leaders such as Interface² and Sony³, large corporations which have committed to have zero environmental impact by 2020 and 2050 respectively. One attractive model to do so is *One Planet Principles*, a set of 10 principles developed by Bioregional⁴, an entrepreneurial charity, that together reduce the impact of developments to near-zero.⁵ Barangaroo South, a major development by Lend Lease in the Sydney CBD, is applying the One Planet Principles⁶.

- Secondly, to incorporate Australia's commitment under the Convention on Biological Diversity that: *"By 2020, at least 17 percent of terrestrial and inland water, and 10 percent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into wider landscapes and seascapes."*⁷
- Thirdly, to plan habitat protection and restoration to take account of species shifting their ranges in response to climate change.⁸
- Finally, to implement the objectives above, and those already found in the legislation, by developing local and regional strategic plans which encourage the:
 - Development/intensification/refurbishment of already developed/cleared land;
 - Refurbishment/restoration of degraded land where it will meet one or more of the previous objects; and
 - Restoration or permanent protection of lands and waters required to conserve our biodiversity and soil and water resources.

Effective local and regional strategic plans would guide development to areas where its impact would be minimal (or small), and help avoid or mitigate the cumulative impacts of many individual projects. They also improve transparency of decision making and reduce opportunities for corruption.

3. To what extent are the current objects being met?

To a very limited extent. The *NSW State of the Environment 2012* published by the NSW Government's Environment Protection Authority (EPA) notes⁹:

Native species remain under threat due to the clearing of vegetation, habitat degradation and invasive species. ...

Since 2009, 35 additional species have been listed as threatened under NSW legislation and the number of listed populations and ecological communities has also increased. ...

The *NSW State of the Environment 2012* well identifies the key issues – agriculture and coastal development are having the greatest impact on biodiversity in NSW. Agriculture and coastal development are also having significant impacts on soil resources and water quality (relevant excerpts of the *NSW State of the Environment 2012* are reproduced in Attachment A). Impacts on soil and biodiversity are particularly significant because they are essentially finite resources. These resources were not created by humans, and form part of our shared natural assets today, and will form assets for future generations, and so effective conservation action is essential.

² http://www.interfaceglobal.com/careers/mission_zero.html (accessed 21 August 2014).

³ <http://www.sony.net/SonyInfo/csr/eco/RoadToZero/> (accessed 21 August 2014).

⁴ <http://www.bioregional.com/> (accessed 22 August 2014).

⁵ <http://www.oneplanetcommunities.org/about-2/approach/the-10-principles/> (accessed 22 August 2014).

⁶ <http://www.oneplanetcommunities.org/about-2/approach/the-10-principles/> (accessed 22 August 2014).

⁷ Aichi Target 11, Convention on Biological Diversity Strategic Plan, 2010-2020 <http://www.cbd.int/sp/targets/rationale/target-11/> (accessed 28 August 2014).

⁸ Steffen, W. et al. 2009. *Australia's biodiversity and climate change: summary for policy makers 2009*. Australian Government Department of Climate Change.

⁹ <http://www.epa.nsw.gov.au/soe/soe2012/summary.htm> and <http://www.epa.nsw.gov.au/soe/soe2012/chapter5/> (accessed 10 August 2014)

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

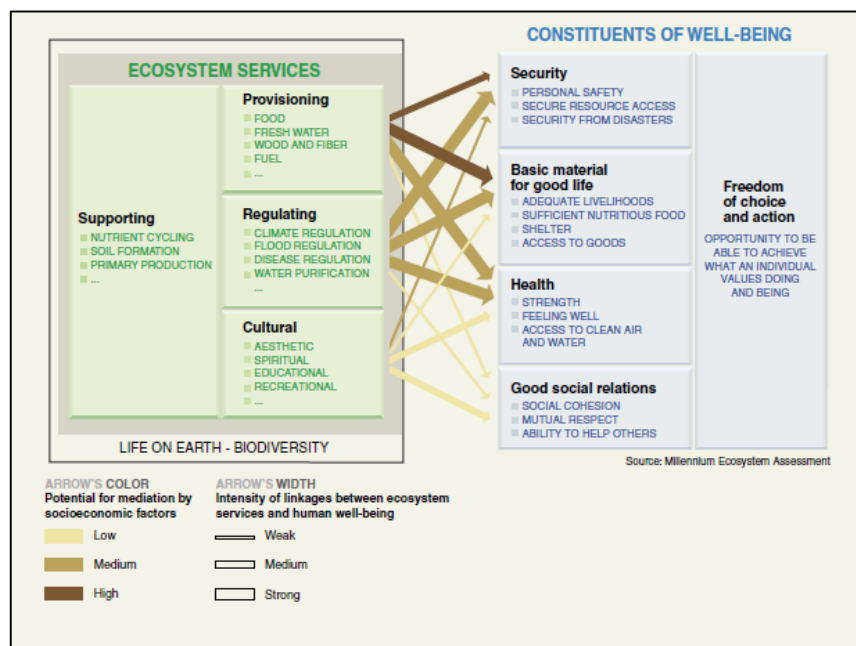
There is relatively limited opportunity to integrate and simplify the current laws because the major pieces of legislation serve different functions. The *Native Vegetation Act* creates an environmental zoning system where none previously existed, with a view to ending the broadscale clearing of remnant native vegetation. The *Threatened Species Conservation Act*, on the other hand, makes provision for a supplementary environmental impact assessment when listed threatened species are present or likely to be present on land proposed to be developed (the “7 part test”) as well as biobanking and biocertification for large scale development impact assessment.

There would be an opportunity to simplify the conservation covenanting provisions of the *Nature Conservation Trust Act* and *National Parks and Wildlife Act*, though one of the advantages in having two models is that many landholder prefer to deal with one or the other organisation. The major opportunity to simplify these pieces of legislation is to each covenant (respectively known as a Trust Agreement and a Voluntary Conservation Agreement) carries identical rights and liabilities (and in particular, that both carry an automatic rates exemption).

Theme 2: Conservation action

1. Is the current system effective in encouraging landowner 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?

While the public debate is dominated by the benefits that landholders provide to the rest of society – which are indeed considerable – it is also the case that biodiversity and other ecosystem services provide benefits to landholders individually, at regional and catchment levels, and to industry, economy and society. The interactions between ecosystem services and human well-being are extremely complex. The *Millennium Ecosystem Assessment Ecosystems and Human Well-being: Synthesis* report attempted to disaggregate and depict the strength of linkages between categories of ecosystem services and commonly encountered components of human well-being, including indications of the extent to which it is possible to purchase a substitute for a degraded ecosystem service (which it termed “mediation” in the report Box Figure A, which is reproduced below).¹⁰



¹⁰ Millennium Ecosystem Assessment, 2005, *Ecosystems and Human Well-being: Synthesis*. Island Press, Washington, DC. Page 50.

Ecosystem services of particular (financial) relevance to industry include:

- Primary production (production of organic matter from inorganic carbon sources, largely through photosynthesis);
- Nutrient cycling (particularly nitrogen, and also phosphorus, sulphur, calcium, potassium, magnesium and manganese);
- Soil formation;
- Food;
- Fresh water;
- Wood and fibre;
- Climate regulation;
- Flood regulation;
- Disease regulation;
- Water purification.¹¹

Often particular elements of an ecosystem provide a variety of services. For example, the ecosystem services most closely related to financial productivity which are provided by native vegetation include:

- Protecting topsoil from erosion, waterlogging and salinity;
- Providing shelter for stock and crops from wind and weather;
- Providing pollination and pest control;
- Moderating regional and global climate.

The destruction of native vegetation extinguishes or reduces all these benefits, and also has other direct detrimental impacts including the actual *loss* of topsoil and freshwater quality.

The role of vegetation in moderating regional (and even local) climate is particularly noteworthy. Deforestation has long been recognised as a major contributor to global climate change. However, science shows that deforestation can change regional climate by altering local heat balance and surface reflectance, the transport of water vapour into the atmosphere, and ground surface drag and roughness, which in turn affects local atmospheric circulation.¹²

Increases in the number of consecutive rainless days in eastern Australia correlate precisely with those areas of land that have been most heavily cleared of native vegetation.¹³ Similarly, in Southwest Australia at least half of the recorded 30% decline in rainfall recorded over the past four decades has been attributed to land clearing and has been estimated to result in a \$970 million-a-year-loss to agriculture from rising soil salinity and reduced rainfall.¹⁴

This impact of land clearing on rainfall is not entirely un-foreshadowed: in the late middle ages explorer Christopher Columbus observed that rainfall in the Canary Islands and Azores declined after their forests had vanished, and that the afternoon rain in the West Indies was due to the island's luxuriant forests.¹⁵

There may be a point at which further clearing of land for agriculture can be self-defeating. That is, the marginal increase in production resulting from the conversion of forest to crops or pastures may be

¹¹ Millennium Ecosystem Assessment, 2005, *Ecosystems and Human Well-being: Synthesis*. Island Press, Washington, DC. Page 50.

¹² Rezaul, M. et al. 2014. Land cover changes and their biogeophysical effects on climate. *International Journal of Climatology* 34, 929-953.

¹³ Deo, R.C. et al. 2009. Impact of historical land status change on daily indices of climate extremes including droughts in eastern Australia. *Geophysical Research Letters* 36, L08705: x-x.

¹⁴ Andrich, M.A., and Imberger, J. 2013. The effect of land clearing on rainfall and fresh water resources in Western Australia: a multi-functional sustainability analysis. *International Journal of Sustainable Development & World Ecology* 20, 549-563.

¹⁵ <http://archive.unu.edu/unupress/unupbooks/80635e/80635E08.htm> (accessed 22 August 2014).

entirely offset by the marginal decline in soil fertility or rainfall or increased drought risk that results. Attention is now being given to the design of native vegetation recovery and retention in an agricultural landscape to maintain suitability for agriculture.¹⁶ As there may be “tipping points” after which the climate becomes unsuitable for the re-establishment of forest or woodlands, these issues should receive natural resource managers’ consideration as soon as possible.¹⁷

Although it may be desirable to identify the value of ecosystems services to individual landholders and to society and price them accordingly, at present this is not practicable¹⁸. In circumstances where the *2012 NSW State of the Environment* report describes the continuing decline of land, water and biodiversity natural resources, WWF submits that the existing legislation has already struck a reasonable balance between the interests of landholders and the interests of wider society. The argument that this is the case is made all the more compelling when it is recognised, as it must, that a series of structural adjustment packages have been established and implemented in the past decade or more to enable landholders to adjust to native vegetation and other natural resource conservation laws.

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?

There is no impediment to any individual managing their land for conservation without binding agreements or choosing to limit the volume of production, and there are considerable opportunities to do so.

In WWF’s view, the major risk for landholders and others who invest in conservation measures (including the government) is that they typically lack any assurance that the conservation activities will continue or that the conservation benefits will endure. Such security is afforded by conservation covenants (or – in some cases – by third-party certified sustainability programs).¹⁹

Effective, efficient and equitable incentives to promote biodiversity conservation on private land would include amendments to Commonwealth taxation legislation to allow the cost of maintaining private land under a perpetual conservation covenant to be offset against off-farm/off-land income and to exempt in perpetuity private protected areas from GST on their purchase price and an exemption from land tax. WWF requests that the Panel recommend that the NSW Government request the Australian Government to implement such measures (landholders have existing limited entitlements to tax deductions for loss of value as a result of accepting a conservation covenant²⁰ and for “landcare works” for lands used for agricultural production²¹, but not biodiversity conservation, and not for works, services or products to maintain land under a conservation covenant).

WWF also requests that the Panel recommend that the NSW Government amend rating legislation to provide an automatic rates deductibility to land or waters covered by a perpetual conservation covenant issued by the Nature Conservation Trust of NSW or a catchment management authority or other agency of the State (perpetual conservation covenants issued by the National Parks and Wildlife Service are already entitled to an automatic rates exemption).

¹⁶ Ryan J.G., McAlpine, C.A., and Ludwig, J.A. 2010. Integrated vegetation designs for enhancing water retention and recycling in agroecosystems. *Landscape Ecology* 25, 1277–1288.

¹⁷ Sampaio, G. et al. 2007. Regional climate change over eastern Amazonia caused by pasture and soybean cropland expansion. *Geophysical Research Letters* 34, L17709.

¹⁸ Though a number of credible attempts have been attempted at a broadscale: cf. Gillespie Economics, 2000. *Economic Values of the Native Vegetation of New South Wales. A background paper of the Native Vegetation Advisory Council of New South Wales*; Aisbett, E & Kragt, M. 2010. *Valuing Ecosystem Services to Agricultural Production to Inform Policy Design: An Introduction*. EERH Research Report 73.

¹⁹ <http://www.enviromeat.com.au/>; <http://www.savethekoala.com/our-work/certified-koala-friendly-products>; <http://grsbeef.org/>; <http://www.almg.org.au/> (accessed 22 August 2014).

²⁰ <https://www.ato.gov.au/Non-profit/Guides/In-detail/Fact-sheets/Other/Conservation-covenant-concessions/> (accessed 22 August 2014).

²¹ <http://www.daff.gov.au/natural-resources/landcare/tax> (accessed 22 August 2014).

Other effective, efficient and equitable incentives to promote biodiversity conservation on private land would include providing owners of land (and waters) covered by in-perpetuity conservation covenants with preferential access to Local Land Service and other NSW Government natural resource management programs. WWF requests that the Panel recommend that the NSW Government request the Australian Government to do the same in respect of programs under the Green Army, National Landcare Program and Carbon Farming Initiative.

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?

A wide range of suitably qualified and regulated or certified organisations should be encouraged to facilitate and manage private land conservation through a range of approaches, though the primary tool for public investment and/or private tax deductibility should be a perpetual conservation covenant registered on title. Presently most Federal and NSW Government conservation spending on private land is applied to activities that do not entail an enduring change in land management arrangements (nor for that matter an enduring system of benefits for conservation landholders, such as being able to sell a product recognised in the market as environmentally low-impact or ecologically sustainable). This should be addressed as a high priority.

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?

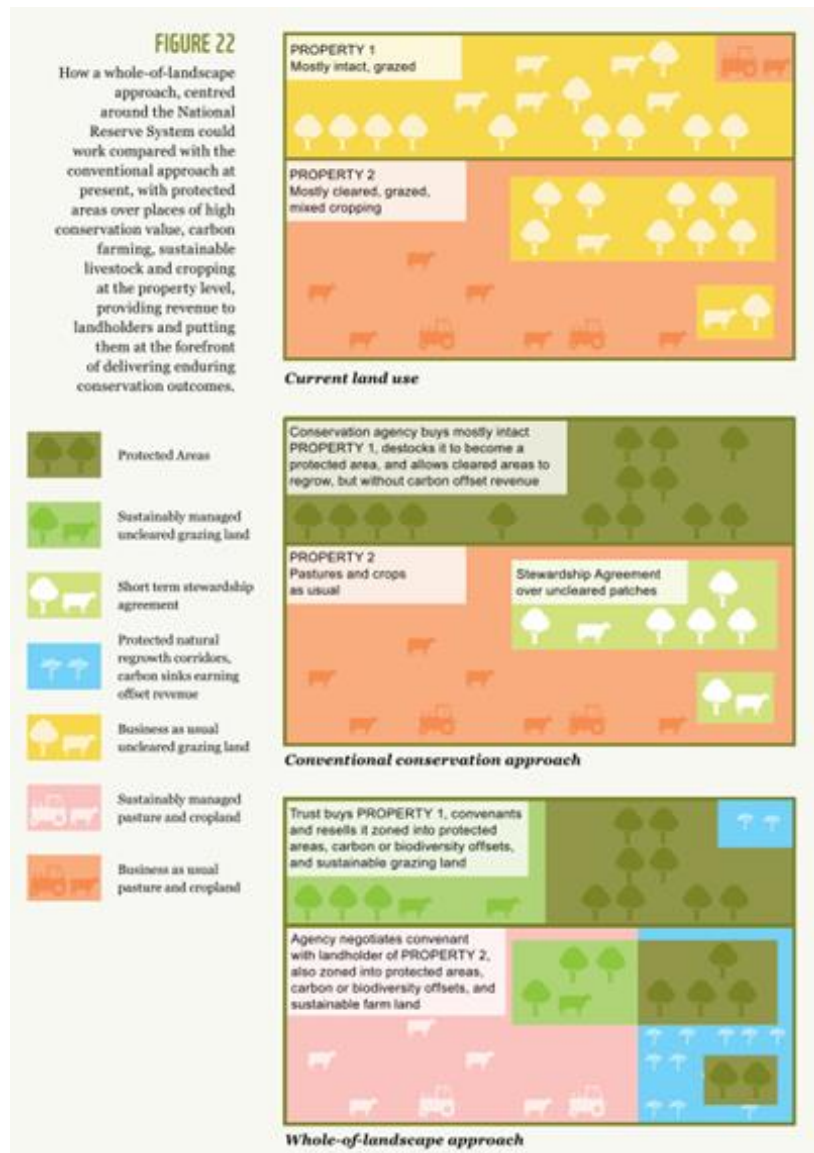
NSW's biodiversity and native vegetation conservation laws are the bedrock of species protection. Although it is desirable to provide incentives for the protection of habitats in order to recover threatened species of animals and plants, and assist their adaptation to climate change, land use change should no longer be permitted to drive native biodiversity toward extinction. This is particularly the case in NSW where all or nearly all the most productive land has been cleared since 1788. It is essential, therefore, to establish minimum standards of operation secured in legislation that enhances the long accepted principle that individuals are not entitled to pollute air, land and waters.²² At a general level, this principle is widely accepted, though its implementation is often hotly contested. In the case of NSW the suite of minimum standards includes *Native Vegetation Act*, *Threatened Species Conservation Act*, *National Parks and Wildlife Act* and *Nature Conservation Trust Act*.

A second priority for the Government should be achievement of Aichi Target 11 of the Convention on Biological Diversity²³, particularly through the continued implementation of the *NSW National Parks Establishment Plan*, and by implementing a "whole-of-landscape" approach integrating protected area and sustainable agriculture goals at the property level. This can be achieved by providing incentives and assistance to those landholders who protect high conservation value habitats as protected areas under permanent covenants, or protect and restore wildlife corridors, climate change refugia and other high conservation value areas through either natural regrowth or environmental plantings. In most cases these high conservation value areas will already be identified in past or existing catchment action plans.

The Figure below demonstrates this whole-of-landscape approach to conservation, compared to the existing, conventional approach.

²² National Farmers' Federation. 2013. *Blueprint for Australian Agriculture 2013-2020*, page 62.

²³ By 2020, at least 17 percent of terrestrial and inland water, and 10 percent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into wider landscapes and seascapes: <http://www.cbd.int/sp/targets/rationale/target-11/> (accessed 22 August 2014).



The whole-of-landscape approach needs to be complemented by well-funded government programs to expand the National Reserve System and control pests, weeds and diseases that threaten native biodiversity, both on and off protected areas.

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

In the medium term, the Wentworth Group of Concerned Scientists' Regional Scale Environmental Asset Condition Accounts are likely to provide the most comprehensive system of monitoring and evaluation. However, it will be some time before a comprehensive set of Regional Scale Environmental Asset Condition Accounts at an appropriate local scale will be available. In the meantime, providing clearer, numeric (unless it is impossible to do otherwise) targets in catchment action plans, together with regular, transparent reporting against those targets, and transparent reporting against the relevant targets in *NSW 2021*, the transparent adoption and implementation at a regional and catchment level of *State-wide Targets for Natural Resource Management*, National Parks Establishment Plan, NSW Report on Native Vegetation and project-scale targets is likely to remain the most effective ways to monitor and evaluate the effectiveness of conservation programs. Now that baselines have been established for many of the key *State-wide Targets for Natural Resource Management*, these Targets should be enhanced by the provision of clearer, ideally numeric, targets that improve environmental outcomes.

There would be much advantage in transparently reporting on all state natural resource targets in an annually or bi-annually updated website.

6. How should trade-offs be assessed?

Trade-offs should be assessed using a transparent metric/science-based standards which “*improve or maintain*” environmental outcomes in relation to land and soil capability, salinity, water quality, invasive native scrub and threatened native animals, plants and ecosystems. This assessment should be guided by a framework of long-term local, regional and catchment strategic natural resource management plans.

This will require a number of steps:

- Preparation of long-term strategic land use plans for all areas likely to be the subject of significant development pressure in the foreseeable future, where such development is or is likely to significantly affect matters of national or State environmental significance. These areas clearly include:
 - Coastal development in NSW;
 - Development involving broad scale clearing of native vegetation or the capture or extraction of water (particularly in north-western NSW);
 - Development applications relating to petroleum exploration and extraction, mining and mine infrastructure, energy generation and methods of carbon sequestration in NSW.
- Use of metric/science-based decision tools as the standard under development assessment and approval processes. NSW already has an effective metric/science-based standard in the *Native Vegetation Assessment Tool* under the *Native Vegetation Act 2003*²⁴ which implements the fundamental principle of the NSW *Native Vegetation Act* that any clearing of remnant native vegetation must “*improve or maintain environmental outcomes*” in relation to land and soil capability, salinity, water quality, invasive native scrub and threatened species and ecosystems.

It would be comparatively simple to amend the existing *Environment Protection and Biodiversity Conservation Act* offset calculator so that it became a decision tool with respect to development in coastal areas and for nationally listed threatened species and ecological communities, listed migratory species and Ramsar wetlands.

Environmental offsets should be like for like and protected by an in-perpetuity covenant where on private lands or waters or incorporated into the National Parks estate where on public land.

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

By ending the broadscale clearing of remnant native vegetation the system is forward looking and should remain so. The system naturally has also to address legacy impacts and this should be done through adequately-funded government and private programs targeting strategically-selected high conservation value lands and waters.

Theme 3: Conservation in land use planning

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?

Other than the NSW National Parks Establishment Plan, state, regional, catchment and local planning has not yet given sufficient priority to the protection of biodiversity, remnant native vegetation, habitat of threatened species and other high conservation value lands and waters, or to the protection of watercourses and estuaries. This is not because evidence is not available. It is because conflict between government, developers and community expectations is both inevitable and challenging for all concerned. Resolving differences will not always be possible but attempts to collaborate should be the first step in the process. This requires and early clear identification of the issues, including particularly

²⁴ <http://www.environment.nsw.gov.au/vegetation/nvat.htm> (accessed 14 August 2014).

the identification of key biodiversity assets and their representation in spatial maps²⁵, together with clear, numeric (unless it is impossible to do otherwise) local, regional, catchment and state-wide conservation and natural resource management targets, evidence that the targets are as well founded in science as can be reasonably expected in a human system, and a system of plans that actively encourage the development/intensification/refurbishment of already developed/cleared land and refurbishment/restoration of degraded land and restoration or permanent protection of lands and waters required to conserve our biodiversity and soil and water resource, thereby guiding development to areas where its individual and cumulative impacts can be minimised.

This should be accompanied with a high profile, well-resourced publicity program to explain the importance of conserving our native biodiversity, ensuring that the use and management of our other natural resources is sustainable and of the need to, and importance of, improving our natural environment and the condition of our soil, water, biodiversity and other natural assets.

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

Please see responses to Theme 1, Issue 3 (*To what extent are the current objects being met?*) and Theme 2, issues 4 (*How should the government determine priorities for its investment in biodiversity conservation ...*) and 6 (*How should trade-offs be assessed?*).

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

Please see responses to Theme 1, Issue 3 (*To what extent are the current objects being met?*) and Theme 2, issues 5 (*How can the effectiveness of conservation programs be monitored and evaluated?*).

Theme 4: Conservation in development approval processes

1. *To what extent has the current framework created inconsistent assessment processes, environmental standards, offset practices and duplicative rules? What can be done to harmonise processes?*

There is relatively limited opportunity to integrate and simplify assessment processes as between the *Environmental Planning and Assessment Act 1979* (and/or *Planning Bill*), *Native Vegetation Act* and the *Threatened Species Conservation Act* as they address different issues. *Native Vegetation Act* creates an environmental zoning system where none previously existed, with a view to ending the broadscale clearing of remnant native vegetation. The *Threatened Species Conservation Act*, on the other hand, makes provision for a supplementary environmental impact assessment when listed threatened species are present or likely to be present. At this point this appears to be the least-cost approach to potential developers (because most developers are not required to apply the 7 part test to their proposed projects).

One option would be to extend the existing urban planning system to the whole of the State, and include developments/changes of use that have a significant impact on high conservation value lands and waters (including remnant native vegetation). Another slightly less ambitious option would be to prepare and implement local, regional and catchment strategic plans as proposed in Theme 3, Issue 1 (*How effective are current arrangements at ensuring biodiversity values are identified early and properly considered ...*) above.

Irrespective of the approach taken, the principle under the *Native Vegetation Act 2003* that clearing should “*improve or maintain*” should apply to all forms of development, rural, coastal, industrial and urban, and should take precedence over the *Planning Act*.

In terms of offset standards, the *Native Vegetation Assessment Tool* under the *Native Vegetation Act 2003* should be the only offset tool available for use in the State and should replace both the

²⁵ Williams, J. 2012. Catchment Management – Setting the Scene. *Water*. 1.

biocertification offset tool and particularly the *Draft NSW Biodiversity Offsets Policy for Major Projects*. The key objections to the *Draft NSW Biodiversity Offsets Policy for Major Projects* are outlined in Attachment B.

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?*

A single, integrated approach to the approval of all forms of development is unlikely to be practical in the near term. However it would be possible to move to a more integrated approach by using a transparent metric/science-based standards and decision-tools which “*improve or maintain*” environmental outcomes in relation to land and soil capability, salinity, water quality, invasive native scrub and threatened native animals, plants and ecosystems to assess individual developments (such as the *Native Vegetation Assessment Tool* under the *Native Vegetation Act 2003*).

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?*

The *Native Vegetation Assessment Tool* under the *Native Vegetation Act 2003* should be the only offset tool available for use in the State as it provides the transparent and consistent application of science-based rules and the data used to support the decision is transparent.

The Government has recognised the need to protect our land and soil capability, salinity, water quality, invasive native scrub and threatened native animals, plants and ecosystems, and that in order to do so future development must “*improve or maintain*” environmental outcomes in relation to those issues.

This unquestionably has an impact on a small number of landholders who are prevented from changing the use to which they put lands and waters owned or occupied by them (though the law does not prevent them from continuing their existing use of the land). In reaching that view the Government has clearly accommodated social and economic values, namely the importance to society and the economy of protecting our land and soil capability, salinity, water quality, invasive native scrub and threatened native animals, plants and ecosystems, and further assessment based on individual circumstances is not required.

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?*

The regulatory system does not adequately protect listed threatened species, populations and ecological communities at present but the changes to the regulatory system proposed in this submission would greatly increase the likelihood of it doing so.

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

No credible evidence has been offered to support the assertions that (material) development opportunities or innovative land management practices have been impeded by the current regulatory system.

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?

The *Native Vegetation Assessment Tool* under the *Native Vegetation Act 2003* adequately addresses this issue.

8. How can offsets be more strategically located?

Please see the responses to Theme 2, Issues 4 (*How should the government determine priorities for its investment in biodiversity conservation while enabling*) and 6 (*How should trade-offs be assessed*).

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

No.

Theme 5: Wildlife management

Of particular interest to the panel are:

1. Have the threats to biodiversity posed by: ... feral animals and weeds ... and ... illegally imported species, been effectively managed?

No, weeds, pests and diseases from abroad are one of the most significant threats to the continued existence of many species of Australian native animals and plants (cf. *State of the Environment Australia 2011*, page 606). The NSW Government should urge the Federal Government to establish a new organisation to:

- Identify high risk invasive species and the most likely or common or highest risk incursion pathways of entry into Australia;
- Develop and monitor contingency plans and measures to eradicate or control invasive species;
- Mount more timely and effective responses to new incursions of invasive species, with the responses' transparent, based on expert advice, applying the 'precautionary principle' and involving the community;
- Improve surveillance of high risk invasive species to allow for a rapid and effective eradication (or other control) response;
- Maintain a public database of incursions of invasive species;
- Establish an independent public review after incursions of invasive species with a view to improving measures to prevent and eradicate invasive species; and generally,
- Foster collaboration between governments, experts, industry and the community.

In the absence of the Federal Government taking action, the NSW Government should adopt as much of the same approach as is practicable.

Attachment A

The *NSW State of the Environment 2012* published by the NSW Government's Environment Protection Authority (EPA) notes²⁶:

Native species remain under threat due to the clearing of vegetation, habitat degradation and invasive species. Over longer time frames, birds have been more resilient than other vertebrate groups, having experienced the lowest proportion of declines in distribution, while mammals have experienced the highest as well as the greatest number of extinctions.

Since 2009, 35 additional species have been listed as threatened under NSW legislation and the number of listed populations and ecological communities has also increased. While a general pattern of decline is evident, many species have maintained their levels of distribution. Sixty-six per cent of terrestrial vertebrate species are not considered to be threatened.

The current condition and extent of native vegetation is considered to be fair. Land clearing is recognised as the greatest threat to native vegetation but clearing levels have stabilised over the past six years and the total extent of woody vegetation appears to have remained stable since 2003. Changes in the condition of vegetation are much harder to monitor than the effects of clearing. While 61% of NSW is still covered by naturally occurring vegetation, only 9% of this is in relatively natural condition and condition has deteriorated significantly in the remainder. Many revegetation and restoration activities are occurring regionally and the condition of vegetation is expected to improve as the results of these activities take effect.

The report also notes that while “soil resources across NSW are in fair condition overall, significant specific issues of land degradation remain: **74% of 124 priority soil monitoring units examined were rated as poor or very poor for at least one degradation hazard.** Across NSW, gully and sheet erosion have been found to be the least problematic of the soil health indicators, while decreasing organic carbon and soil structure decline present the greatest challenges. Potential acid sulfate soils are also a long-term management issue in some coastal areas. ... These land management practices generally lead to only a **moderate risk of degradation** but this varies across soil health indicators and catchment management areas.”²⁷ [emphasis added].

Also relevant is the statement that the “condition of estuaries and coastal lakes in NSW varies greatly, from near-pristine to highly disturbed. Condition generally reflects the level of disturbance in the catchment and the degree of flushing of the water body. Disturbance of estuary catchments and waterways results in habitat modification and changes in stormwater flows and runoff characteristics, increasing the loads of sediments and nutrients which can affect estuarine water quality and ecosystem health. Population growth and coastal development continue to put pressure on estuaries and coastal lakes and it is anticipated that these pressures will intensify along the NSW coast in the future.”

²⁶ <http://www.epa.nsw.gov.au/soe/soe2012/summary.htm> and <http://www.epa.nsw.gov.au/soe/soe2012/chapter5/> (accessed 10 August 2014)

²⁷ <http://www.epa.nsw.gov.au/soe/soe2012/summary.htm> (accessed 10 August 2014).

Attachment B

In WWF's view, the *Draft NSW Biodiversity Offsets Policy for Major Projects* departs very significantly from good biodiversity offsetting practice, as embodied in the *EPBC Act 1999 Environmental Offsets Policy*, the NSW Government's *Office of Environment and Heritage principles for the use of biodiversity offsets in NSW* (<http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm>) and the *Environment Outcomes Assessment Methodology* under the *NSW Native Vegetation Act 2003* (<http://www.environment.nsw.gov.au/resources/vegetation/130788EOAMNVR13.pdf>). The key points of departure are summarised below:

- **Does not require offsets to “improve or maintain” the protected matter.** Indeed the reverse. Principle 3 of the *Draft NSW Biodiversity Offsets Policy for Major Projects* permits the offset to be targeted towards “*the biodiversity being lost or to higher conservation priorities*” – that is, a “*protected matter*” other than the one proposed to be destroyed by the development. Although Principle 2 sounds reasonable at a theoretical level, it could easily have perverse outcomes. For example, by offsetting the clearing of a large and viable area of vulnerable vegetation with small, unviable patches of endangered vegetation;
- **Does not require offsets to be “like for like”**, for the same reason as above;
- **Uses undefined, highly subjective terms in important clauses**, most notably the word “*appropriate*” in Principle 6 (*Supplementary offsets may be used in lieu of offsets*) of the *Draft Policy*. Principle 6 provides that: “*If appropriate offset sites cannot be found, proponents can provide funds for supplementary measures. All reasonable attempts must be made to locate appropriate offset sites before supplementary measures can be undertaken ...*” [emphasis added];
- **Allows “discounting” of offsets based on the social and economic benefits of development** (Principle 7), a provision that will lead to inequitable outcomes between proponents, uncertainty for and between proponents, an environment conducive to corruption and case-by-case exemptions leading to the incremental loss of biodiversity throughout NSW;
- **Allows double counting of offsets** (Principle 4 – note that the title of the Principle is misleading) contrary to Clause 7.6 of the *EPBC Act 1999 Environmental Offsets Policy* by allowing offsets to be generated by protecting existing protected public land and permitting the generation of biodiversity offsets and carbon credits by the same management actions on the same land;
- **Allows the use of mine site rehabilitation as a biodiversity offset** (see page 13 of the *Draft Policy* under the heading “Biodiversity offset strategy”): an extraordinary proposition;
- **Allows the use of “supplementary” offsets to satisfy 100% of the biodiversity offset**, a complete departure from the *EPBC Act 1999 Environmental Offsets Policy* which provide that direct offsets should satisfy a minimum of 90% of the offset (clause 7.2), the NSW Government's *Office of Environment and Heritage principles for the use of biodiversity offsets in NSW*, the *Environment Outcomes Assessment Methodology* under the *NSW Native Vegetation Act 2003* and global good practice (<http://www.forest-trends.org/program.php?id=117>). To effectively conserve biodiversity, the *Draft Policy* must deliver real “net positive” biodiversity outcomes. The use of “supplementary measures” severs the nexus between the loss of biodiversity and the compensatory measures, and cannot deliver a “net positive” biodiversity outcome.
- **In particular, payments into the proposed offset fund should only be permitted where suitable offsets can be identified and protected before development commences, and research and education should not be permitted in place of “like for like” offsets.** While research and education on biodiversity is important and certainly requires adequate funding, research and education does not compensate for biodiversity loss and it should not form an offset credit. Trading mechanisms and third party offset managers, which will be facilitated by the fund, can provide improved management outcomes and efficiencies in some circumstances, the fund should not be considered a substitute for securing “like for like” offsets prior to the commencement of the development.

The *Draft NSW Biodiversity Offsets Policy for Major Projects* is accompanied by the Framework for Biodiversity Assessment which provides more detail in relation to some of the Principles though it does not address the issues outlined above (and in any event is subordinate to the Principles).

Although WWF is opposed to the accreditation of any state approval process, a number of measures would improve the Draft Policy:

- **Recommendation 1:** That the Draft Policy state that its primary objective is to achieve “net positive” biodiversity outcomes.
- **Recommendation 2:** That the Draft Policy clearly identify the circumstances in which consent to destroy native flora, fauna or habitat will not be granted.
- **Recommendation 3:** That the Draft Policy require “like for like” offsetting.
- **Recommendation 4:** That restoration of ecological values during mine site rehabilitation be required as a standard condition of consent, but not be permitted as an eligible biodiversity offset.
- **Recommendation 5:** That offset payments only be permitted where it can be demonstrated that like offsets have been identified and will be protected before development commences.
- **Recommendation 6:** That research and education not be permitted in place of direct offsets or supplementary measures.
- **Recommendation 7:** That the policy apply a consistent, predictable approach to determining offset conditions, and not provide for “discounting” of offset requirements.