



THE COLONG FOUNDATION FOR WILDERNESS LTD.

Friday December 15th, 2017

NSW Office of Environment and Heritage
Conservation Programs Branch
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Sydney South NSW 2000

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Dear Sir/Madam,

Submission on the Biodiversity Conservation Investment Strategy

This report should clarify how the draft Biodiversity Conservation Investment Strategy links through the *Biodiversity Conservation Act, 2016* with the Biodiversity Conservation Trust and the Biodiversity Assessment Methodology. What is to be achieved by the Biodiversity Conservation Fund – its wide-ranging social, economic and nature conservation purposes – is poorly defined. This lack of clarity could result in wide-spread rorting of this multi-million, tax-payer funded, private land conservation scheme as the Strategy also doesn't have a clear monitoring, evaluation and compliance program.

It appears that the draft Strategy will only invest government funds, not funds from offsets, gifts or donations, the latter being handled by such organisations as the National Parks and Wildlife Foundation. This program is only underpinned by the government's investment promise of \$240 million over five years, with \$70 million in ongoing annual funding, subject to performance reviews. As a result, its future is politically uncertain.

In comparison, the NSW Environmental Trust's annual acquisition funding for new national parks is just \$5 million. There is also the Saving our Species program coming in at \$20 million a year and the \$10 million this year for koala habitat, but neither of these necessarily involve reservation. National Parks acquisition is clearly the poor relation to private land and wildlife conservation funding. This inversion of past priorities has the hard-to-dismiss political benefit of propping up rural electorates in addition to any social and economic benefits of the Strategy.

National Park reservation processes can't compete with this proposed private land funding, so reserves are not going to grow where they are most needed in the central west or outback NSW, as potential lands will be set aside for private land conservation instead.

The draft Biodiversity Conservation Investment Strategy is not underpinned by clear legal principles that will ensure, for example, improvements in conservation of Endangered Ecological Communities

and nationally endangered species. Instead tax-payer funded conservation on private land is being offered without a clear legal framework to guide it. Under the draft Strategy, improvements in nature conservation will not be guaranteed in law, but will be dependent on funding decisions and the talent of those who implement it. The reliance on budgetary decisions to achieve biodiversity gains must be underpinned by an adequate legal framework if it is to prevent continued biodiversity decline.

The Strategy, for example, should prioritise the upgrading of existing non-permanent forms of private land conservation on 2,546,279 hectares, or 3% of NSW in informal reserves on private land (page 12), to improve the legal security for these areas. Writing to these land holders offering to fund a protection upgrade for these lands may be a cost-effective conservation action under the Strategy to ensure permanent legal outcomes. Without on-going funding and statutory protection, these temporarily protected lands may be cleared and investment wasted.

The decision-making discretion of those on the Biodiversity Conservation Trust will operate across a broad range of environmental, social and economic factors that will probably weaken conservation outcomes. It seems that 'rats and mice' fragments within numerous unprotected NSW landscapes where social and economic outcomes can be achieved, will be the investment priority not genuine conservation outcomes. This would be just a sop to rural electorates, not real conservation.

The strategic investment vision of a representative and comprehensive range of private land conservation agreements over 90 NSW Landscapes by 2037 has not been costed and would be well beyond the financial capacity of the NSW Government. Idealising the role of market intervention by funding private conservation instead of a sensible application of legal constraints on land clearing will fail when costs run into billions of dollars. The truth is that effective land clearing laws and practical financial incentives are both required to achieve conservation outcomes on private land.

Biodiversity Conservation Trust

The Biodiversity Conservation Fund will be allocated by the Biodiversity Conservation Trust, whose funding decisions will be guided by this draft Biodiversity Conservation Investment Strategy.

Offset funds are also managed by the Biodiversity Conservation Trust but are not part of this draft Strategy. The Trust will, however, receive large amounts of offset money.

The draft Strategy report distracts the reader to inform them that the Biodiversity Conservation Trust also plays a key role in the delivery of the NSW Biodiversity Offsets Scheme. It is responsible for sourcing biodiversity offsets on behalf of development proponents when they *choose to meet an offset obligation* by paying into the Biodiversity Conservation Fund (emphasis added, page 6).

The draft Biodiversity Investment Strategy is half-baked as the Trust's offsets role sits outside it. The draft Strategy states paying offsets into the Trust will make it *'easier for proponents to comply with the Biodiversity Offsets Scheme and will enable a more strategic approach to securing offsets across New South Wales'* (emphasis added, page 6). This money undermines biodiversity offsetting, as the proposed payments will be made in lieu of genuine like for like ecosystem offsets occurring before a development is approved. There are no red flags to protect threatened environments, no standard

requiring avoidance of impact outcomes, and so payments will become the first option of developers and major land clearers. The Biodiversity Strategy's tiered approach of avoid impacts, mitigate any remaining impacts and only when these options are either not viable or insufficient pursue an offset, will be replaced with easy to make financial payments. This ad hoc suggestion will, if implemented, accelerate the loss of biodiversity.

The draft Biodiversity Investment Strategy and its Fund will not assist genuine like for like outcomes. 'Areas under pressure from clearing for urban and other forms of development *will not be prioritised* through this process as these areas are expected to have a biodiversity offsets market operating. Indeed, private land conservation investment *should generally avoid* areas where an active offsets market is in place so as not to impact the efficient operation of these markets' (emphasis added, page 17).

The Biodiversity Conservation Investment Strategy states it will avoid areas where there is urban expansion, mining or land clearing to prioritise (other) areas where is biodiversity at risk. So it seems that only threatened, rare bushland that nobody wants may be funded for conservation management under this Strategy? These areas usually have natural protection being steep land, or having poor quality or rocky soils.

The potential for rorting this Strategy for government handouts seems high, as there is no 'additionality' provision. The Strategy needs to specify a requirement that financial resources allocated funding achieve genuine outcomes beyond those already being achieved due to the character of the site, its soils and landscape position.

Further there are many circumstances, urban bushland for example, where a local environmental plan may include, for example, endangered Cumberland Plain Woodlands that should be protected. It is unclear what the role of a Biodiversity Conservation Trust regarding the Fund should be in these circumstances.

Surely the Trust should intervene, acquiring such land and framing urban development along ecological lines for the benefit of future residents and wildlife alike. In an ideal world the Trust should operate so that ecologically important land becomes valuable for biodiversity and worthless for urban or coal development. Ideally rare trees should be more valuable in the ground than coal or real estate.

The Biodiversity Conservation Fund should not avoid coal mine expansion and urban expansion areas, it should strategically buy up environmentally sensitive land in these areas as a priority.

Four biodiversity markets

There are at least four biodiversity land markets: Developer preferred monetary offset payments for destruction threatened biodiversity; NSW Government Biodiversity Conservation Fund for investment on private land conservation; NSW Government funded reserve establishment at just \$5 million a year; and privately funded conservation schemes – e.g. Bush Heritage and Foundation for NPW. Only one, the Biodiversity Conservation Fund, is the subject of this draft Strategy, which is peculiar seeing that all these markets compete with each other for the same scraps of bushland!

One result of having these competing biodiversity markets is that the cost of rare bushland must increase.

Having advised that offsets is a separate market, the draft Strategy states that 'Despite this, there may be cases where there are strategic benefits to using private land conservation funds on neighbouring lands, to supplement the conservation protections achieved through payments generated by the NSW Biodiversity Offsets Scheme. These opportunities should be pursued where they achieve improved conservation outcomes, for example where larger areas can be protected or corridors can be established' (page 25). It is unclear what guidance this remark entails regarding future expenditure of the \$240 million in NSW Government funding. It also raises the additionality question regarding investment, and when a party would be deemed to be seeking inappropriate double-dipping or proposing a strategic investment. These market relationships need to be clarified or money will be wasted.

Coordination or at least considering the competing biodiversity markets

There is confusion between the priorities amongst these markets. When should tax-payer money be spent on funding farmers to undertake conservation management and when should land be acquired to be permanently protected in national parks and reserves. There seems to be at least potential for the Biodiversity Conservation Trust to compete with the NPWS for conservation of priority areas. The resolution of competing markets is not addressed by the draft Strategy.

Certainly NPWS identified wilderness and state-capable wilderness should be added to the NPWS estate and declared wilderness. If however such reservation were not possible, then as a stop-gap measure, acquisition by the Trust would be preferred to development or land clearing. If that was not possible perhaps Bush Heritage would have funds available. How these markets play out in the real world is something for fund managers to consider, hopefully in a cooperative manner but they are competitors.

Not a replacement for effective land clearing laws

The Fund investment strategy will not be a replacement for land clearing laws. The idea that government or private offset funds can curb inappropriate land clearing is unrealistic. Rates of land clearing will not be effectively curbed by funding biodiversity conservation.

New land clearing laws increase land clearing as farm efficiency codes will reduce bushland connectivity by facilitating the removal of individual trees and woodland patches.

In areas of outstanding biodiversity value the biodiversity investment strategy will be ineffective, as sound land clearing laws no longer exist in NSW. Paying farmers to not clear land is not going to work. For example, on the Cobar Penneplain and Mulga Land bioregions of western NSW where about \$1 billion has been spent by Direct Action, it is estimated that about 77% and 96% of all native woody vegetation will be lost respectively due to the application of the land clearing equity code. In

this context, the proposed funding is window dressing. The funds would be better spent on NPWS reserve acquisition.

None of the 571 NSW landscapes are so valuable or under reserved as to be off limits for development or clearing, as the new laws don't operate in that way. Developers can discharge offset obligations by paying into a fund and ultimately proceed with development of even critically endangered ecological communities.

No independent oversight

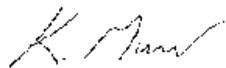
The draft Strategy should have outlined provisions for independent oversight by Fund stakeholder and advisory groups. There is some transparency through annual reporting and three and five yearly reviews, but scientific expertise, traditional, local and financial knowledge have to provide oversight to the Fund.

There also needs to be an on-line public register, with maps and tenure details, of all private land conservation schemes funded by tax-payers. Citizens should be able to report any perceived inappropriate management or clearing of protected private lands to the Trust, the OEH or to Local Land Services.

Without a public register and with at least four markets competing for the same lands there is also a risk that some land parcels will be protected multiple times under different market mechanisms. The public register would facilitate checking before a biodiversity, conservation or wildlife agreement was signed by the Trust or other biodiversity market player.

Thank you for the opportunity to comment.

Yours sincerely,



Keith Muir
Director
The Colong Foundation for Wilderness Ltd