



Hunter Bird Observers Club

Affiliated with BirdLife Australia

Hunter Bird Observers Club Inc
PO Box 24, New Lambton, NSW 2305
www.hboc.org.au
ABN 62 415 889 446

21 June 2017

Land Management and Biodiversity Conservation Reforms
Office of Environment and Heritage
PO Box A290
SYDNEY SOUTH
NSW 1232

Submission submitted online at www.landmanagement.nsw.gov.au/have-your-say/

Dear Sir/Madam,

Re: NSW biodiversity and land management reforms: Draft regulations and products on public exhibition

The Hunter Bird Observers Club Inc. (HBOC) is a well-respected community group based in the Hunter Region of NSW. It is the largest club or group in the Hunter Region that caters specifically for those with an interest in birds in their natural habitat, with approximately 350 members. HBOC is affiliated with BirdLife Australia; the country's largest bird conservation organisation with over 85,000 members and supporters across the country. In turn, BirdLife Australia is the national partner of BirdLife International, representing one of the world's largest nature conservation partnerships, with over 13 million supporters. HBOC is also a member of the NSW Bird Interest Group Network (BIGnet).

HBOC has two objectives in its charter:

1. *To encourage and further the study and conservation of Australian birds and their habitat; and*
2. *To encourage bird observing as a leisure-time activity.*

As outlined in previous submissions, HBOC has major concerns about the implications of the new biodiversity legislation on remnant vegetation in NSW and for the efficacy of environmental assessment in this state. We firmly believe that these are 'backward steps' that address the issue of red tape for developers, as opposed to having concern for biodiversity protection as the foremost objective. HBOC is still of the opinion that that these reforms are regressive and will likely result in an increase in clearing of native vegetation with a net loss to biodiversity in NSW.

HBOC supports the contentions found in the detailed submissions provided by the Environmental Defenders Office (EDO; see submission [here](#)), the 'Stand Up For Nature' alliance (see submission [here](#)) and previous submissions made by various other BIGnet member groups and BirdLife Australia Southern NSW.

We have particular concern about the concept of "Serious And Irreversible Impact" (SAII) and how this will be treated by consultants and consent authorities in the future (e.g. the assessment of SAII will be often be down to the lone opinion for the judgment authority). The mechanisms by which offsetting will occur and the emphasis on 'monetary offsetting' are not indicative of legislation that has the conservation of biodiversity as the primary driver for its enactment. Again, the failure to

include State Significant developments in the assessment of impacts on biodiversity is a foremost concern. HBOC echoes the concerns of the EDO on page 12, where they state:

If like-for-like credits are not available, this is an indication that the proposal's impact is significant (and potentially serious and irreversible), particularly for species or ecological communities already at risk of extinction. Options still available to the proponent include:

- *further avoid or minimise the proposal's impact on biodiversity values;*
- *generate legitimate like-for-like credits on-site (not mine site rehabilitation);*
- *find and purchase like-for-like credits themselves;*
- *if a more stringent set of variation rules apply – follow those variation rules; or*
- *withdraw the project on the basis of significant impacts that cannot be offset*

HBOC fears that none of these options will be considered, especially the withdrawal of projects that will have 'serious and irreversible impacts', causing local extinctions.

It is also apparent that the draft regulations are being rushed through, as was the legislation itself. There is misleading information in the "Draft guidance and criteria to assist a decision maker to determine a serious and irreversible impact" (link [here](#)) where it is stated that the Swift Parrot is critically endangered (it is under the EPBC Act 1999, but is still only listed as endangered under NSW legislation). Further, it is said that:

'Important habitat' could be defined as sites with multiple records of the species over a period of five or more years and/or that have been identified as breeding habitat (evidence-based).

Swift Parrots do not breed in NSW, so already there is a glaring error and a major shortcoming in the identification of what constitutes 'important habitat' for a critically (sic) endangered species such as the Swift Parrot.

We thank you for the opportunity to comment.

Prepared by the Hunter Bird Observers Club Inc.



Attachment A – Hunter Bird Observers Club Submission on Draft Biodiversity Conservation Bill and Draft Local Land Services Amendment Bill (June 2016)



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Biodiversity Reforms – Have Your Say
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Dear Sir/Madam,

Re: Draft Biodiversity Conservation Bill and Draft Local Land Services Amendment Bill

The Hunter Bird Observers Club Inc. (HBOC) is a well-respected community group based in the Hunter Region of NSW. It is the largest club or group in the Hunter Region that caters specifically for those with an interest in birds in their natural habitat, with approximately 350 members. HBOC is affiliated with BirdLife Australia; the country's largest bird conservation organisation with over 85,000 members and supporters across the country. In turn, BirdLife Australia is the national partner of BirdLife International, representing one of the world's largest nature conservation partnerships, with over 13 million supporters. HBOC is also a member of the NSW Bird Interest Group Network (BIGnet).

HBOC has two objectives in its charter:

1. *To encourage and further the study and conservation of Australian birds and their habitat; and*
2. *To encourage bird observing as a leisure-time activity.*

HBOC is very active in promoting and undertaking both objectives and at the forefront of what we do is advocating for the conservation of bird habitat, not just in the Hunter Region, but elsewhere in NSW and Australia. Objective and science-based legislation underpins effective conservation and as a result HBOC has serious concerns with the draft *Biodiversity Conservation Bill 2016* and the draft *Local Land Services Amendment Bill 2016* and how it will undermine many of the safeguards that protect biodiversity and threatened species in NSW at present; many of which have been hard fought and won over a long period of time.

One of the most glaring issues with the new proposed legislative changes has been the lack of consultation with community groups and now an extremely short period of time for the public to review and comment on the proposed changes. These are not simple amendments that occur periodically as a regular part of legislative processes; they are far-reaching, complex and will have repercussions on the viability of biodiversity in NSW into the future. At least an additional 6 months would likely be required for community groups to fully digest and interpret the proposed changes. HBOC is disappointed with the unreasonably short timeframe that public comment was afforded.

HBOC views the new legislation as regressive and will have the effect of 'undoing' many conservation initiatives and projects where many millions of dollars have been spent, supported by community goodwill and based on proper scientific research. At the present time the number of

threatened species in NSW is still increasing and the immediacy of the threat of extinction has escalated for many, such as the Regent Honeyeater, Swift Parrot, Plains Wanderer, Eastern Curlew, Curlew Sandpiper and others. Legislation to protect these and other threatened species should be becoming stronger, not weaker, in their efficacy to ensure that impacts of developments are avoided and/or managed if they cannot be avoided. HBOC is not opposed to economic development within NSW, but we maintain that the protection of biodiversity should be paramount in assessing the impacts of developments. HBOC believes that the new legislation does not provide the basis for this protection and is more aligned with other legislative amendments seen in recent times that place economic considerations in impact assessment ahead of environmental ones.

HBOC endorses the detailed analyses and comments provided by the Environmental Defenders Office (see [here](#)), the 'Stand Up For Nature' alliance (see [here](#)) and the submission made by various other BIGnet member groups and BirdLife Australia Southern NSW. Collectively, the themes in these responses concur with HBOC's stance that these reforms are regressive and will likely result in an increase in clearing of native vegetation with a net loss to biodiversity in NSW. In particular, HBOC has read and reviewed the submission made by BirdLife Australia Southern NSW. The 15 key recommendations within that submission have been included here as Attachment A.

By way of a brief summary, we share the key concerns that have been promulgated by other groups, as outlined below.

1. The repeal of the *Native Vegetation Act* and replacing Environmental Outcomes Assessment Methodology (EOAM) with self-assessable codes, exemptions and discretionary clearing.
2. Heavy reliance on flexible and indirect biodiversity offsets rather than preventing the impacts, including relaxation of 'like-for-like' offsetting requirements and watering down of in-perpetuity protection of offset areas.
3. Conservation gains aren't guaranteed in law, but are dependent on funding decisions.
4. Uncertainty in assessment methodology and discretion as to whether a consent authority actually has to apply the results, resulting in loopholes instead of clarity and consistency.
5. Public participation not being mandatory.
6. Administration of a complex regime involving the repealing three and a half Acts to create one Act, resulting in confusion between the existing Local Land Services Act, Environmental Planning & Assessment Act, the new Biodiversity Conservation Act and associated regulations, SEPPs and Codes.
7. Contradictory legislation resulting from repealing of the *Threatened Species Conservation Act* (in the *Biodiversity Conservation Bill*) and incorporating the new *Local Land Services Bill* with conflicting standards to assess impacts on biodiversity.
8. Lower environmental standards for 'Biocertification' at the landscape scale, removing the requirement to 'maintain or improve environmental outcomes'.
9. Uncertain compliance, enforcement, monitoring and reporting under the new legislation.

10. Missed opportunities for key reforms, reiterating the earlier point about the legislation being regressive, as opposed to progressive.

Of particular concern is point 2; the reliance on flexible and indirect biodiversity offsets rather than preventing the impacts, the relaxation of 'like-for-like' offsetting requirements and watering down of in-perpetuity protection of offset areas. It is important to note that the mantra of impact assessment in NSW has for many years now been to "avoid, mitigate and offset". Very rarely (if ever) is an area to be impacted "avoided" once a proposal has been submitted to a consent authority. In fact, it could be argued that "avoidance" simply refers to areas where there are no development proposals; thus effectively only leaving mitigation or offsetting the impacts of developments.

More and more emphasis is being placed on offsetting as the major "tool" for reducing or managing the impacts on biodiversity from developments where habitat is removed or modified. We refer you to the HBOC submission on the Draft "NSW Biodiversity Offsets Policy for Major Projects" in May 2014 (included as Attachment B). There, as now within the sphere of these proposed legislative changes, HBOC has major concerns with the relaxing of "like for like" offsetting requirements. We also refer you to the BirdLife Australia policy on offsetting [here](#), which HBOC supports.

Many species, populations and ecological communities in NSW can now not withstand any further loss of habitat. To suggest that removal of habitat for these highly threatened entities could be offset using the mechanisms of "Biobanking" or a "Biodiversity Fund" (where funding is channelled at ways to "benefit" the species through education or even outcomes for other species) is fundamentally flawed. Quite simply, you cannot offset the loss of something that is unique or of critical importance to a threatened species that can withstand no further loss of habitat. This is a major failing of the proposed changes in the new legislation.

As with anything that relies on market-forces, the elementary flaw in using a "Biodiversity Fund" is that economic gains of developments (and hence the functioning of the fund) are likely to be short lived and at the expense of threatened species and biodiversity as they occur without recognising the imperative to avoid (rather than offset) such losses.

Unfortunately, the underlying theme of the proposed draft *Biodiversity Conservation Bill* 2016 and the draft *Local Land Services Amendment Bill* 2016 align with assisting market forces to facilitate development, as opposed to prioritising avoiding or properly assessing the impacts on biodiversity in NSW.

We appreciate the opportunity to provide feedback on the proposed legislative changes.

Prepared by Mick Roderick, Conservation Officer, Hunter Bird Observers Club Inc.

Attachment B – BirdLife Australia Summary of Recommendations; Draft Biodiversity Conservation Bill and Draft Local Land Services Amendment Bill (June 2016)

Recommendation 1: That the public comment period extended by a period of no less than six months and include genuine engagement of the community in the design of new biodiversity legislation.

Recommendation 2: The objects of the *Biodiversity Conservation Bill 2016* must include objects and subsequent provisions to:

- a. prevent the extinction and promote the recovery of threatened species, populations and ecological communities;
- b. protect critical habitat of threatened species, populations and ecological communities; and
- c. avoid further species becoming threatened with extinction.

Recommendation 3: Prior to the clearing of any vegetation in NSW, sites must be assessed by experienced, independent Ecologists to ensure:

- a. no sedentary threatened fauna or flora species are killed or destroyed
- b. threatened species habitat is not removed or destroyed without direct offsets that meet strict criteria (see <http://www.birdlife.org.au/documents/POL-Offsets-Policy.pdf>).

Recommendation 4: Publically commit to the necessary staff and funding resources for LLS to certify and regulate vegetation management under the proposed reforms.

Recommendation 5: That the NSW Government undertake accurate modelling and calculations of the total area of vegetation that is likely to be cleared under the proposed new *Local Land Services Amendment Bill 2016*, compared to the total areas of the same that can be cleared under the current legislation (*Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995*) and publish it for the NSW public to comment on prior to the end of the submission period. We specifically wish to see:

- a. an accurate estimate of the all the native vegetation that will be cleared under the new legislation;
- b. all the pre-1990 vegetation that will likely be cleared;
- c. all the post-1990 vegetation that will likely be cleared;
- d. the total area of NSW-listed Endangered Ecological Communities and Critically Endangered Ecological Communities that will be likely cleared;
- e. the total area of *Environmental Protection & Biodiversity Conservation Act 1999* (Cth) listed Endangered Ecological Communities, Critically Endangered Ecological Communities and matters of national environmental significance that will be cleared (assuming that none of this clearing will be referred to the Commonwealth);
- f. the total volume of greenhouse emissions caused by the proposed land clearing and a clear explanation of how these emissions will be 'offset';

- g. the NSW Government undertake a formal environmental impact assessment of activities permitted under the biodiversity reform package.

Recommendation 6: That the NSW government:

- a. undertake a formal Commonwealth Referral to assess the impact of all activities permitted under the biodiversity reform package on MNES.
- b. clearly acknowledge how the proposed reforms will interact with the EPBC Act, including the possibility of inconsistency between what is an offence under the State and Commonwealth legislation.
- c. provide clear, detailed information to help land managers conserve nationally listed MNES habitat on their properties and avoid clearing that would breach the EPBC Act.

Recommendation 7: That the Minister and public authorities (including the Chief Executive) not make decisions that are inconsistent with the provisions of a Biodiversity Conservation Program as was required by s.69 of the *Threatened Species Conservation Act 1995*.

Recommendation 8: Undertake an honest and transparent economic analysis of the financial costs and gains of implementing the proposed legislation reforms.

Recommendation 9: That the government retain 'Endangered Populations' in the *Biodiversity Conservation Bill 2016*

Recommendation 10: Improve the process proposed for declaring Areas of Outstanding Biodiversity Value (AOBV) by:

- a. Aligning AOBV thinking with the Key Biodiversity Area standard which is designed to harmonise approaches to the identification of globally important sites for biodiversity.
- b. Maintaining Critical Habitat as a special category of AOBV

Recommendation 11: All proposed 'exempt wildlife' that are native birds are clearly listed and include the rationale and a strong evidence base for listing, as well as transparent plans for assessing the effectiveness of proposed management actions. BirdLife Australia is opposed to wildlife destruction that is inhumane or ill-considered. We refer the NSW Government to our pest bird management policy (<http://www.birdlife.org.au/documents/POL-Pest-Bird-mngment.pdf>).

Recommendation 12: Retain current requirements for public consultation and registers. Retain the rights of the people of NSW to challenge Environmental Planning and Biodiversity decisions in the Land and Environment Court.

Recommendation 13: The proposed reforms should be based on a hierarchy of controls by where negative impacts are avoided or mitigated. Offset should be a last resort. If offsets are used, do not allow exemptions and discounts from any offset pathways. Vegetation management and clearing assessors must be adequately trained and funded to review and assess all proposed 'offsets' and 'set asides'. The decision making process around assessment of areas of land to be cleared and the 'proposed offsets' should be publically available. See BirdLife Australia's Biodiversity Offset policy <http://www.birdlife.org.au/documents/POL-Offsets-Policy.pdf>

Recommendation 14: All threatened bird species should be listed as ‘species credits’ and not ‘ecosystem credits’. It is inappropriate to use ‘habitat surrogates’ to predict species presence on an offset site. The BAM should be revised to ensure that appropriate species experts (and where they exist, recovery team chairs) are consulted when assessing impacts on threatened species.

BirdLife is also able to provide expert advice regarding:

- a. The list of species credit species and ecosystem credit species
- b. The minimum survey methods required under the BAM to ensure adequate conservation of threatened bird species. This is particularly important for threatened woodland birds which are underrepresented in the ‘species credit’ stream.
- c. The use of ‘habitat attributes’ as a proxy for determining if threatened birds exist in Development and Biocertification sites.
- d. Ensuring any proposed offsets are proven to contain the bird species they are said to offset.
- e. Ensuring Offsets schemes deliver biodiversity gains. To do this an offset must increase the value of a site for the species likely to be impacted by development, to a degree equivalent to the values lost.

Recommendation 15: Retain the requirement to ‘maintain or improve environmental outcomes’.

Recommendation 16: Offsets must ensure there is a biodiversity gain. To achieve this, an offset must increase the value of a site for the species likely to be impacted by development, to a degree equivalent to the values lost.

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Attachment C – Hunter Bird Observers Club Submission on Draft NSW Biodiversity Offsets Policy for Major Projects



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9 May 2014

Hunter Bird Observers Club Submission on Draft NSW Biodiversity Offsets Policy for Major Projects

Hunter Bird Observers Club (HBOC) is concerned about the welfare of birds and their habitats and is well aware that declining bird populations are directly attributable to loss of habitat. Consequently, we are intensely interested in having a biodiversity offsets policy that is effective and sustainable in perpetuity.

Two aspects of the Draft Policy that are of great concern to HBOC are:

- The lack of a capacity to totally refuse developments on the grounds that they would destroy rare ecosystems or species, and/or be impossible to offset credibly;
- The acceptance in the Policy that many developments may ignore or avoid the application of genuine “like-for-like” offsetting standards.

Much of the wording of the main Draft Policy document suggests that the Policy’s purpose is more about helping developers to achieve their aims, quickly, cheaply and simply, than about working out ways to best use offsetting to aid in biodiversity conservation in NSW. Rigorous surveys and well-considered decisions on offsetting are likely to take time and should never be rushed just to please developers.

HBOC suggests that there needs to be a much stronger commitment in the Policy to implementing biodiversity harm-avoidance and minimisation strategies, to the extent of preventing some developments and relocating others, especially where threatened ecological communities and species are involved.

Where offsetting can validly be used, finding the most truly “like-for-like” offsets, or at least offsets that will materially benefit some threatened taxa *in situ*, should always be rigorously attempted. This would be an important task for a biodiversity or biobanking program manager. We are suspicious of the “supplementary measures” described in the Draft Policy, and do not see these as any sort of valid substitute for proper “like-for-like” offsets. Supplementary measures are likely to include funding of human-friendly devices such as bird hides, rather than any efforts to preserve or enhance bird habitat - HBOC deplores the use of supplementary measures that are not of direct benefit to birds and their habitat.

If the Policy were to be implemented as proposed in the draft, without major overhaul, we see three main potential dangers:

1. Many currently Threatened ecological communities and species would continue to decline over the next few decades, to extinction or extreme rarity;
2. Many currently uncommon though not Threatened species and ecological communities (and possibly some now-common ones) would decline into Threatened categories; probably a progressive occurrence with a “snowballing” effect;
3. Low quality offset areas could be increasingly accepted because they are available, with a reliance on various management actions by owners or managers that fail to restore biodiversity values lost, on these sites themselves or other sites.

The challenge for the Government and people of NSW is to work out how to use positive attributes of offsetting to enhance biodiversity conservation in this State, not to devise offsetting policy that will only serve to entrench the processes currently causing biodiversity decline. Advice from the NSW Scientific Committee should be central to the development of any revised offset policy, and should also be sought during its implementation. The policy needs to include a capacity for public input to decisions on offsetting, and rights of appeal by the public (individuals or groups) against poor decisions.



Mick Roderick
President, Hunter Bird Observers Club