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29 April, 2009

Natural Resources Commission
GPO Box 4206
Sydney NSW 2001

By email: nrc@nrc.nsw.gov.au

To whom it may concern,

Re: Submission on the review of the Environmental Outcomes Assessment Methodology

Thank you for the opportunity to make a submission on the review of the Environmental Outcomes Assessment Methodology (EOAM), established under the *Native Vegetation Regulation 2005*.

The Environmental Defender's Office (NSW) (EDO) is a community legal centre specialising in public interest environmental law. We provide legal advice and assistance to individuals and community groups who are working to protect the natural and built environment.

Our comments are based on a very brief review of the proposed changes to the EOAM and are preliminary comments. We were not aware that the proposed changes had been finalised until very recently. As such, we have not had the opportunity to consider the proposed changes in detail.

Our comments are set out below.

Review panel report not made publicly available
A review panel was established to make recommendations on changes to the EOAM. We presume that the review panel prepared a report to the Department of Environment and Climate Change (DECC), and it was our understanding at the beginning of the review process that this would be publicly exhibited. To improve transparency, we believe this report should have been made publicly available. Can DECC provide reasons as to why the report was not made publicly available?

Ability of the EOAM to properly value biodiversity
While we generally support the use of assessment methodologies such as the EOAM over previous situations (improved objectivity, consistency and transparency), a key broad issue with such methodologies is whether they properly value the biodiversity at a site. For example:

- Do the 10 site attributes used to measure Site Value best determine the value of a site for the majority of species, or will some species or groups miss out?

- Does the methodology give appropriate weight to site attributes relative to each other or to Site Value relative to Landscape Value in determining the biodiversity value of a site?

It is unclear to what extent this review evaluated whether the EOAM properly values biodiversity at a site. It is also unclear to what extent the EOAM has been tested and monitored over the four or so years of its operation to provide the data needed to undertake such an evaluation.

On-going independent and systematic testing and monitoring of the EOAM across different sites and landscapes is vital to the ecological integrity of the EOAM and the results of such testing and monitoring should be considered in reviews such as this one. Without such testing, sites that are actually of highest value to biodiversity may be being lost over sites of lower value.

We are aware of one recent study (Weinberg et al, 2008),[1] which focuses on the ability of a number of assessment methodologies, including BioMetric, to properly predict vertebrate species richness at a site, which would be particularly relevant to this review. It is unclear whether this study has been considered in this review.

Use of local data (item 4)
The current EOAM allows a tool user to override the data in the Threatened Species Profile Database (TSPD) in relation to the estimated percentage increase in population that can be expected in response to a proposed management action (the proposed changes do not affect this).

It appears to us that re-estimating the percentage increase in population due to a proposed management action would be highly subjective and subject to much uncertainty. We would like DECC to be clearer on what sort of evidence or data would be required to support the use of more appropriate local data in these circumstances.

Increased flexibility in relation to Regional Value scores (item 6)
In cases where the vegetation type to be cleared is ≤ 70% cleared, the proposed changes allow for the offset site to be in a vegetation type with a % cleared value up to 10% lower than that of the % cleared value of the vegetation type at the clearing site.

While allowing for greater flexibility around Regional Value may be appropriate to some extent,[2] we believe that the Regional Value score is a very important component of the EOAM because it aims to protect a diversity of vegetation (habitat) types across a region. Protecting a diversity of habitat types is likely to be a robust strategy to combat the impacts of climate change on biodiversity.[3]

In the development of the EOAM, DECC has consistently referred to the importance of retaining at least 30% of each vegetation type within a region as this is an important 'threshold' below which biodiversity quickly declines. The proposed changes to the EOAM will allow less common

[1] Weinberg A, Kavanagh R, Law B, Penman T (2008) 'Testing biodiversity toolkits – How well do they predict vertebrate species richness'? NSW Department of Primary Industries, Beecroft, Sydney.

[2] For example, Weinberg et al (2008) found that Regional Value is poor at predicting the vertebrate species richness of a site.

[3] Dunlop M and Brown PR (2008) *Implications of climate change for Australia's National Reserve System: A preliminary assessment. Report to the Department of Climate Change* Department of Climate Change Canberra, Australia.

vegetation types (e.g. 70% cleared) to be offset with more common vegetation types (e.g. 60% cleared). The changes effectively mean that the 30% 'threshold' for each vegetation type has been reduced to 25%. This is because the changes will allow clearing of vegetation types that are 70% cleared, but on average, offsets for this clearing will be in more common vegetation types (because they will be easier to find). Because % cleared values for vegetation types are in increments of 5%, this effectively means that only vegetation types ≥ 75% cleared will be assured protection. This could be addressed by modifying the proposed changes to state that increasing flexibility for the Regional Value score can occur where the vegetation type is < 70% cleared (not ≤ 70% cleared).

Removing the requirement to assess percent native vegetation cover in 10 ha circle (item 22)
The proposed changes include removing the requirement to assess percent native vegetation cover in a 10 ha assessment circle around the site and modifies the categories of assessment for this component of the EOAM from large intervals (e.g. 0-10%, 11-30%, etc) to 10% intervals.

We support replacing the larger intervals with smaller 10% intervals if it is possible to be that accurate in undertaking the measurements (based on a visual estimate). However, no adequate justification is provided for removing the 10 ha assessment circle and we are unclear what the implications of this change are likely to be for biodiversity. This proposed change should be supported by evidence to show that the 10 ha assessment circle is unnecessary in terms of properly valuing the biodiversity value of the site or that the benefits of removing the 10 ha assessment circle outweighs any costs (e.g. by reference to a report such as the Weinberg et al, 2008 report or similar).

Additional points for offsetting within a riparian area (item 33)
The proposed changes include changes to the scoring of points for offsetting within riparian areas. We support this change, as it appears that the presence of water (e.g. riparian zones or dams) is an important habitat requirement of many fauna groups and are likely to have a strong influence on fauna species richness at a site.[4]

Swapping Landscape Value score for Site Value score (item 34)
In cases where the Site Value score at the offset site is more than the Site Value score at the clearing site, the proposed changes allow the extra score to contribute towards the Landscape Value score at the offset site (up to a maximum of 12 points) in order to meet the Landscape Value offset rule, where the landscape and vegetation type on the clearing site is ≤ 30% cleared.

Generally, we are not in favour of allowing Site Value to offset Landscape Value (we recognise that BioBanking also allows this). Such an approach means that the EOAM is less encouraging of offsets being located in well connected landscapes or large patches, which over time may result in landscapes with lower connectivity and smaller patches compared to if this proposed change was not made (although we recognise the extent to which this occurs will be limited by the associated rules). Furthermore, it appears that the Landscape Value score is more influential than the Site Value score in predicting species richness for some groups of species (vertebrates),[5] which suggests that this

[4] Weinberg A, Kavanagh R, Law B, Penman T (2008) 'Testing biodiversity toolkits – How well do they predict vertebrate species richness'? NSW Department of Primary Industries, Beecroft, Sydney.

[5] Weinberg A, Kavanagh R, Law B, Penman T (2008) 'Testing biodiversity toolkits – How well do they predict vertebrate species richness'? NSW Department of Primary Industries, Beecroft, Sydney.

proposed change may not be appropriate. In addition, it is likely that under climate change, it will become even more important to protect large patches of vegetation and well connected landscapes.[6]

Thinning (items 55, 56 etc)
The proposed changes mean that thinning is now generally treated in a similar way in the eastern Catchment Management Authority (CMA) regions to the western CMAs (although the types of vegetation formations and genera that are able to be thinned in eastern CMAs are more restricted).

In cases where the stem densities in the higher size classes are already below benchmark densities, we would like to see the EOAM require that stem densities in the smaller size classes be retained above benchmark densities to ensure that benchmark densities are attained in the larger size classes in the future.

In addition, the provision allowing size classes of the same age cohort to be grouped (item 72), the smaller size class will be preferentially thinned, meaning that over time that particular size class will never attain benchmark density in any size class. We would like to see the provision allowing grouping of size classes removed from the EOAM.

Change in definition of local population (item 100)
The proposed changes modify the meaning of the term 'local population' to be either the population that occurs on the property or within a 100 ha radius or 1,000 ha radius of the site, as specified in the TSPD. We cautiously support this change as it makes greater ecological sense to define the 'local population' based on home ranges (fauna) rather than on site property boundaries. However, it is vitally important that the meaning of the term is clearly and appropriately defined for each species in the TSPD. In our experience, the term 'population' has caused problems when applied to the 7 part test process under the *Environmental Planning and Assessment Act 1979* as well as when applied under the *Environment Protection and Biodiversity Conservation Act 1999*. The term has been interpreted inconsistently, and the definitions have allowed some consultants to define populations over very large scales, which makes it easy to argue that impacts are not significant.

We thank you again for the opportunity to make a submission. Please feel free to contact the writer if you would like to discuss any of these comments further.

Yours sincerely
Environmental Defender's Office (NSW) Ltd

Tom Holden
Scientific Director

[6] Heller N and Zavaleta E (2009) 'Biodiversity management in the face of climate change: A review of 22 years of recommendations *Biological Conservation* 142 14-32.