



NSW Biodiversity and Private Conservation Laws – What's Happening?

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Private Conservation In NSW

1. Context of change
2. What are the tools?
3. Who is who?
4. What have we lost?
5. What's next?



Regent Honeyeater Source: Birdlife Australia

Context of Change

Biodiversity Conservation Bill - This replaces the: Threatened Species Conservation Act, Nature Conservation Trust Act, and parts of the National Parks & Wildlife Act

Local land Services Amendment Bill - This replaces the: Native Vegetation Act 2003, Native Vegetation Regulation 2005 and the Environmental Outcomes Assessment Methodology

Self assessable land clearing codes

Biodiversity Assessment Method – A single tool to assess impacts

Land use map – This identifies excluded, regulated and unregulated land

Priority Investment Strategy and Funding package

Continued Saving our Species Approach to threatened species

Risk based licensing for wildlife interactions

Context of change

- \$\$ for private conservation
 - \$240m over 5 years then \$70m pa
 - Climate Change Fund (\$1.4b)
- Biodiversity Conservation Trust (BCT)
- Public Register of Private Land Conservation Agreements
- Public Register of strategies included in the Biodiversity Conservation Program (regarding a threatened species or ecological community)
- Biodiversity Conservation Investment Strategy
 - To be developed asap
 - guide Government and the BCT in priority biodiversity conservation investment



Private conservation

- Three new agreement categories:
 - Biodiversity Stewardship Agreement
 - Biodiversity Conservation Agreement
 - Wildlife Refuge Agreement



1. Biodiversity Stewardship Agreements

- Minister and landholder (private or public)
- In perpetuity – can be terminated by Agreement or by Minister where the Act allows
- Undertake management actions for payment
- Biodiversity Assessment Method
- Will generate Credits for Offsets
- May be registered on title
- Prospecting and Mining can take place over Biodiversity Stewardship Land
- Minister can require mining company to further offset
- Public Authorities can carry out development on Biodiversity Stewardship Land



Image: Warkworth Coal Mine by John Krey

2. Conservation Agreements

- The BCT and landholders (private and public)
- In perpetuity or as set out in Agreement
- Typically for higher conservation value lands
- BCT can end Agreement if of the opinion it is no longer needed for conservation
- If BCT amends Agreement without the consent of the Landholder, the Landholder can terminate the Agreement
- The Minister can direct the BCT to vary or terminate Agreement if a mining approval will adversely affect the land (no compensation is payable – Mining Company may be required to pay the costs of Landowner or BCT entering onto the Agreement and Landowner may be required to reimburse the BCT for money paid under the Agreement)
- Agreements may be registered on Title
- Public Authorities can carry out development on Conservation Agreement lands and Minister can direct the BCT to vary a Conservation Agreement accordingly – if varied without landholder consent – landholder can terminate Conservation Agreement
- No compensation payable to Landholder
- Conservation Agreement has no effect on Mining or Petroleum Titles and does not prevent the granting of such



3. Wildlife Refuge Agreements

- The BCT may enter into a Wildlife Refuge Agreement with landholders (private and public) – for the purpose of conserving or studying the biodiversity of the land
- In force until terminated
 - By agreement
 - By the BCT
- May be varied by agreement
- Minister may direct the BCT to vary or terminate where a mining or petroleum authority will affect the biodiversity protected by the Agreement
- No compensation payable
- May run with the land
- Public Authorities can carry out development on Conservation Agreement lands and Minister can direct the BCT to vary a Conservation Agreement accordingly – if varied without landholder consent – landholder can terminate Conservation Agreement



Biodiversity Offset Scheme

- Biodiversity stewardship sites
 - Stewardship Agreement
 - Biodiversity Stewardship Payment (from the Biodiversity Stewardship Payment Fund)
 - Generate credits for trade
 - Development
 - purchase/retire credits
 - \$\$ in to the Biodiversity Conservation Fund – implications for the BCT and Private Conservation)
- The Minister the Environment Agency Head and the BCT may engage in offsetting by purchase, holding, transferring and retiring biodiversity credits
- The Regulations will lay down rules for offsetting
- BAM (Biodiversity Assessment Method) – established by Ministerial Order
 - Underpin the offset scheme
 - Underpin assessment of impacts of development (including land clearing)
 - Accredited assessors
 - Stewardship sites assessment reports – Development assessment reports – Biodiversity certification assessment reports

The Biodiversity Conservation Trust (BCT)

- The BCT subsumes all legal responsibilities of the NCT as it is extinguished
- Object of the BCT to protect and enhance biodiversity
 - Work with landholders to get conservation outcomes
 - Offset development
 - Provide mechanisms to achieve conservation of biodiversity
- BCT has broad Functions and Powers
- BCT has no regulatory role or particular regulatory powers



The Funds and the BCT

- Biodiversity Conservation Fund
 - BCT Fund manager
 - Money that's not other money
 - Money required in lieu of credit retirement
 - Penalties
- Biodiversity Conservation Trust Public Fund (DGR status)
 - BCT Fund manager
 - not for profit fund
- Biodiversity Stewardship Payments Fund
 - BCT may be the Fund Manager
 - Credit retirement
 - Investment returns
 - Money to Landholders under a Biodiversity Stewardship Agreement



Photo: Riverina Landcare Network

What have we lost?

- Legal Test - Maintain or improve environmental outcomes
- EOAM
- The NCT
- Diverse mechanisms
- Separation from private conservation and offsetting



What's next?

- The new Biodiversity Conservation Regulation
 - needs to create red lights for development that impacts on critically endangered species
 - Recommend amendments to local land service regulations to ensure they prevent a return to broad scale land clearing.
- Testing the new Biodiversity Assessment Method, which will determine how the impacts of development on biodiversity are managed.
- A new State Environmental Planning Policy that is going to decide the fate of urban vegetation and biodiversity.
- A new Regulatory Map which will decide what vegetation will be regulated and what areas will be unregulated.
- Investment Strategy
- Surprises and unanticipated outcomes