

NSW STATE GOVERNMENT DRAFT BIODIVERSITY CONSERVATION BILL 2016 & DRAFT LOCAL LAND SERVICES AMENDMENT BILL 2016

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| ATTACHMENTS: | 1. DRAFT SUBMISSION – DRAFT BIODIVERSITY CONSERVATION BILL 2016 & DRAFT LOCAL LAND SERVICES AMENDMENT BILL 2016 |
| RESPONSIBLE OFFICER: | PETER CONROY - INFRASTRUCTURE & PLANNING DIRECTOR |
| AUTHOR: | SALLY HAMILTON – ENVIRONMENT MANAGER |
| CITY STRATEGY LINK: | 2.1.1 CONSERVE AND MAINTAIN WILLOUGHBY'S NATURAL ECOSYSTEMS |
| MEETING DATE: | 14 JUNE 2016 |

Purpose of Report

The purpose of this report is to seek Council's endorsement to make a submission to the State Government's *Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016*.

Background

In June 2014 the NSW State Government commissioned an Independent Panel to conduct a review of the *Native Vegetation Act (2003)*, *Threatened Species Conservation Act (1995)*, *Nature Conservation Trust Act (2001)* and parts of the *National Parks and Wildlife Act (1974)*.

Following the review the Government agreed to implement all 43 recommendations from the Panel.

As a consequence the Government will repeal the *Native Vegetation Act (2003)*, *Threatened Species Conservation Act (1995)*, *Nature Conservation Trust Act (2001)* and parts of the *National Parks and Wildlife Act (1974)* and introduce the new *Biodiversity Conservation Act* and amended *Local Land Services Act*.

The NSW State Government has invited written submissions on its *Draft Biodiversity Conservation Bill 2016*, *Draft Local Land Services Amendment Bill 2016* and supporting tools by 5pm on 28 June 2016.

The Government aims to introduce the legislation into the Parliament in October 2016. Subject to Parliament passing the proposed legislation, the Government will commence the new laws in two stages in 2017 and start the full legislative changes from 1 July 2017.

This report outlines a submission on the *Draft Biodiversity Conservation Bill 2016* and *Draft Local Land Services Amendment Bill 2016* for Council's consideration.

Discussion

Over the last decade Willoughby has recorded an increase in wildlife species living in and returning to the area. As such Council has a real interest in continuing the momentum of nature conservation and vegetation management.

Willoughby is home to over 340 hectares of bushland that consist of significant and threatened plant and wildlife communities. Bushland within the Willoughby local government area has strong and direct connections to both the Lane Cove National Park and Garigal National Park which is also connected to the larger Ku-ring-gai Chase National Park. Willoughby's connection to Middle Harbour provides habitat for marine species and connectivity to Sydney Harbour.

Furthermore, Willoughby residents are strong supporters of protection of the natural environment and contribute financially via an environment levy which provides an annual income to Council of over \$5 million annually for on-ground projects in and around bushland reserves. These reserves are highly valued for the numerous benefits they confer on local communities including strong bushcare program which supports fifty volunteer Bushcare groups with over 300 volunteers who contribute around 4,500 hours annually.

The existing legislation has strong principles, practices and procedures developed over time to protect native vegetation. It has been described by *WWF Australia* as having achieved world class standards with over 4 million hectares of native vegetation protected. At the same time farmers have described it as being highly bureaucratic and that reduces productivity.

The Government has suggested that the new reforms:

- will remove red tape and allow land owners to work, manage and protect their own land;
- allow farmers to undertake legitimate land clearing and improve agricultural production.

Native Vegetation Regulatory Map

A new native vegetation regulatory map is being developed in association with the new *Draft Biodiversity Conservation Bill 2016* and *Draft Local Land Services Amendment Bill 2016*. The map will only apply to rural areas and will categorise land into three types:

- **Exempt Land** (clearing of land is exempt from the new framework, meaning no restrictions).
Types of land that it will include:
 - Land cleared of native vegetation prior to 1 January 1990 or lawfully cleared since
 - Grassland with low conservation value
 - Biodiversity certified land (land currently certified under the existing Act and part of an existing development application).
- **Regulated Land** (clearing of vegetation can occur under the *Local Land Services Act*).
Types of land that it will include:
 - Land that has not been lawfully cleared since 1 January 1990
 - Land subject to a private land conservation agreement or has been conserved with public funds
 - Vulnerable land, such as steep land at risk of erosion
 - Land that has been unlawfully cleared
 - Grassland with high conservation value
 - Land with environmental features subject to other regulations, such as coastal wetlands, littoral rainforests, Ramsar wetlands.
- **Excluded Land** (the land management framework does not apply and clearing is regulated under the *Environmental Planning and Assessment Act 1979* and other legislation such as national parks and forestry legislation).

Land categorised as Excluded Land will now require development consent under Part 4 of the *Environmental Planning and Assessment Act (1979)* and will apply uniformly across the State to all types of development.

State Environmental Planning Policy and Development Control Plan

Land in Sydney local government areas, and land across the State in urban zones, E2, E3 and E4 and R5 zones under Local Environmental Plans, will be covered under a new State Environmental Planning Policy and a comprehensive model Development Control Plan. These are currently being developed by the NSW Department of Planning and Environment.

It has been suggested that the new State Environmental Planning Policy will replace existing Council Tree Preservation Orders. However trees with amenity and heritage value will still be protected by Councils. It is important that Council continues to protect significant trees within the Willoughby area that have a Tree Preservation Order. The proposed State Environmental Planning Policy and Development Control Plan will be the subject of separate public consultation.

NSW Biodiversity Offsets Scheme

Under the new State Environmental Planning Policy, if a development triggers 'serious or irreversible impacts', it will be subject to assessment under the NSW biodiversity offsets scheme developed by the Office Of Environment and Heritage. However the specific details of the new State Environmental Planning Policy are uncertain, particularly the clearing threshold to trigger an assessment.

Existing tools for biodiversity assessment and offsetting will be consolidated into one single Biodiversity Assessment Methodology. Concerns have been expressed that the new proposed Act is focussed on offsetting biodiversity impacts rather than prevention. The proposed biodiversity assessment methodology is significantly weakened with no direct like-for-like offsetting requirements and has the option to pay money in lieu of an actual offset. This may result in net loss of certain threatened species and communities. By not replacing lost vegetation with the same species from the same ecological community, sensitive and endangered plant communities, and the wildlife that depend on them, may be lost.

Local Land Services Amendment Bill 2016

The new *Local Land Services Amendment Bill 2016* consists of self-assessable codes, exemptions and discretionary clearing. It contains no clear environmental baselines, aims or targets, no ban on broadscale clearing, no mandatory soil, water and salinity assessment, and no 'maintain or improve' standard to ensure environmental outcomes. It is likely that this will result in an increase in clearing in NSW.

Biodiversity Conservation Bill 2016

The new *Biodiversity Conservation Bill 2016* is highly likely to have a negative impact on the State's biodiversity values as it will be easier for land owners to remove native vegetation. A major concern relates to the ease with which land owners may be able to remove small stands of old remnant vegetation in close proximity to existing agricultural land. Removal of remnant native vegetation is likely to result in more fragmentation of an already highly fragmented landscape and reduce the connectivity of wildlife habitats.

The past review identified that there should be a focus on conserving biodiversity at a regional or State scale. As mentioned previously there is genuine concern that the new *Biodiversity Conservation Bill 2016* will increase fragmentation and will reduce the connectivity of landscapes and the ability of native wildlife to move freely within and between rural and urban areas.

Policy Implications

The proposed *Draft Biodiversity Conservation Bill 2016* is inconsistent with Council's objectives to protect and enhance biodiversity as stated in the *Willoughby City Strategy (2013)* and the *Urban Bushland Plan of Management (2014)*.

Conclusion

While the reduction of red tape or obstacles for farmers is seen as a positive outcome, it should not come at the expense of the entire State's biodiversity values. Willoughby values the protection of vegetation in the Sydney region and throughout all of NSW for present and future communities to enjoy.

OFFICER'S RECOMMENDATION

That Council:

- 1. Make a submission in respect of the *Draft Biodiversity Conservation Bill 2016 & Draft Local Land Services Amendment Bill 2016*, alerting the NSW Government to its concerns in relation to :**
 - a. the potential for broad area clearing**
 - b. the need for planting offsets to be 'like for like'**
 - c. the need for sensitive plant communities and habitat corridors to be protected**
 - d. the lack of detail available and/or still under development in relation to the key elements of the new Act and associated documents.**
- 2. Delegate to the General Manager the finalisation of the submission to the NSW Government in relation to the *Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016*.**

ATTACHMENT 1 - Draft submission - Draft Biodiversity Conservation Bil...