



## POSITION PAPER

### LAND CLEARANCE, BIODIVERSITY AND THE DRAFT NSW BIODIVERSITY ACT

#### HERITAGE SIGNIFICANCE OF BIODIVERSITY

The Australian Natural Heritage Charter defines biodiversity – ‘Biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes diversity within and between species and the diversity of ecosystems.’

Over the last 200 years Australia has suffered the largest documented decline in biodiversity of any continent. Despite efforts to manage threats and pressures to biodiversity in Australia, it is still in decline.

Since its inception in 1945, the National Trust has lobbied for the establishment and sensitive management of Conservation Reserves and for the protection and conservation of important bushland remnants in both urban and rural situations. The Trust has listed 100 Landscape Conservation Areas on its Register, has operated for nearly 40 years an urban bushland restoration program and has made submissions in 2008 and 2009 into reviews of the Australian Environment Protection and Biodiversity Conservation Act 1999 and a submission in September 2014 to the NSW Biodiversity Legislation Review.

#### CRITICAL ISSUES WITH THE DRAFT NSW BIODIVERSITY ACT

##### The draft Act

- changes the nature of NSW biodiversity protections from the current regulatory system where the impact of development proposals is assessed with unacceptable impacts being refused and/or challenged in court to an offset based system where developments are approved if funds are paid to protect and restore biodiversity elsewhere (with no effective refusal or challenge in court).
- removes virtually all legal avenues for the public to effectively oppose developments which harm endangered wildlife.
- has lower objectives than the current acts. It's stated objectives are to maintain, not restore, biodiversity and to 'facilitate' sustainable development'.
- broadens the scale for biodiversity conservation from local to bioregional and state only. While existing declarations for endangered populations remain it would be difficult to list any in the future.
- provides for continuing habitat loss with the scale and rate of loss managed through offsetting. Developments will no longer need to consider indirect impacts such as climate impact, pollution, introduction of pests or other indirect impacts on endangered biodiversity. Instead, a payment will be made to secure a future offset for direct clearing impacts only.
- ends legal appeals, removing almost all grounds for appealing developments in court, and gives almost unlimited discretionary power to the Minister for Environment. There will no longer be avenues for appeal when environmental assessments ignore endangered species and no avenues for appeal against the merits of proposals.
- provides numerous appeal rights for those doing the wrong thing: for illegal clearing, failure to meet conservation offset actions or if refused a licence to harm a protected species.
- empowers Ministers for the Environment to determine developments as they see fit and, in the unlikely event a Minister refuses a proposal, the developer can submit it to the Premier to resolve 'as the premier thinks fit'.
- heightens the risk of corruption. The ICAC has strongly criticised the proposal for broad Ministerial powers noted above. The new Act goes further and allows for those regulating development offsets to personally invest in the same offsets they approve. This would encourage high risks of mismanagement and corruption.
- restricts public information about offsets: The Office of Environment and Heritage can restrict any information it chooses from the public register of offsets, making public oversight of the scheme impossible. OEH already restrict data on BioBanking making it impossible to see where funds for development offsets are allocated.

#### ACTION IN RESPONSE TO THE NSW BIODIVERSITY ACT EXHIBITION

The Trust will make its views known publicly and will collaborate with other conservation organisations to promote its views and achieve major re-drafting of the legislation to properly protect biodiversity.