

Cessnock Biodiversity Strategy



Biodiversity Strategy
Cessnock City Council
2014

Part 1 Strategic Context

Natural Environment Planning
Planning & Environment

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ABBREVIATIONS

BFT – Biodiversity Forecasting Tool

CAP – Catchment Action Plan

CCC – Cessnock City Council

CWSS – City Wide Settlement Strategy

DCP – Development Control Plan

EPBC - Environment Protection Biodiversity Conservation Act (Aus)

HCCREMS – Hunter Central Rivers Regional Environmental Management Strategy

LEP – Local Environment Plan

LGA – Local Government Area

LHRS - Lower Hunter Regional Strategy

LHRCP – Lower Hunter Regional Conservation Plan

LLS – Local Land Services

MNES – Matters of National Environmental Significance

OEH- Office of Environment & Heritage

PVP – Property Vegetation Plan

RAMA – Routine Agricultural Management Activity

SEWPaC – Sustainability, Environment Water Population and Community (Australian Government)

Version History

V1.0 Reported to Council June 2013

V2.0 Reported to Council September 2014 following public Exhibition.

V3.0. Adopted by Council 17/9/2014

1 Introduction

Biodiversity is what makes our local, catchment and Australian landscapes unique. Areas of naturally diverse native bush are aesthetically and culturally important, and remind us of the intricacy and uniqueness of the landscapes in which we live.

Biodiversity underpins our quality of life and our livelihoods. We rely on healthy, complex and functioning natural ecosystems to keep our air and water clean, pollinate our crops, grow food and fibre, and help keep pests and diseases in check. Everyone has a role in managing biodiversity.

The Cessnock Local Government Area is biologically diverse and supports a range of ecosystems, ecological communities and vegetation types. These include dry rainforest in the Mount View and Bow Wow area, the woodlands which support in excess of 420 bird species, many of which are threatened, and botanists have counted 29 species of Eucalypt near Kurri Kurri. Over 950 plant species have been recorded in the valley floor alone.

People value biodiversity. An increasing number of Cessnock residents identified in the 2009 and 2012 community survey that the bushland that supports a diversity of native plants and animals is valuable (Micromex 2012). In 2011 the Catchment Management Authority undertook a survey of residents to have them identify the environmental assets they thought were most important. The most commonly nominated types of assets were areas of native vegetation (bushland), rivers and creeks, wetlands (including Ellalong Lagoon), and significant plants and animals.

Biodiversity values are highest in areas where native vegetation is in high condition and is well connected to other areas of vegetation. These areas occur across public and private land.

Biodiversity is declining— 78 vertebrates and 40 plants in Cessnock LGA are formally listed as threatened under NSW and Australian Government legislation. Native vegetation communities have been extensively cleared for agricultural production and some are now listed as endangered.

Threats to existing biodiversity need to be actively managed. Areas of native vegetation that are healthy and functioning have the potential to decline if threats to their viability are not actively managed. In Cessnock LGA, the main threats are pest animals and weeds, urban development, inappropriate fire (including wildfire) and climate change.

It is important to prioritise biodiversity investment to ensure that the greatest benefit can be achieved in the most cost-efficient way. It is equally important to recognise the value of agricultural production and other land uses in the Cessnock LGA.

In balancing the management of development with the adequate protection of biodiversity, mechanisms such as offsetting need to be considered and tailored to ensure the outcomes are sustainable for the future viability of both.

2 Aim

The aim of Part 1 of the Cessnock Biodiversity strategy is to provide;

- a snapshot of what has been done historically in relation to strategic biodiversity planning and what has influenced this planning in the past. It will also identify gaps to the development of a comprehensive strategy.
- an outline of the current issues that require a strategic approach to biodiversity management and specifically those issues that require resolution (eg the deferred matter of the Cessnock LEP).
- An introduction to the current status of a range of activities that are occurring at a Federal and State level that will significantly influence the strategic direction Cessnock City Council can take in relation to biodiversity.

The aim of Part 2 of the Strategy will be to provide a framework and staged action plan for Cessnock City Council to take the context and influences identified in Part 1 and use them in a range of actions to maintain and improve biodiversity values across the LGA for future generations.

3 Objective

3.1 Overall Objective

The overall objective of a Cessnock biodiversity strategy is to set in place a number of processes, mechanisms and initiatives which will lead to, in the long term, improved biodiversity protection and resilience for future generations through:

1. The adequate identification, protection and enhancement of areas of biodiversity value on all land tenure.
 - a. This can to be achieved by addressing threats and providing incentives.
 - b. Increasing community perception and engendering a value for biodiversity and environmental assets.
2. Integration of planning directives (at a federal, state, regional and local scale) into the Cessnock 2023 integrated planning process and other relevant Council documents (eg Local Environment Plan and Development Control Plan).
3. Council compliance with all state and federal legislation in relation to biodiversity in its own operations in order to limit our exposure to liability for breach of environmental laws and to set a standard for our community and lead by example.
4. When development occurs there is no net loss to biodiversity – ideally “maintain or improve” the biodiversity assets (in accordance with state legislation).

Overall the Biodiversity Strategy will seek to find a balance between the competing demands on the resources available in our local government area to ensure that future generations have the opportunity to experience the benefits of a biodiverse environment.

These objectives have been developed based upon past documents adopted by Council, issues that have been raised through various processes (including the development of the Cessnock Local Environment Plan 2011) and issues raised at various forums such as the Council's Environment Committee.

4 What is a Biodiversity Strategy?

A biodiversity strategy is an informed, considered and structured approach to addressing the range of issues surrounding biodiversity management. The strategy will ideally provide baseline information, or identify where gaps in data exist, give broad objectives, provide SMART (Specific, Measurable, Realistic, Achievable and Time bound) actions to achieve these objectives.

4.1 What is Biodiversity?

There are numerous definitions of biodiversity, two of relevance include the NSW Government definition adopted by the Draft NSW Biodiversity Strategy (NSW Government 2010 p3);

Biodiversity includes all plants, animals, fungi, bacteria and other micro-organisms in the natural environment. It encompasses three components: genes, species and ecosystems, which comprise composition (species and genes), structure (vegetation and landscape structure) and function (ecosystem processes including nutrient and energy cycling).

The other definition is drawn from the Hunter Central Rivers Catchment Action plan and is referenced in Council's Citywide Settlement Strategy;

The Hunter-Central Rivers CAP (2009) describes biodiversity as:

“the variety of life that provides us with valuable environmental services such as maintaining groundwater tables, absorbing carbon, protecting water quality, controlling pests and supporting species that pollinate crops. Restoring ecosystem function by increasing biodiversity means that ecosystems are more resilient to negative influences such as drought, pests and wildlife. To protect biodiversity we must protect the habitat on which it relies” (p 56).

5 Scope of Cessnock City Council Biodiversity Strategy

Cessnock City Council's biodiversity strategy will need to clearly define the scope of influence the strategy will address. Council has resolved to “formalise the green corridor identified in the lower hunter regional strategy” so it is clear that the outcomes of the strategy should address regional biodiversity elements. The review of the appropriateness of LEP zonings for biodiversity outcomes will require the strategy to address sub-regional/ local issues. In order to deliver a holistic product

more localised actions and initiatives at subdivision and lot scales to create biodiversity outcomes will also be required. These may be as part of a community capacity building program and through improvements to the City's DCP based upon information gathered through the strategy implementation.

6 Background to Cessnock Biodiversity Strategy

This section describes a number of current and historical influences which has led to the identification by Cessnock City Council for the need for a Biodiversity Strategy. It includes some legislative influence and Council's response to those influences.

6.1 Ecologically Sustainable Development

In 1997, a requirement was introduced to the Local Government Act requiring that Councils implement the principles of Ecologically Sustainable Development (ESD) into their operations. ESD, as defined in the Local Government Act, requires the effective integration of economic and environmental considerations in decision-making processes. It can be achieved through the implementation of the following principles:

- the precautionary principle, namely that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- Intergenerational equity, namely that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- Conservation of biological diversity and ecological integrity should be a fundamental consideration; and
- Improved valuation, pricing and incentive mechanisms, namely that environmental factors should be included in the valuation of assets and services.

The development and adoption of a biodiversity strategy will see important ecologically significant communities and ecosystems protected in the manner prescribed by the Act.

6.2 Cessnock 2020 - 2011/2013 Delivery Program and Operational Plans

The Integrated Planning & Reporting Framework was introduced to the Local Government Act in 2009 requiring Council's to have a 10 year planning horizon with a 4 year delivery plan (the term of an elected Council) and annual operational plan.

The Delivery program for Cessnock City Council was built on a 2 year term to reflect the Council's status as a Group 2 Council under the Framework which recognised the need for a review of the plan following the 2012 Local Government Election. The Delivery program covers the years 2011/2013; the strategy and Actions within that program that are focussed on Biodiversity, or relate to the development of the Biodiversity Plan include;

Delivery Program

Strategy 3.1.3 Protect environmental corridors from being degraded and fragmented;

Action – Prepare a comprehensive Biodiversity Strategy in conjunction with relevant agencies.

Council have indicated in this planning document that the strategy completion should have commenced preparation by June 2012 and completed by June 2013.

Strategy 3.2 Consolidate existing open space areas to establish green corridors

Action - Formalise the Green Corridor identified in the Lower Hunter Regional Strategy by investigating an environmentally significant land overlay to the maps in the Local Environmental Plan

The delivery of this document outlining the development of the Biodiversity strategy will determine the most appropriate tools for the formalisation of the corridor. Thus the two actions are inextricably linked.

6.3 Cessnock 2023 - 2014/2017 Delivery Program

Council is in the process of reconfirming its 2020 community aspirations for the development of the 2023 plan. This plan will have a similar strategic direction to that of Cessnock 2020 however the actions to be undertaken over the next 4 years will be strongly driven by the Cessnock Biodiversity Strategy. Primarily this integration of external influences such as the Lower Hunter Regional Strategy and the Lower Hunter Regional Conservation Plan will play an important part in how CCC directs its Biodiversity actions.

6.4 Council's City Wide Settlement Strategy 2010

Council's City Wide Settlement Strategy (CWSS) was reviewed in 2010 and endorsed by Council in September of that year. The strategy is described as an "environmental study for the purposes of preparing a new citywide LEP (Local Environment Plan)" The CWSS includes sections on Biodiversity & Conservation and Primary Industries and Agriculture. Their influence on the direction of the biodiversity strategy is described below. The CWSS makes reference to the Lower Hunter Regional Plan and the Regional Conservation Plan; these will be discussed further below.

6.4.1 Biodiversity & Conservation

Within the CWSS a number of key biodiversity actions were identified (Cessnock City Council 2010, p11, and p189). These include;

- Action BC7: Formalise the 'green corridor' identified in the Lower Hunter Regional Strategy 2006 by investigating the suitability of zoning and/or an Environmentally Significant Land overlay to the suite of maps supporting the comprehensive LEP to protect, maintain or improve the diversity of landscapes.

This action was identified within the Biodiversity section of the CWSS and was translated into the draft LEP through the development of the E3 zonings in partnership with the vulnerable land zoning described below (in 6.4.2). In addition the City Wide Settlement Strategy stated that the biodiversity strategy should include the identification of priority areas for vegetation offsets. (CCC 2010, p199). Offsets are addressed in section 7.5 of this document.

6.4.2 Agriculture

The CWSS chapter on Agriculture discusses, among other things, the concept of agricultural capability and its relationship to certain landscapes. The CWSS introduced the advent of the Native Vegetation Act and the inclusion of what was once “protected land” under that act as ‘vulnerable land’.

The inclusion of the paragraph in the 2009 draft CWSS *“It is appropriate that the private land identified as ‘vulnerable lands’ under the Native Vegetation Act 2003 between the national parks and forestry lands (see Figure 15.2) be assigned a land use zone in the new LEP that reflects the particular characteristics of this land. (CWSS 2009 p192)”* appears to be the catalyst for the inclusion of the initial E3 zoning of the Wollombi Valley.

The origin of Figure 15.2 is assumed to have been produced in house. It is not referenced in either the draft CWSS or the adopted version. It does not appear in the LHRP or the LHRCP. While the caption under the figure states “Extract from Lower Hunter Regional Strategy (2006) ‘Vulnerable’ lands between Yengo National Park and forestry lands” this is not entirely accurate – the base picture is an extract from the LHRP but the box identifying the lands is assumed to be a CCC initiative. The land is predominantly the Wollombi Valley between Yengo National Park and Corrabare State Conservation area. The eastern boundary for the zone appears to be Cedar Creek Rd with vulnerable lands to the north and west not included.

The adopted CWSS 2010 has this element revised with the statement *“The private land identified as ‘vulnerable lands’ under the Native Vegetation Act 2003 between the national parks and forestry lands (see Figure 15.2) will be zoned RU2 Rural Landscape with a Sensitive Lands Overlay and associated local provision clause that reflects the particular characteristics of this land.”*

This was translated into the following action within the CWSS

- Action AG2: Recognise constrained rural lands in the south-western corner of the LGA (between forestry lands and National Parks) by investigating the suitability of zoning and/or an Environmentally Significant Land overlay to be added to the suite of maps supporting the comprehensive LEP to protect, maintain or improve the diversity of landscapes

The change from E3 zoning to the RU2 and ESL overlay recommendation occurred as a result of the first round of community consultation.

6.4.2.1 Agricultural Lands Study

An Agricultural Lands Study provides information and makes recommendations for the strategic direction of the rural lands of the Local Government area and how they are to be managed over the next 10 to 20 years.

Direction 1 from the CWSS identifies the need for an Agricultural Lands Study (CCC, 2010 pp200-201).

- Direction 1: Prepare an Agricultural Lands Study to determine the base requirements for sustainable agriculture (including dwelling entitlements) in conjunction with the Dept of

Industry and Investment – Agriculture and the Dept of Environment Climate Change and Water (including Hunter-Central Rivers CMA). Outcomes and actions to amend the Cessnock LEP.

The preparation of a strategy enables the Council to address the wider issues confronting its rural lands as well as giving direction for the development of an area. It is important to recognise however, that this strategy gives a direction for further work. It does not rezone any land – it provides an indication of the future land use designations for the area. There will be a direct correlation between the biodiversity strategy and the Agricultural lands strategy as the creation of biodiversity corridors across the landscape will need to integrate with farm practices such as shelterbelts and riparian zone management.

As the focus of the Biodiversity Strategy will be towards the protection and improvement of remnant vegetation on private lands primarily outside the residential and industrial zones there are a number of synergies that can be achieved by doing the two plans in collaboration.

The federal Government’s department of Sustainability, Environment Water Population and Communities (SEWPaC), have funded the assessment of agricultural land within the Local Government Area. This assessment will inform the development of the Agricultural Land study by identifying land most suitable for various agricultural pursuits from both a land capability and local support (in terms of infrastructure etc) perspective.

6.5 Local Environment Plan (2011)

The first draft of the Cessnock City Council Local Environment Plan (LEP) was placed on public exhibition in 2009. The first iteration had areas considered for environmental protection zoned as E3. This zoning particularly covered the Wollombi Valley and Mulbring areas and appears to be based upon the recommendations from the CWSS Agricultural section as described in 5.3.2.

Through the exhibition period community concern was raised over the zoning with the interpretation that the land, if it remained in this zone would result in compromised “development rights”.

In response Council altered the E3 zone to a RU2 zone with an Environmentally Sensitive/ Significant Land Overlay with a “Heads of Consideration” (see appendix 1). The recommendation;

The draft LEP and associated maps be amended to include an RU2 – Rural Landscape zone in Wollombi, with a sensitive lands overlay mapping and clauses added to the draft LEP.

Council re-exhibited these amendments to draft LEP and associated land use zone maps for public comment prior to making a final determination.

Recommendations from Public Exhibition Period

1.14 The draft LEP and associated maps be amended to replace those areas exhibited as E3 - Environmental Management zone with an RU2 - Rural Landscape zone in and around the Wollombi area.

1.15 An 'Environmentally Significant Land Map' added to the suite of maps supporting the draft LEP to protect, maintain and improve the diversity of landscapes. Refer to Figure 14.

1.16 The draft LEP be amended and new Clauses 6.7 Environmentally significant land, be added as a Local Provision to give effect to the proposed environmentally significant land mapping.

(CCC, 2011)

While the zoning and the layer were entitled "environmentally significant" this significance was based upon the vulnerable land categorisation. There was no biodiversity element associated with the "Environmentally Significant" layer and as a result other areas of land with higher biodiversity values were not identified nor protected through the process. While zoning provides a strong indication of the appropriateness of land for a particular use it does not preclude applications for rezoning or external imperatives to undertake development contrary to the zone, and in some cases other mechanisms will provide a higher level of protection.

The Cessnock LEP was gazetted in December 2011. Land that was the subject of an Environmentally Significant Areas (ESA) overlay has been deferred from Cessnock LEP 2011. All provisions of the Cessnock Local Environmental Plan 1989, including the Rural 1(a) and Rural 1(c) zones will continue to apply to these areas (CCC 2012, p1).

6.5.1 What was the Environmentally Significant Lands Overlay?

The overlay in this area was based upon the mapping of land with a slope greater than 18° as previously defined in the Soil Conservation Act. This land is also defined under the NSW Native Vegetation Act 2007 as "Vulnerable Land". (CCC, CWSS p194).

The Layer also mapped the vulnerable land to the east of Mulbring as an interpretation of land that required some level of protection as part of the Stockton Watagan Green Corridor.

6.5.2 Development on Vulnerable Land

Under the Native Vegetation Act 2003 (NV Act), the former 'state protected land' has been more accurately mapped and is now classed as 'vulnerable land'. These areas of NSW are especially vulnerable to soil erosion, sedimentation and landslip if appropriate techniques are not used when clearing vegetation. This land is categorised as:

- Steep or Highly Erodible Land (formerly Category A)
- Protected Riparian Land (formerly Category B)
- Special Category Land (formerly Category C).

Under the NV Act, all regrowth on Steep or Highly Erodible Land and Protected Riparian Land has been classified as protected regrowth.

All clearing of native vegetation on vulnerable land requires approval unless it is excluded clearing, or can be cleared under a routine agricultural management activity (RAMA). However there are restrictions to the RAMA's available for clearing on Protected Riparian Land.

Any development proposed for the area that involves the removal of vegetation on the mapped area would require the need for approval under the Native Vegetation Act 2003. Where clearing does require approval, landholders may apply to their local Catchment Management Authority (CMA) either to prepare a Property Vegetation Plan (PVP) or make an application for Development Consent. PVP's are negotiated agreements between a landholder and a CMA, where offsets can be used to counteract the negative impact of the clearing in order to meet the 'improve or maintain' test of the NV Act. A Development Consent cannot be granted unless the clearing itself improves or maintains environmental outcomes because offsets are not available (OEH 2011).

7 External Influences

7.1 Environment Protection & Biodiversity Conservation (EPBC) Act

This is the primary piece of federal legislation that protects matters deemed of environmental significance from a national perspective. The act refers to Matters of National Environmental Significance (MNES) of which a number exist in the Cessnock LGA and include;

- World heritage properties
- National heritage places
- threatened species and ecological communities

Examples of these within the Cessnock LGA include the Greater Blue Mountains World Heritage area within Yengo National Park in the south west, the Old Great North Road, plant species such as *Personia pauciflora*, Bynoe's Wattle, and animals including the Regent Honeyeater and the Swift Parrot. Further to this a nomination to the Federal Scientific Committee has been submitted to list "Lower Hunter Woodlands and Open Forests" as an endangered community under this Act. This will have a significant impact upon the approval processes for development within the LGA.

7.2 Regional Sustainability Plan

The Australian Government and NSW Government have signed a bilateral agreement to develop a Regional Sustainability Plan for the Lower Hunter. This Regional Sustainability plan is made up of a number of components. The Plan itself will consist of the revised Lower Hunter Regional Strategy and the revised Lower Hunter Regional Conservation Plan. These will provide information to form the basis of a Strategic Assessment under the EPBC Act.

It is worth noting that in terms of land area Cessnock City Council makes up just over 47% of the lower hunter region. Hence the significant interest from the federal government in this project.

This strategic assessment will assess broad environmental, social and economic sustainability aspects within the local government areas of Newcastle, Maitland, Cessnock, Lake Macquarie and Port Stephens. The strategic assessment incorporates urban development areas and associated

infrastructure corridors, with a focus on matters of national environmental significance protected under national environmental law. Through endorsement and approval under this law, the strategic assessment will streamline environmental regulation and provide greater certainty for business and local communities.

In order to develop the strategic assessment the Department of Sustainability Environment Water, Populations and Community (SEWPaC), now the Department of Environment (DoE) identified a number of data gaps in relation to MNES in the Lower Hunter, they require to be filled. They are;

7.2.1 Vegetation Mapping

The LGA has had a number of vegetation mapping projects undertaken within it in the past. The most significant of these was the OEH funded Vegetation of the Cessnock- Kurri Region by Bell & Driscoll in 2008. This was undertaken as part of the Kurri Sand Swamp Woodland recovery plan and is the largest source of local data (outside National Park) available to inform biodiversity planning. The lack of more refined mapping especially within the Wollombi Valley was identified by Council and OEH and through consultation with SEWPaC a project to map some of this area was commissioned. The final report on this mapping exercise is due to SEWPaC in April 2013 and will be a vital input into Council's identification of priority biodiversity sites within the LGA. It is to be recognised however that the on ground element of this mapping is restricted to "public access" sites, such as roadsides and reserves. This project may require additional information from private property to be comprehensive.

7.2.2 Swift Parrot and Regent Honeyeater priority habitat areas study

These bird species are listed as endangered and critically endangered under the EPBC Act respectively. The study will identify extent and quality of foraging habitat, breeding sites, movement corridors and potentially recoverable habitat in the Lower Hunter for the Swift Parrot and Regent Honeyeater. Identification of these areas will assist in informing the location of vegetation corridors and protected areas networks within the region. These two species overlap closely in range and habitat usage and the study will provide critical information on potential vegetation corridors and protected area networks within the Lower Hunter region

7.2.3 Grey-headed Flying-fox management strategy for the region

Research into the grey-headed flying-fox is being undertaken to develop a management strategy for the species in the Lower Hunter region. The research focus is on existing scientific information about the local flying-fox population, history of previous management attempts and experience in similar situations elsewhere. The strategy will be finalised following analysis of key stakeholder and community submissions and is due in April 2013.

7.2.4 Natural hazards and resilience study for the region

This project will assess the potential future impact of a range of natural hazards such as storm, flooding and coastal recession, sea level rise, extreme heat, earthquakes and bushfire. A number of these events could have severe impacts upon biodiversity and some consideration of these must be given in the development of actions to address biodiversity into the future.

7.2.5 Koala study for the region

The Lower Hunter koala study will collate best available information from experts, published literature and mapping, to fill current knowledge gaps about the koala in the Lower Hunter region. This research will be used to provide recommendations for conservation of this species in perpetuity within the Lower Hunter region and will provide a robust, scientific basis for decision-making in relation to potential urban and associated infrastructure development and conservation scenarios. This information, while less significant in Cessnock than other areas of the Lower Hunter will still be a useful tool in assisting the identification of high priority biodiversity sites within the LGA.

7.2.6 Values study of the Greater Blue Mountains World Heritage Area

This project will take the world heritage values that have been used to identify those areas already within the LGA that are declared World Heritage (eg parts of Yengo National Park) and undertake an analysis to determine if areas within the Lower Hunter (with a focus on the Cessnock LGA) also exhibit these values. These values include Eucalypt diversity, presence of endangered communities, habitat linkages, buffers and riparian values. Following the analysis a map will be produced indicating the extent of all priority conservation areas in the Cessnock LGA and relevant adjoining areas of the Lower Hunter.

7.2.7 EPBC Act ecological communities mapping for the region

This project will identify those Ecological Communities that are listed under the EPBC Act, identify and provide recommendations regarding high priority conservation areas within the region. The project will also identify and provide recommendations regarding key threatening processes that have the potential to impact on EPBC Act listed endangered communities, threatened flora and fauna species.

7.2.8 Important Agricultural Lands mapping for the region

The Lower Hunter important agricultural lands project involves undertaking an assessment of agricultural lands within the Lower Hunter region with the aim of identifying potential threats and measures to protect important agricultural lands. Rural landscapes have played a significant role in the settlement and development of the Lower Hunter region and are predicted to continue to have significant value associated with social and cultural heritage, rural production and scenic amenity. Many of these areas are currently under pressure from development associated with tourism, recreational activities and sub-division for rural lifestyle plots.

This project, although not necessarily directly related to MNES has been funded by SEWPaC and will map the Important Agricultural Lands identified not only from their biophysical attributes but consideration of the socio-economic factors around the key industries has been given.

It is clear that each of these studies will provide significant information to assist Council in identifying its high priority biodiversity lands and also developing localised strategies to maintain and protect these areas.

7.3 NSW State and regional influences

It should be recognised that there a vast number of plans, strategies and initiatives being undertaken at a State and regional level that have some bearing on the development of the

Cessnock biodiversity strategy. Those that have been identified as high priority, due to their ability to identify or influence any of the key outcomes within this draft have been given greater consideration. Others have been identified and listed in chapter 7.1, while important in their own right, have a lesser degree on the achievement of the aims.

7.3.1 Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy 2006-2031 is the strategic land use planning framework designed to guide the sustainable growth of the Lower Hunter over the 25 year period. Broadly the strategy recommends the identification and protection of new green corridors between the Watagan ranges and Stockton Peninsula, it also aims to maintain or improve the regions biodiversity through a regional conservation plan, which establishes a framework for biodiversity protection (NSW Government 2006, p11).

This Strategy is under review with the discussion paper recently being exhibited and a new strategy due for release at the end of 2013, the companion Regional Conservation Plan is due to follow closely behind.

7.3.1.1 Lower Hunter Regional Conservation Plan

The Threatened Species Legislation Amendment Act in 2004 reformed the former Act to shift the focus of conservation efforts from individual development sites to protecting and restoring habitat at a landscape scale. The Lower Hunter Regional Conservation Plan (LHRCP) identifies areas within Cessnock City that require protection and enhancement of biodiversity values to create the Stockton Watagan Corridor (DECCW 2009).

The LHRCP identifies the relationship between planning instruments (including LEP's), biocertification of these and BioBanking as the primary tools for maximum biodiversity outcomes for development.

The LHRCP reiterates the government's biodiversity goals, as described in the Native Vegetation Act and the Threatened Species Act, as 'improve or maintain'. This means that the gains for biodiversity must be equal to or greater than any losses associated with clearing or other forms of degradation of biodiversity values.

Objectives for this LHRCP were framed by the already agreed targets by the NSW & Australian Governments through the Commonwealth of Australia (1997) Joint ANZECC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) targets.

7.3.2 Hunter Central Rivers Catchment Management Authority

The Hunter-Central Rivers Catchment Management Authority (CMA) is one of 13 CMAs that were established in 2004 to work with regional communities across NSW to improve the management of the state's natural landscapes through their Catchment Action Plan (CAP). It will, by January 2014 be replaced by a new organisation, Local Land Services (LLS) which is a combination of the CMA, Livestock Health & Pest Authorities and some agricultural extension areas from within the Department of Primary Industries.

The Hunter Central Rivers Catchment Management Authority (CMA) reviewed its Catchment Action Plan (CAP) in 2013. This review incorporated a process whereby priority action areas were identified

spatially (mapped). These areas will need to be integrated into the identification of priority biodiversity sites for Cessnock LGA.

Cessnock ratepayers contribute to the CMA through a Catchment Contribution, the past three years allocations are tabulated below;

Table 1 - Cessnock City Council Catchment Contribution to CMA

2009-2010	2010-2011	2011 – 2012
\$381,492	\$390,343	\$407,027

The investment from the HCRCMA in the Cessnock LGA has not been estimated at 6% of their expenditure. Any future strategy will need to approach the strengthening of the relationship between Council and the new LLS and attempt to increase the reinvestment of funds back in to the LGA.

The direction from the NSW Government is that the CAP will remain as a strategic document for the remainder of 2013 and in to 2014 until the new LLS is established and they develop their own regional strategy (DPI 2013). This will be undertaken sometime in 2014.

7.3.3 Cessnock Biodiversity Management Plan

The NSW Office of Environment and Heritage (OEH) developed during 2010 the “Cessnock Biodiversity Management Plan”. This plan has been described as a working document with the intention of addressing a range of biodiversity issues in a subregional context holistically. The plan uses the Biodiversity Forecasting Toolkit developed in 2006 as a decision support tool. The OEH Plan is restricted geographically and does not cover the City area comprehensively as the data which informs it is based upon the Vegetation Mapping undertaken by OEH referred to in section 7.2.1. Notwithstanding the plan states, that if implemented 7 of the 9 threatened ecological communities, 7 of the 10 threatened plants, and all 46 threatened fauna would be adequately conserved within the project area (OEH Unpublished). OEH have established a Cessnock Biodiversity Management Plan webpage which provides the plan, relevant documents and resources for students and the general community.

The methodology for the creation of the Cessnock Biodiversity Management Plan unfortunately has not been formalised into a written document however OEH have indicated that they could assist in developing a similar process to cover the remainder of the LGA.

7.3.4 Biodiversity Forecasting Tool

The Biodiversity Forecasting Tool (BFT) was developed by OEH and the University of New England in 2006 as a regional biodiversity planning tool.

Biodiversity Forecasting inherits the most fundamental principle of systematic conservation planning, i.e. that planning and decision-making should aim to maximise retention of regional, or “collective”, biodiversity within the study area of interest (often referred to as the principle of “complementarity”). This means that the conservation value of any given location in a region is

assessed not only in terms of the attributes of that location (e.g. local species richness, or patch size), but also in terms of the contribution that this location makes to regional biodiversity in combination with other areas (e.g. the extent to which species found here occur rarely in other retained habitat in the region, or the extent to which this location contributes to a corridor connecting core habitat areas).

The BFT was also used in the development of an index for relative conservation priority across the region in the development of the Lower Hunter Regional Conservation Plan.

If the decision is made that the BFT is the most appropriate model to use for the Cessnock Biodiversity Strategy then the availability and quality of data required to run the tool needs to be made. Initial discussions with OEH staff have indicated that a composite map of vegetation may be required. This composite map will combine the Bell Mapping undertaken in 2007 (as used in the OEH Biodiversity Management Plan) and any vegetation mapping available for the south western third of the LGA (eg from Yengo National Park).

7.3.5 NSW Environmental Planning and Assessment Act Review

On the 16th of April the NSW Government released the New Planning System for NSW White Paper, dubbed as “a planning system focused on sustainable growth to deliver the jobs and houses we need to support our growing cities and regions”.

This white paper has significant implications for the future of environmental assessment across NSW as it proposes significant changes to the NSW Environmental Planning and Assessment Act.

The White Paper recognises the need for strategic planning to be undertaken to provide the structure for future development. This is clearly reflected in the following extract from the paper (NSW DoPI 2013, p61).

Strategic planning has increasingly taken a back seat to development assessment in NSW. While there has been substantial strategic planning work undertaken, it has not been given sufficient weight in development assessment. Instead, development has often been assessed in the absence of strategic direction and sound evidence.

A thorough knowledge of the environmental and biodiversity assets within the Council area will be paramount to determining from a strategic perspective the potential impact of any proposed development into the future. The gap analysis identified in the action plan (Part2) will assist in identifying these areas where more work is needed and giving Council and the NSW government direction for future study.

7.3.6 Environmental Zoning Review

The NSW Department of Planning are currently undertaking a review of the application of Environmental E2 and E3 zones in a number of LGA's in the North Coast. As the issue, as identified above in section 6.5, of environmental zoning still applies to the Cessnock LEP a request to the Department for the methodology, to determine the appropriateness of trialling it here, was requested. The response from the Department indicated that the final report would be made available and that the Department would consider the implications of the review to other E zones across the state and make recommendations to the Minister on the matter.

7.4 Other associated Strategic Directions for Consideration in Future Planning

While this is not an exhaustive list these are a number of relevant documents which will need to be integrated into any future biodiversity planning process, and conversely when these strategies and documents are reviewed Council will be required to feed information it has gathered into them.

DOCUMENT/ DIRECTION	COMMENT
Draft NSW Biodiversity Strategy	The aim of the strategy is to coordinate and guide investment and effort in biodiversity conservation in NSW for the next five years. It has been in draft since February 2011.
NSW Invasive Species Plan	Provides actions that aim to prevent and effectively manage the introduction and spread of invasive species. Driver behind Council's Weeds Strategy
Hunter Region Pest Management Strategy	Primarily address pest species in National Parks estate however provide broader direction in relation to vertebrate pests.
NSW Natural Resources Commission – Standard for Quality Natural Resource Management (2005)	State-wide standards and targets for natural resource management issues under Natural Resources Commission Act 2003.
NSW Draft Biosecurity Strategy – NSW Department Primary Industries	Aims to address not only primary industries, but the broader biosecurity spectrum in terms of biodiversity and the natural environment, infrastructure and service industries as well as lifestyle, recreation, sport and social amenity
Great Eastern Ranges Initiative	Connectivity conservation across the Great Dividing Range as a strategic response to mitigate the potential impacts of climate change, invasive species, land clearing and other environmental changes
Hunter Bushfire Risk Management Plan 2009	Identifies assets (including environmental) and actions to protect these assets from fire.
NSW Threatened Species Priority Action Statement 2007	Incorporates a number of strategies that are applicable to multiple threatened species. The PAS also provides an integrated approach to species recovery and threat abatement.

7.5 Biodiversity Offsets

Biodiversity offsets counterbalance specific impacts of development on biodiversity. Offsets are undertaken elsewhere and result in the legal protection of land and the implementation of management actions to remove threats. Offsets are required to be protected in perpetuity through some legal mechanism.

The CMA manages offsets for vegetation clearing under the Native Vegetation Act through the Property Vegetation Planning mechanism. Where threatened entities are encountered the clearing is “red flagged” and negotiated approval is required from NSW OEH (a similar situation occurs in the case of Biobanking). All other offsets are managed through consultation with OEH who have listed “Principles for the use of biodiversity offsets in NSW” as their guiding document. In many cases Council is consulted in the determination of negotiated offsets yet has no policy or position on outcomes. A policy could give direction on the appropriateness of onsite versus offsite offsets and in the case of offsite offsets the desirability of retaining these within the LGA. Council also would benefit from a whole of government approach to the management of the determination of offsets and the compensation provided by developers to offset sites for their management “in perpetuity”. In addition knowledge sharing on what land has been offset for biodiversity purposes, thus removing the possibility of duplicate offsetting.

7.5.1 Offsets at Rezoning

There is a preference from OEH to determine offset arrangements under section 97F of the Environmental Planning and Assessment Act 1979 to allow up front strategic assessment of conservation values, reduce the potential for land use conflicts and simplify and streamline any subsequent development application process (DECCW Cspd 2010). This has been introduced on a number of occasions (Cessnock Civic, Avery’s Village, Heddon Greta) however, as previously identified, there is no policy direction established as yet for CCC preference for determining of offsets (e.g. onsite, offsite within LGA, off-site outside LGA).

7.5.2 Offsets at Development Application Stage

Offsets at the Development Application (DA) stage are determined if a DA is deemed to have a significant impact upon a threatened species. This determination is made by the approval authority by using the assessment of significance guidelines as published by OEH (As DECC). In the case of CCC the Assessment of Significance is usually undertaken by the proponent (or their consultant) and assessed by CCC staff. When a significant effect is likely further consideration is required and is carried out through the preparation of a Species Impact Statement (SIS), these are referred to OEH to determine the offsets required. Historically very few referrals to OEH have been made from CCC (L Grenadier pers comm.).

8 What Biodiversity has been identified as a priority to date?

Approximately 24% of land within the Cessnock LGA is reserved within National Park. These Parks include (either partly or wholly) Watagan, Werakata and Yengo. A further 3 % is State Conservation Area, and 13% State forest

The Cessnock Biodiversity Management Plan has identified 65 threatened entities within its area of concern. This includes 46 animal species, 10 plant species and 9 ecological communities.

Sources of data which have informed the above include the NSW Atlas of Wildlife (available from www.bionet.nsw.gov.au), and vegetation mapping from Bell & Driscoll in 2007.

The Cessnock Biodiversity Management Plan as developed by OEH identifies a Landscape Conservation Strategy which provides a conservation value of lands within the valley floor (on the area mapped for vegetation by Bell & Driscoll) and identifies broad corridors for conservation.

Biodiversity elements such as waterways, riparian zones, aquatic ecosystems, soil biota have yet to be addressed on an LGA basis. Some of these biodiversity elements are certainly acknowledged and under management programs by the CMA.

9 Community Expectations

The Cessnock community, not unlike many others in NSW, have varied attitudes to the environment. The following provides some insight into the feedback provided when the community has been engaged;

9.1 Cessnock 2020 and 2023 Community Strategic Plan

The community engagement program was successful in identifying numerous opportunities and challenges grouped together under the key directions of: Our Community, Our Economy, Our Environment, Our Services, Our Leadership.

The section within the plan “Our Environment” focuses on the conservation and preservation of the natural environment whilst balancing the impact of development to ensure a sustainable and healthy community.



Through the Cessnock 2020 engagement process the community has expressed a number of significant concerns and aspirations for the future of Cessnock’s environment through the Cessnock 2020 process. They include:

- Finding a balance between development and the environment through appropriate planning controls
- At a minimum retaining current green space but planning for an increase in green space with new developments
- Better utilising the open green space we already have and being more strategic about selecting locations for playgrounds etc.
- Expanding environmental education programs about waste, biodiversity and environmental protection for primary aged children and the whole community
- Rehabilitating old mining sites

The Community Research report conducted in 2009 by Micromex identified environmental protection in the top 10 most important issues for the City (Micromex, 2009 p8). This survey was

repeated in 2012 and indicated a decline in satisfaction by residents in a number of areas including Environmental Protection and Maintain open space and bushland. One of the key findings of this research was that these issues are considered as some of Council's core strengths and should be treated as such as they are influential and address clear community needs (Mlcromex 2012, p15).

9.2 Hunter Central Rivers Catchment Management Authority

The Hunter Central Rivers Catchment Management Authority (CMA) has undertaken extensive community engagement across the region as part of their revised Catchment Action Plan 2013-2023. This consultation has identified the key community issues, environmental values and the drivers and threats that contribute to them.

Any activity CCC undertakes or proposes in relation to biodiversity would benefit from a close alignment to the operational plan being developed by the CMA. This will increase opportunities for the landholders within the LGA to see CMA investment return to the area.

9.2.1 Values Workshop

In addition through 2010 the CMA undertook a community values workshop in Cessnock. The workshop identified a number of sites that residents valued – these include Ellalong Lagoon, Bow Wow Creek

9.3 Council's Environment Committee

Council's Environment Committee was formed in 2010 with its 1st meeting held in February 2011. Council receive recommendations from the committee on a range of subjects including biodiversity.

10 Strategy Stakeholders

A stakeholder is defined as those with an interest in or who may be affected by the outcome. There are a number of direct and indirect stakeholders in biodiversity management including community and agencies.

The Biodiversity strategy will require a companion document which outlines the engagement process for agencies and community members who have land that may be included in the strategy.

10.1 Community Engagement

In order for the action plan to be successfully implemented the strategy needs to have the understanding and support of the community. The concern that was raised through the LEP process illustrates the need for a logical and sensitive approach toward the communication and consultation process.

10.1.1 Engagement Principles

Council's Draft Communication and Engagement Strategy could inform the procedures and targets for effective communication and engagement through the development and implementation of the Biodiversity Strategy.

11 Evaluating the Strategy

In order to illustrate the success of the strategy consideration must be given to the development of key performance indicators embedded within the strategy. These will be included in a Monitoring, Evaluation and Review (MER) Plan for the strategy. It is proposed that the end of term State of the Environment report provide this mechanism.

12 References

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13 Appendix 1

6.7 Environmentally Significant Land

(1) The objective of this clause is to protect, maintain or improve the diversity of landscapes, including:

- (a) protecting biological diversity of native flora and fauna, and
- (b) protecting the ecological processes necessary for their continued existence, and
- (c) encouraging the recovery of threatened species, communities or populations and their habitats.

(2) This clause applies to land identified as “environmentally significant land” on the Environmentally Significant Land Map.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered a report that addresses the following matters:

(a) identification of any potential adverse impact of the proposed development on any of the following:

- (i) a native vegetation community,
- (ii) the habitat of any threatened species, population or ecological community,
- (iii) a regionally significant species of plant, animal or habitat,
- (iv) a habitat corridor,
- (v) a wetland,
- (vi) the biodiversity values within a reserve, including a road reserve or a stock route,
- (vii) topography, and

(b) a description of any proposed measures to be undertaken to ameliorate any such potential adverse impact.

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is consistent with the objectives of this clause and:

(a) the development is designed, sited and managed to avoid the potential adverse environmental impact, or

(b) if a potential adverse impact cannot be avoided, the development:

- (i) is designed and sited so as to have minimum adverse impact, and
- (ii) incorporates effective measures so as to have minimal adverse impact, and
- (iii) mitigates any residual adverse impact through the restoration of any existing disturbed or modified area on the site.

13.1 APPENDIX 2 - Mechanisms for “in perpetuity” protection

The determination of offsets by OEH requires the land which has been offset for biodiversity conservation to be afforded a rigorous level of protection in perpetuity. A number of options are available;

13.1.1 BioBanking

BioBanking is a market-based scheme that provides a streamlined biodiversity assessment process for development, a rigorous and credible offsetting scheme as well as an opportunity for rural landowners to generate income by managing land for conservation. Landholders can establish their land as a biobank site and determine how many species and ecosystems credits their site is worth, using the Biobanking Assessment Methodology. They can then list these available credits and potential developers whose developments are going to impact upon an area (with ecosystem credits determined) can purchase these to offset their development.

Biobanking is still in its infancy with only a small number of sites being registered and as of June 2011 only six agreements being made. It is known that the creation of a Biobanking site has a high establishment cost for landholders. This may be the reason there are few sites available for developers to purchase credits to offset their proposals.

13.1.2 Transfer to National Parks Estate

OEH have negotiated a number of transfers to its estate through the offsets process. These are usually accompanied by a payment to OEH for the establishment and some management of the site. These are approved by the Minister for the Environment.

13.1.3 Conservation Agreement

A conservation agreement is a joint agreement between landholders and the Minister for the Environment. The agreement provides permanent protection for the special features of the land and is voluntary.

The area under the agreement is registered on the title of the land, ensuring that, if the land is sold, the agreement and management requirements remain in place. It is established under Section 69 of the National Parks & Wildlife Act 1974. Land which is subject to a conservation agreement is not rateable under the Local Government Act.

13.1.4 Covenant on Land

A restrictive or positive covenant from section 88B-E of the Conveyancing Act 1999 is one possible method for protecting offset land. OEH have received a legal note which indicates this mechanism as not suitable for securing offset land (Lucas Grenadier pers comm.).

13.1.5 Planning Agreement

At the rezoning stage there is an opportunity to include in a Planning Agreement (between the proponent and Council) to see biodiversity issues addressed. This occurs under section 93F of the Environmental Planning and Assessment Act and there are a number of options for this process to be implemented;

1. A Clause in the LEP which states a legally enforceable mechanism be in place (by the subdivision or development application stage) for the ongoing management and protection of the part of the land within Zone E2 Environmental Conservation.
2. A similar Clause within the Planning Agreement.
3. Within the Planning Agreement where the offset land is retained in private ownership measures which achieve the above.

13.1.6 Trust Agreement

Entering into a trust agreement under the Nature Conservation Trust Act 2001 is another mechanism to achieve in perpetuity protection. A conservation land title covenant is a voluntary agreement with the Nature Conservation Trust (NCT) that helps the land owner to protect and enhance the natural values of their property. The land covenant can apply to all or part of the property, and can only be terminated with the consent of the NCT Board.

The land covenant has legislative weight under the Nature Conservation Trust Act 2001 and can be enforced by the Land and Environment Court. Because the covenant is registered on the property title, any future owners are legally bound to uphold it. This ensures that the environmental integrity and biodiversity of a property is protected in perpetuity.