



Nature Conservation Council

The voice for nature in NSW

22 February 2021

The Hon. Matt Kean MP
Minister for Energy and Environment
GPO Box 5341
SYDNEY NSW 2001

Email: office@kean.minister.nsw.gov.au

Dear Minister,

Areas of outstanding biodiversity values (AOBVs)

I am writing regarding the implementation of 'areas of the outstanding biodiversity value' (AOBVs) under the *Biodiversity Conservation Act 2016* (BC Act).

AOBV declaration under the BC Act provides an important legal mechanism to recognise areas with irreplaceable biodiversity values of state, national or global importance. However, since the BC Act came into effect in 2017, no new AOBVs have been declared or registered.

At the NCC Annual Conference in 2020, Member Groups approved a motion expressing concern that there is no process established for community members, or other stakeholders, to nominate AOBVs. The AOBV mechanism is not being implemented effectively, with significant unexplained delays in implementing the AOBV framework.

These shortcomings are demonstrated by the Mt Canobolas State Conservation Area (SCA) nomination, submitted to the Office of Environment and Heritage by Richard Medd and Colin Bower in July 2018. The nomination is yet to be finalised, although it is understood that it has met all the criteria. With a competition style mountain bike track now proposed for the Mt Canobolas SCA, the additional protection an AOBV listing could provide is needed urgently.

The NSW Nature Conservation Council Annual Conference calls on the NSW government to:

1) Establish a clear and transparent process for how areas can be nominated for AOBV status

There is no process in place guiding the community on how to nominate an AOBV, and no new AOBVs have been declared since the BC Act came into effect in 2017. This unacceptable delay must be explained.



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A clear and transparent process for individuals, community groups and other stakeholders to nominate AOBVs must be implemented as a priority. This process should include nomination guidelines and a nomination form explaining the AOBV process and how community and third parties can make nominations. We recommend a similar approach to the nomination process for threatened species.

2) Finalise the declaration of the Mount Canobolas State Conservation Area as an AOBV.

Despite the lack of clarity around AOBV nomination, there has been at least one known submission to DPIE nominating an area for AOBV status - the submission by Richard Medd and Colin Bower in July 2018 for the Mount Canobolas State Conservation Area (SCA), just south of Orange.

The comprehensive submission demonstrated the Mount Canobolis SCA addressed the AOBV criteria specified in Section 3.2 of the BC Act. The area is of state, national and global significance due to the high level of endemism, regionally important species, the large number of threatened species and ecological communities. The site makes a significant contribution to the persistence of biological distinctiveness; ecological processes and integrity; and has outstanding ecological value for education and scientific research. However, two years after being submitted, this nomination has not been finalised and no additional protections are in place for this unique ecosystem.

This delay is particularly significant because the Mount Canobolas SCA is currently under threat from a proposal for a major mountain bike track network and associated infrastructure. As the park is only 1672 ha, this development would have severe impacts on biodiversity values. It would be much more appropriate for the mountain bike track to be located in the adjacent state forest. AOBV declaration could help prevent this damaging project.

3) Strengthen the protection provided by an AOBV listing

A number of legal restrictions and requirements have been put in place to protect the outstanding values of AOBVs. For example:

- AOBVs or land recommended for listing as an AOBV is to be identified as category 2 sensitive regulated land under the *Local Land Services Act 2013*, and code-based clearing cannot be undertaken in these areas.
- AOBVs are identified on the Biodiversity Values Map, which triggers the Biodiversity Offset Scheme.
- Under section 2.3 of the Biodiversity Conservation Act it is an offence to damage a declared areas of outstanding biodiversity value.

However, these areas are not entirely off limits to clearing and development and approval can still be given to clear and develop AOBVs. The legal protections for AOBVs should be strengthened to further restrict or prohibit clearing or development that would impact on an AOBV.



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Additionally, the BC Act and the *Local Land Services Act 2013 (LLS Act)* impose various obligations on decision-makers in relation to impacts on biodiversity values that are at risk of a serious and irreversible impact (NSW DPIE, 2019). The department has created guidelines for assessing whether these values are at risk - *Guidance to assist a decisionmaker to determine a serious and irreversible impacts*. To strengthen protection, AOBVs should be included as an 'entity at risk of serious and Irreversible impacts' in clause 2.3 of these guidelines.

We look forward to your prompt reply on these important matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Don White', with a large, stylized flourish at the end.

Don White
Chair
Nature Conservation Council of NSW