



# environmental defender's office new south wales

**Submission on the Environmental Outcomes  
Assessment Methodology under the  
*Native Vegetation Act 2003***

4<sup>th</sup> February 2011

The EDO Mission Statement:

*To empower the community to protect the environment through law, recognising:*

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the importance of fostering close links with the community*
- ◆ *the fundamental role of early engagement in achieving good environmental outcomes*
- ◆ *the importance of indigenous involvement in protection of the environment*
- ◆ *the importance of providing equitable access to EDO services around NSW*

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**Submission on the proposed changes to the Environmental Outcomes  
Assessment Methodology under the  
*Native Vegetation Act 2003***

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide comment on the proposed amendments to the Environmental Outcomes Assessment Methodology (EOAM) under the *Native Vegetation Act 2003* (NV Act).

The EDO strongly supports the intent of the NV Act to end broadscale clearing of native vegetation unless it maintains or improves environmental outcomes, and we have been involved in advising on the development of the regulatory scheme since 2003. We strongly support the use of an objective and rigorous EOAM to assess all clearing proposals.

We recognise that the scheme must provide a practical and timely process for negotiating property vegetation agreements (PVPs) that result in maintained or improved environmental outcomes. In some circumstances, assessments may necessarily take some time in order to be accurate. The new draft chapter of the EOAM proposes a streamlined assessment for 5 categories of vegetation. While there may be areas of the assessment process that could be made more efficient (and user friendly for both CMA officers and landholders), the EDO is concerned that the fast tracking of assessments for the 5 categories is designed to meet an application assessment timeframe goal rather than an ecological goal as required by the Act.

The proposed categories are broad, meaning a significant amount of vegetation, including for example, endangered ecological communities, could avoid the rigorous assessment that has underpinned the integrity of the scheme since 2005. In making this submission, EDO notes that recommendations from contemporary scientific literature, especially concerning paddock trees, have not been incorporated into the proposed Chapter 8. We incorporate some of the most relevant literature in our submission, but note that more recent and ongoing research may provide more detailed information.

We make comment on the proposed categories and three step process for streamlining below, followed by general comments on the proposed chapter. We greatly appreciated the opportunity for the EDO Scientific Officer to attend the 'Streamlining PVPs' workshop convened by DECCW in Orange, 27-28<sup>th</sup> January, and found the discussions at the workshop very useful in getting a better understanding of the proposal and informing this submission. We would be interested to be involved in any further modelling or field testing.

**Step 1: Does the native vegetation proposed to be cleared fall into one of 5 vegetation categories?**

It is proposed that the streamlined assessment be available for 5 categories of vegetation:

1. Low condition including paddock trees
2. Scattered paddock trees and clumps of trees not in low condition
3. Not viable or low viability vegetation that is not in low condition and is overcleared vegetation
4. The Mitchell landscape and vegetation type are 10% cleared or less cleared
5. Small areas that are part of larger areas of native vegetation.

We address each of these categories in turn.

### ***1. Low condition including paddock trees***

Clause 8.3 provides that native vegetation in “low condition” means:

- Native woody vegetation:
  1. with an over-storey percent foliage cover that is less than 25% of the lower value of the over-storey percent foliage cover benchmark for that vegetation type; and where
  2. a) less than 50% of the groundcover vegetation is indigenous species;
  - b) more than 90% of the area is ploughed; or
  - c) more than 90% of the area is fallow; or
  - d) 90% or more of the groundcover vegetation is regrowth but not protected regrowth
  
- Native grassland, wetland or herbfield vegetation where:
  - a) less than 50% of the groundcover vegetation is indigenous species; or
  - b) more than 90% of the area is ploughed; or
  - c) more than 90% of the area is fallow; or
  - d) 90% or more of the groundcover vegetation is regrowth but not protected regrowth

The EDO has concerns that allowing a streamlined assessment for low condition vegetation will place additional pressure on assessors to reclassify vegetation from ‘not in low condition’ to ‘low condition’, and avoid comprehensive assessment under Clause 27 of the *Native Vegetation Regulation 2005* (and the related protocol). The lure of a streamlined assessment for low condition vegetation may also provide an incentive for landholders to *not* manage native vegetation which is close to being classified as ‘in low condition’, allowing degradation to occur in order to pursue a faster assessment for its eventual clearing.

EDO notes that by the definition provided in 8.3, all paddock trees are considered low condition<sup>1</sup>. However, we do not agree that a paddock tree necessarily constitutes vegetation in low condition and do not agree that all paddock trees should be assessed according to the “native vegetation in low definition criteria” set out in 8.3. The reason being, that apart from the inherent value of paddock trees for biodiversity, single paddock trees, having experienced a period with relatively low competition from surrounding trees, can often be strong, healthy and larger than naturally expected if the tree was growing amongst other trees. We recognise that older paddock trees naturally senesce, and that farm managers may view the removal of paddock trees as assisting a natural process. However, EDO does not support the pre-emptive removal of paddock trees merely because they are ageing and will one day die. Literature suggests that in south eastern Australia, the temporal trend for paddock trees to naturally mature and senesce is between 40 and 185 years<sup>2</sup>, and we recommend that instead of premature removal, farm managers engage in appropriate (and genuine<sup>3</sup>) replacement activities, discussed below against appropriateness of offsets.

EDO is in favour of paddock trees being retained under most conditions, due to the direct link longitudinal landscape studies have drawn between increased species mortality and the

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<sup>1</sup> As discussed at the Streamlining PVPs testing workshop, Orange 27 & 28 January 2011.

<sup>2</sup> Dorrough, J & Moxham, C (2005). “Eucalypt establishment in agricultural landscapes and implications for landscape scale restoration”. *Biological Conservation* **123** (2005): 55-66.

<sup>3</sup> Genuine being an offset that *replaces* the tree in perpetuity rather than an offset that allows for incremental loss of trees as existing trees age and become assessed as “low condition”.

loss of paddock trees<sup>4</sup>, and the fact that they serve as ‘keystone structures’: they provide a disproportionately large contribution to ecosystem function<sup>5</sup>. This submission addresses several aspects of the value of paddock trees against the relevant section of the proposed Chapter 8. With regards to Category 1, EDO maintains that should paddock trees be classed as “low condition”, it should be because of specific criteria that assesses single trees as opposed to the more broad assessment of ‘vegetation’. We understand that at times paddock trees may be in low condition, and suggest the expansion of low condition to include the following (or similar) that would apply to paddock trees:

Single paddock trees where:

Visible damage to root stock, trunk or branches of the tree indicates that the tree is unlikely to survive >5 years from the time of assessment by a qualified assessor.

However we note that landscape restoration studies have shown that the probability of eucalypt regeneration (from dispersed seeding) decreases dramatically as the distance from paddock trees or remnant vegetation increases<sup>6</sup>. We also note that the proposed Chapter 8 allows for the removal of paddock trees to be offset with revegetation, and discuss the implications of this in the section addressing offsets.

## ***2. Scattered paddock trees and clumps of trees not in low condition***

The EDO is strongly concerned at the breadth of this category by the inclusion of “clumps” in addition to scattered paddock trees. The note in clause 8.3 defines “clump” as “A clump of native trees usually ranges in area from 0.25 hectares to 10 hectares.” The proposed category applies to “clump or clumps”. The use of the plural means for example that if 3 clumps were close together then broadscale clearing of 30 hectares could qualify for streamlined assessment. This means that significant amounts of good condition vegetation could qualify under this category and avoid full detailed assessment. In some areas of NSW, remaining native vegetation is comprised almost entirely of single trees or small patches of trees, with patches usually less than 1 hectare in size<sup>7</sup>. Furthermore, the “clumps” could be endangered ecological communities, which are often highly fragmented. For example, Gibbons and Boak calculated that in woodlands dominated by Blakely’s Gum and Yellow Gum<sup>8</sup>, 54% of remnant patches were less than 1ha, and if they were cleared, the extent of that woodland type would be reduced from 7.4% to 3.4% of its pre-1750 distribution<sup>9</sup>. The streamlined assessment potentially provides for the clearing of significant amounts of endangered ecological communities, if they exist in small patches or ‘clumps’. Also, the note is a guideline only and therefore difficult to enforce.

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<sup>4</sup> For example, see the studies referenced in: Fitzsimons, J.A & Maron, M. (2007). “Agricultural intensification and loss of matrix habitat over 23 years in the West Wimmera, south-eastern Australia” Biological Conservation. **135** (2007): 587-593.

<sup>5</sup> Fitzsimons, J.A & Maron, M. (2007). “Agricultural intensification and loss of matrix habitat over 23 years in the West Wimmera, south-eastern Australia” Biological Conservation. **135** (2007): 587-593.

<sup>6</sup> Dorrrough, J & Moxham, C (2005). “Eucalypt establishment in agricultural landscapes and implications for landscape scale restoration”. Biological Conservation **123** (2005): 55-66.

<sup>7</sup> Oliver, I., Pearce, S., Greenslade, P.J.M. & Britton, D.R (2006). “Contribution of paddock trees to the conservation of terrestrial invertebrate biodiversity within grazed native pastures”. Austral Ecology **31**:1-12.

<sup>8</sup> White Box Yellow Box Blakely's Red Gum Woodland is listed as an endangered ecological community under the TSC Act.

<sup>9</sup> Gibbons, P. and M. Boak (2002). "The value of paddock trees for regional conservation in an agricultural landscape." Ecological Management & Restoration **3**(3): 205.

A recent study on *Eucalyptus spp* in agricultural areas found that significant improvements in conservation values would be made by changing management practices around paddock trees and small remnants, allowing them to regenerate naturally, rather than focusing solely on larger remnants (where regeneration is generally already occurring)<sup>10</sup>. The authors caution that without a change in the protection and management of small remnants, there will be 'considerable loss of remnant native vegetation'. The use of a streamlined methodology for clearing of paddock trees and remnants makes it simpler and faster to clear these 'clumps'. Additionally, trees used as offset are currently required to be managed to meet benchmark over-storey cover or benchmark number of hollows. This could be done without allowing any regeneration to occur, for example by allowing existing trees to mature but still allowing grazing beneath them. The methodology should require that, as well as aiming to meet the current benchmarks, remnants and individual trees must be managed to support natural regeneration.

The proposed methodology also allows the removal of young age classes of vegetation, including EECs. The methodology requires offsets for trees with 15cm hollows but does not account for those with smaller, or no, hollows, but the potential to develop them. The offsetting provisions in the streamlined methodology also allow hollow-bearing trees to be offset with plantings of new trees; this may mean replacing a 100 year old tree with plantings which will not produce hollows for decades. Until those new trees provide the same hollow-bearing habitat as those cleared (potentially 100 years in the future), the offset does not maintain or improve environmental outcomes. This is despite the fact that 'Loss of hollow trees' has been listed as a Key Threatening Process under the TSC Act<sup>11</sup>. The long time lag between replanting or protecting young trees and the age at which they will develop suitable hollows, illustrates the need for offsets to demonstrate their biodiversity benefit before they can be used.<sup>12</sup> Any offsetting should therefore require that trees representative of all age classes (ie. 1A, 1B and 1C) must be retained to ensure there is a constant supply of hollows over time; without this, the maintain or improve test is not met.

### ***3. Not viable or low viability vegetation that is not in low condition and is overcleared vegetation***

Category 2 and 3 involve similar concepts, are similarly defined, and may be confusing unless the criteria are more specifically described.

The draft chapter provides that:

#### ***Clause 8.3 Definitions***

*Not viable or low viability:* The viability of an area of native vegetation depends on its condition, patch area and isolation, and surrounding land use(s). Vegetation that is proposed to be cleared is assessed as not viable or of low viability according to one or more of the following criteria:

a) the current or known future land uses surrounding the vegetation to be cleared reduce its viability or make it unviable.

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<sup>10</sup> Weinberg, A., P. Gibbons, et al. (2011). "The extent and pattern of Eucalyptus regeneration in an agricultural landscape." *Biological Conservation* **144**(1): 227-233.

<sup>11</sup> <http://www.environment.nsw.gov.au/threatenedspecies/KeyThreateningProcessesByDoctype.htm>

<sup>12</sup> Bekessy, S. A., B. A. Wintle, et al. (2010). "The biodiversity bank cannot be a lending bank." *Conservation Letters* **00**: 1-8.

- b) the size and connectedness (with other native vegetation) of the vegetation to be cleared is insufficient to maintain its viability.
- c) the condition of native vegetation to be cleared is substantially degraded resulting in loss of or reduced viability.

Notes:

- (i) Relatively small areas of native vegetation (eg patches of a few hectares or less) surrounded or largely surrounded by intense land uses such as intense cropping can be unviable or have low viability because of disturbances from the cropping including edge effects.
- (ii) Relatively small areas of isolated native vegetation (eg patches of a few hectares or less that are more than several hundred metres from the next patch of native vegetation) can be unviable or have low viability.
- (iii) Native vegetation in degraded condition can be unviable or have low viability. Degraded condition means substantially outside benchmark in the majority of vegetation condition variables listed in 5.3.4, but does not necessarily meet the strict definition of 'low condition'. Vegetation that is substantially outside benchmark due to recent disturbance such as a fire or a prolonged drought is not considered degraded.

#### **Clause 8.4.1 Vegetation categories for streamlined assessment**

...

3. Native vegetation (other than native vegetation that is in low condition) that has been assessed as not viable or of low viability in accordance with the criteria for not viable or of low viability in 8.3. Derived grasslands are only included in this vegetation category if :

- a) they are below 90% of the benchmark value for native species richness for the vegetation type, or
- b) they are in Hunter Central Rivers CMA area or Northern Rivers CMA area.

Notes:

- (i) Species richness is assessed against the benchmark for the original vegetation type.
- (ii) Native vegetation that is not viable or has low viability is assessed by the CMA according to the definition of *not viable or low viability*. The CMA is to keep a written record of each assessment of *not viable or low viability vegetation* for approved PVPs in this vegetation category that are assessed under this Chapter.
- (iii) Native vegetation in vegetation category 3 may be overcleared or not overcleared vegetation (as defined in 8.3).
- (iv) Additional environmental benefits as described 8.4.3.3 are required when the vegetation in category 3 that is proposed to be cleared is overcleared vegetation (as defined in 8.3).

We strongly disagree with this definition of 'viable', and question the intent of the definition, as it appears to strongly favour the legitimization of further clearing of native vegetation, in contravention of the objects of the NV Act. It is not clear to EDO why the definition of viability should be distinct from the definition of low condition.

The question of a tree or trees being viable *to do what* is not defined. Does viability refer to the ability of the tree/s to survive? For one year, or 10 years? 50 years? Does viability refer to the ability of the tree/s to control soil erosion or salinity? Biodiversity? In addition, we reject the criteria proposed to assess vegetation as not viable or low viability on the following grounds:

- a) *Current or known future land uses*: this criteria makes it acceptable for farming practices to disregard the inherent biodiversity value of paddock trees. This criteria allows a farm manager to suggest that 'future land uses' will render the tree unviable. EDO supports the development of efficient agricultural practices, but we do not agree that these practices automatically exempt farm managers from the objects of the NV Act. Given the increasing trend towards precision agriculture and specifically pivot irrigation systems, EDO is concerned that this criteria has been included to allow

farmers to clear native vegetation without restriction, and that by definition this criteria will target single or clumped paddock trees, which, as discussed throughout this submission, form a valuable and essential part of the landscape. We submit that this criteria is inconsistent with the objects of the Act.

- b) *Size and connectedness* (with other native vegetation): The presence of mature paddock trees in agriculturally landscapes indicates that single trees are able to survive in agricultural landscapes for many decades and in some cases several centuries until maturity. EDO assumes the ‘size and connectedness’ criteria has been included as an indicator of the viability of single trees to provide connectivity in the landscape, that is, to provide fauna species with a link between areas or patches of native vegetation. We strongly support the principles of connectivity, however do not agree that the ‘size and connectedness’ criteria accurately represents the movement of species in a wider landscape. Studies addressing paddock trees and their contribution to landscape connectivity have shown that single trees at a distance of greater than 200m from a patch (2-5 trees) of native vegetation, can provide essential foraging, nesting and protection for wider ranging bird species<sup>13</sup>. We caution against assuming the typical ‘linear’ strip vegetation corridor is the only or in fact the best way to provide connectivity in the landscape. In a highly cleared agricultural landscape, where a linear strip corridor is not possible, or will not mature for several decades (in the case of revegetation), we are of the opinion that paddock trees provide fauna with an essential stepping stone between remnant vegetation, and the loss of paddock trees will result in reduced opportunities for many species to find food or shelter. In fact, scientific literature shows that animals are “more likely to use paddock trees when these were remote<sup>14</sup> from woodland patches<sup>15</sup>” In addition, the inclusion of this criterion in the Category which includes trees “Not in Low Condition” implies that not only single paddock trees, but (undefined areas or) patches of trees with foliage cover >25% of the over storey benchmark can be cleared.
- c) *Condition substantially degraded*: we agree that a criterion assessing the degradation of individual trees is appropriate. However as discussed above against the definition of low condition, we suggest that this criterion be used to assess whether vegetation is in low condition, and the result of that assessment be used to assess vegetation classified as Category 1.

The object of the proposed Chapter 8 is to provide a “shortened assessment process”<sup>16</sup>. As noted, Category 2 and 3 are similarly defined and may be confusing. The interchangeable uses of different but similar concepts and definitions – for example ‘low condition’, ‘low viability’, ‘substantially degraded’ – is unclear. Key definitions should be consistent in the Act regulation and methodology, and not keep being reinterpreted in subordinate protocols and incremental methodology changes. Adding ad hoc layers of protocols and definitions seems inconsistent with the goal to streamline processes as it causes more confusion.

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<sup>13</sup> Fischer, J & Lindenmayer, D. B. (2002) “The conservation value of paddock trees for birds in a variegated landscape in southern New South Wales. 2. Paddock trees as stepping stones”. *Biodiversity and Conservation* **11**: 833-849.

<sup>14</sup> Remote being greater than 200m from woodland.

<sup>15</sup> Fischer, J & Lindenmayer, D. B. (2002) “The conservation value of paddock trees for birds in a variegated landscape in southern New South Wales. 2. Paddock trees as stepping stones”. *Biodiversity and Conservation* **11**: 833-849 pp 842.

<sup>16</sup> Proposed Chapter 8.

The EDO appreciates that it is logical to invest resources in management of vegetation that will be viable in the long term. However, this category requires some limits, for example, where a vegetation type only remains in small fragmented remnants, and all those remnants qualify for streamlined assessment then the scheme may result in clearing of that type. There are currently vegetation communities that are now restricted primarily to paddock trees due to intensification of landuse<sup>17</sup>. The streamlined assessment option must not apply to such endangered vegetation types that only exist in less viable patches due to historic clearing. This would not meet the test of maintaining or improving the environmental values of that vegetation type.

We do not agree that Category 3 should include vegetation that is already overcleared. In addition, 5.2.1 states that “offsets cannot be used to balance the impacts of clearing overcleared vegetation that is not low condition”. If offsets cannot be used, how can this category of native vegetation undergo streamlined assessment?

#### ***4. The Mitchell landscape and vegetation type are 10% cleared or less cleared***

Clause 8.4.1 provides that “Native vegetation where the Mitchell landscape and vegetation type are 10% or less cleared” can qualify for streamlined assessment. The EDO is concerned that there is no size limit on this category and so significant/large patches of relatively abundant vegetation types could qualify. The draft NSW Biodiversity Strategy 2010-2015 identifies that well reserved ecosystems in good condition are of high conservation value and that they need to be identified as important assets in any landscape assessments at catchment or regional scales<sup>18</sup>. The EDO is strongly in agreement with this. Decisions to allow clearing of parts of any large areas of native vegetation in good condition (regardless of the percentage cleared) should only be made in the context of broader landscape-scale planning, not on a site-by-site basis. This allows consideration of the cumulative impacts on the vegetation type, and management and monitoring to ensure that its abundance is actually maintained and improved as required by the Act, and not incrementally reduced under the streamlined approval option.

#### ***5. Small areas that are part of larger areas of native vegetation.***

The proposal in clause 8.4.1 is to allow streamlined assessment for “up to two hectares of any native vegetation that is not in low condition that is contiguous with or included within any larger area of native vegetation.” The EDO is very concerned about this category, and considered it a backwards step in terms of native vegetation policy. As for the previous category, clearing of any part of large areas of native vegetation should not be allowed without consideration as part of a landscape or regional scale assessment. It is unclear from the description in the proposed methodology whether a number of 2 hectare patches could be excised from the one large patch, which would allow incremental clearing of large areas of native vegetation in good condition, and potentially reduce the value of the remaining vegetation. It also seems contrary to the policy intent of offsetting to supplement/improve large viable patches<sup>19</sup>.

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<sup>17</sup> Fitzsimons, J.A & Maron, M. (2007). “Agricultural intensification and loss of matrix habitat over 23 years in the West Wimmera, south-eastern Australia” *Biological Conservation*. **135** (2007): 587-593.

<sup>18</sup> DECCW, Draft NSW Biodiversity Strategy 2010-2015, p6.

<sup>19</sup> See Note (iv) in box in section 8.4.3.2, 2B.

## **Step 2: Does the proposed clearing pass the filter criteria?**

The EDO supports the requirement that a clearing proposal must meet *all* the criteria in 8.4.2. As submitted previously, there should not be trade-offs permitted between different values (for example, a trade off *between* water and biodiversity outcomes).

### ***Water quality***

EDO strongly supports that clearing not be carried out within riparian buffer zones.

### ***Salinity***

The EDO strongly supports that that clearing must not be carried out on land with moderate to very high outbreaks of salt scalding.

### ***Biodiversity***

Clause 8.4.2 c provides:

#### c. Biodiversity assessment

Broadscale clearing must not be proposed to be carried out in any of the following circumstances:

- i. Where the loss of Landscape Value resulting from the proposed broadscale clearing is greater than 10%, as assessed as in 5.3.3.
- ii. Where one or more threatened species that cannot withstand loss (as set out in threatened species profile database) are known or predicted to occur on the land on which the broadscale clearing is proposed.
- iii. Where trees supporting large stick nests greater than 30 cm are proposed to be cleared.
- iv. Where trees with hollows greater than 15 cm diameter are proposed to be cleared.
- v. Where the current extent in the CMA area of the vegetation type proposed to be cleared is less than 1000 ha.

In practice it is usually the biodiversity assessment that takes the most time to complete when assessing a clearing application using the current EOAM. The streamlining process is therefore likely to affect this category the most and it is essential that this filter is robust. The current list of limitations is inadequate and will not ensure comprehensive assessment of biodiversity values. We strongly support the prohibitions related to species that can withstand no further loss and vegetation types with less than 1000 hectares remaining. We note that the latter is likely to capture some EECs in some CMAs, however not all, so this does not filter out any clearing of EECs. The EDO submits that the streamlined assessment option must *not* be available for clearing proposals that involve:

- Critically endangered species;
- Endangered ecological communities; or
- Critical habitat.

### ***Soil***

The EDO supports the prohibition on broadscale clearing in steep and erodible land, sensitive terrain and acid sulphate soils.

### **Step 3: Are the required offsets provided and secured?**

The numbering system employed with regards to offsets is complicated and confusing. In addition, the new structure of the offset provides greater flexibility for offset options, which raises concerns that offsets chosen will not adequately maintain or improve environmental outcomes.

The proposed offset requirements do not specify any requirement for the offset to comprise the same species (in relation to paddock trees) or vegetation type as that being cleared. This should be explicitly stated. If this is not the intention, and one vegetation type can be offset by another, offsetting will not result in 'like for like' outcomes.

The proposed methodology also allows for the clearing of endangered ecological communities in some circumstances, yet has no offsetting requirements specific to EECs. While the EDO considers that the streamlined assessment should not apply to EECs, if it does, then there must be a requirement to offset the clearing in the same EEC.

The offsetting section does not specify the location of offsets. The EDO submits that offsets should ideally be located as close to the clearing site as possible: ideally on the same or an adjacent property.

Clause 8.4.3 sets out offset requirements under the new streamlined assessment process. We note that these rely on standard ratios (for example 1:5 or 1: 10 trees or 1:10 area) in contrast to the current methodology where ratios are not set, but depend on the calculation of a range of variables.

Where threatened species occur and the clearing is of paddock trees (in 8.4.3.1), a combination of 3 offset options (with set ratios) can be used, including in 1C, planting rather than offsetting with mature trees. As mentioned previously, this potentially allows for mature paddock trees to be offset with new plantings that may take decades to produce hollows. Any clearing should be offset by protection of a range of age classes (i.e. elements from each of 1A, 1B and 1C) to ensure there are no gaps in the availability of hollows over time. Where threatened species occur and the clearing is other vegetation (not paddock trees), the offset is area based (equivalent or greater area).

Regarding 8.4.3.3 "Additional environmental benefits required when vegetation proposed to be cleared is overcleared vegetation that is not viable or of low viability", the EDO submits that overcleared vegetation should not be eligible for streamlined assessment as full understanding of its values is required before making a decision regarding its clearing. As with our concern for category 1 vegetation, we have concerns that accredited experts will be under increased pressure to certify the appropriateness of the additional environmental benefits.

### **General concerns**

#### ***Purpose of the proposed Chapter 8***

The purported aims of Chapter 8 are twofold: to shorten the assessment process while providing offsets that are suitable to the environment and which are of equal quality to offsets provided using the tools and regulations currently approved. We discuss time savings first, and then the issue of equal quality offsets.

While certain aspects of the proposed chapter may shorten the assessment time for officers<sup>20</sup>, the EDO not certain that the overall assessment process will be substantially faster. For example, officers assessing PVPs will often be juggling multiple tasks, and although the proposed chapter may mean that they don't run one of the tools associated with the EOAM, or that mapping is simpler in some cases, overall the assessment time (from initial contact from the landowner to PVP approval) may still take several months. EDO is concerned that the draft chapter does not provide sufficient time savings on a broader level to justify the speed with which drafting and gazettal is proposed. If genuine and consistent time savings are sought we suggest alternative methods may be more appropriate. If measures such as the introduction of statutory timeframes for sections of the assessment process were introduced, they must be coupled with an increase of funding to CMAs to allow for additional officers to share the workload. We do not expect chapter 8 to provide for a substantially shortened assessment process, and thus consider that it does not meet its objective in this regard.

Comparability of offsets was not able to be determined or clearly demonstrated at the Orange workshop, and EDO suggests that full testing of several sites, including field testing, is undertaken in order to effectively compare offsets generated by the proposed chapter. Currently, offsets in the EOAM are driven by the various tools used by the assessing officer. The streamlined assessment does not adequately address all the aspects of environmental outcomes that the existing tools do. For example, salinity and erosion are inadequately addressed in Chapter 8, and may result in decreased site value.

We also note that chapter 8 appears to be designed to favour clearing of paddock trees. The DECCW testing workshop tested chapter 8 using 23 PVPs that had been matched to the proposed 5 categories. 8 of the 23 PVPs matched Category 1, the category that targets paddock trees. This emphasis on category 1 means any overall data analysis from the testing workshop will be skewed and incomparable across the range of other vegetation categories (ie, the time savings for category 1 are not the same for other categories). In addition, the vegetation in Category 3 cannot be assessed with any testing data, as this vegetation is generally currently assessed via the Ministers Protocol, not the EOAM. While the majority of the CMA officers present at the workshop agreed that the proposed chapter would be most likely to save time when assessing paddock trees, the EDO is concerned offset measures are most unlikely to adequately maintain or improve environmental outcomes due to the keystone role played by paddock trees in the landscape.

### *Ground surveys*

The draft chapter notes:

Note: The presence or predicted presence of threatened species (fauna) may be assessed from vegetation type, low or moderate-good condition of the vegetation, CMA subregion and habitat components, rather than undertaking the full assessment in 5.6.

The EDO is concerned that removing the need for on ground surveys could enable the clearing of large areas of good condition vegetation (category 4) without a full understanding of the species using that area. While we recognise that the presence of many species is correlated with vegetation type, this is not always the case (hence the need for species credit

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<sup>20</sup> Depending on the area and the type of assessment, average time savings for officers assessing a PVP would be around 15-30% (of approximately 5 days of work) as discussed at the Streamlining PVPs testing workshop, Orange 27 & 28 Jan 2011.

species in the biocertification and biobanking assessment methodologies). We do not support removing the need for surveys as per section 5.6, particularly in large areas of vegetation in good condition, in a streamlined assessment.

### *Monitoring and review*

The draft chapter provides:

3. The following offset is required where threatened species (flora) occur on the land on which broadscale clearing is proposed and the threatened species (flora) will be cleared by the broadscale clearing (assessed as set out in 5.6).

An area of land where the gain in number of individuals of threatened species (flora) with management actions equals or exceeds the loss in individuals from the proposed broadscale clearing (as calculated in accordance with 5.8).

As we have proposed in a previous submission<sup>21</sup>, the EDO considers that DECCW needs to have a monitoring and review mechanism to ensure that the values used to predict future improvements in biodiversity values are based on demonstrated outcomes. Otherwise schemes such as this risk overestimating the future environmental outcome and failing to maintain or improve biodiversity outcomes.

For further information on this submission, please contact [rachel.walmsley@edo.org.au](mailto:rachel.walmsley@edo.org.au) or 9262 6989.

Yours sincerely,

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Environmental Defender's Office NSW

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<sup>21</sup> [http://www.edo.org.au/edonsw/site/pdf/subs10/100730draft\\_biodiversity\\_certification\\_methodology.pdf](http://www.edo.org.au/edonsw/site/pdf/subs10/100730draft_biodiversity_certification_methodology.pdf).