



Australia's property industry
Creating for Generations

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Professor Graeme Samuel AC
EPBC Act Review Secretariat
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

24 April 2020

Via email: epbcreview@environment.gov.au

Dear Professor Samuel

RE: The statutory review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The Property Council of Australia welcomes the opportunity to provide feedback. We do so in the spirit of cordial and productive engagement we have always enjoyed with the Department of Environment and Energy (the Department) and its predecessors.

The Property Council of Australia is the nation's leading advocate for property, an industry that employs 1.4 million Australians and accounts for 13 per cent of our GDP, larger than mining and manufacturing combined.

Our members pursue ecologically sustainable development to build Australia's cities and in particular provide the vital pipeline of housing supply needed by our growing population. They include Australia's largest greenfield residential and commercial developers.

The property industry is the largest user of the assessment and approvals process under the EPBC making up 27 per cent of all referrals¹ in the 2018-19 financial year.

The current review of the EPBC Act is timely. As the key piece of legislation protecting our environment, the EPBC Act should continue to evolve toward legislative best-practice and the growing expectations of our communities around sustaining native and flora and fauna. Our

The Property Council's key priorities in the following submission are to support:

1. Commonwealth Government leadership on a national strategy, research and funding to preserve habitats for key threatened species across all states and territories;
2. positive environmental outcomes for communities by adopting whole-of-region offsetting solutions; and

¹ Department of the Environment and Energy Annual Report 2018-19

3. the urgent improvement of the EPBC Act and the capacity of the Department to streamline processes and focus on user experience.

As an industry, we have wide-ranging expertise on these matters and would be very pleased to meet with you and discuss our research and recommendations in more detail.

Please do not hesitate to get in touch with me on 0434 182 362.

Kind regards,

A handwritten signature in black ink, appearing to read 'Mike Zorbas', with a stylized flourish at the end.

Mike Zorbas

Group Executive, Policy
Property Council of Australia

The need for a nationally coordinated effort to protect and rehabilitate Australia's environment

Australia's environment is facing significant challenges. Acute shocks, such as the recent bushfires, combined with the long-term stresses of climate change, invasive species and evolving land uses have taken a heavy toll.

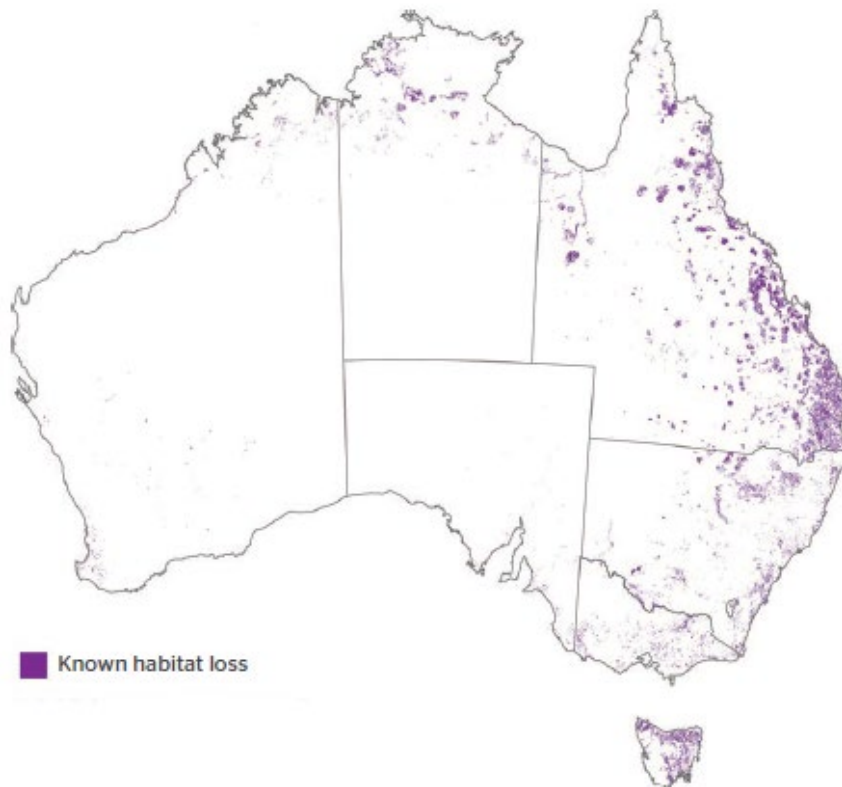


Figure 1- Known habitat loss in Australia between 1999-2017 (source: University of Queensland)

Australia needs an overarching national policy that establishes a clear vision for the protection and sustainable management of Australia's environment to the year 2050. The Commonwealth is uniquely placed to deliver such a plan in collaboration with states and territories.

Such a program needs to be supported by the Commonwealth's leading role in:

1. **Ensuring that matters of National Environmental Significance are properly protected.**

Many threatened species' habitats traverse state and territory borders and their populations depend on access to large areas of bushland for their survival. Obstructing environmental efforts due to artificial borders between states and differing approaches to conservation is leading to inadequate outcomes for Australia's fauna and flora. There is a need for the Commonwealth to lead specific action programs and policy to preserve and, restore natural capital, taking into account the impacts of climate change.

2. **Streamlining and simplifying processes and prioritising good environmental outcomes.**

Fragmented legislative approaches at a state and territory level are leading to uncertain environmental outcomes and increasing uncertainty for business.

There is a need to implement efficient and collaborative planning and decision-making processes across all levels of government with clear lines of accountability which will improve environmental outcomes and reduce the cost of new homes.

The Commonwealth should take a leadership role in delivering this and simplifying the assessment and approvals process.

3. **Promoting National Standards for conservation and implementing them in state and territories through harmonisation or accreditation activities.**

The Commonwealth, states and territories have diverging regulatory frameworks. This causes confusion for users of the legislation and adds costs to projects. The Commonwealth should consider standardising processes wherever possible. This could be done through greater use of joint assessment panels whereby the Commonwealth and state and territory assessment processes are compared, aligned, and harmonised to the greatest extent possible.

The Commonwealth should also empower state and territory systems where they have been found to deliver good outcomes.

4. **Supporting a well-resourced Department and facilitating its activities across Australia.**

Issues faced by our members when engaging with the Department of Environment and Energy include inconsistent interpretations of the EPBC Act, bottlenecks due to insufficient resources, staff turnover and, at times, lack of adequate experience in frontline Department staff. The Property Council has politely advocated for better resources for the administration of the EPBC Act for more than a decade.

Recommendation 1: The Commonwealth should deliver and fund an overarching national policy that establishes a clear vision for the protection, rehabilitation, and sustainable management of Australia's environment to the year 2050. This plan should be supported by strong evidence-based policies, a harmonised regulatory framework across all levels of government and a Department better resourced to administer it, knowing the projects at stake are some of the largest job creating opportunities across the economy.

Establishing an Environment Rehabilitation Fund

There is a heightened need to adequately fund environmental repair against the backdrop of climate change.

The Department of Environment and Energy has the ability to administer bonds, guarantees and small cash deposits, but has no administrative arrangements for the management of other payments. Penalties generally go to consolidated revenue. The establishment of an Environment Rehabilitation Fund would allow the Department to collect and direct funds to strategically offset the impacts of developments and develop research.

Recommendation 2: The Commonwealth should create an Environmental Rehabilitation Fund to support the development and implementation of a broad environmental improvement package including, research, centralised planning, and nationally coordinated offsetting.

Ensuring positive environmental outcomes for communities by adopting whole-of-region offsetting solutions

Increased use of Strategic Assessments in key growth areas

Our member organisations support the principles of ecologically sustainable development and seek to deliver good environmental outcomes through development projects. It can be a source of frustration for proponents when navigating the complex approvals process when it doesn't lead to good environmental outcomes.

In growth areas that are not covered by Strategic Assessments, proponents are often required to lodge multiple, complex applications for the approval of individual components of large, multifaceted development proposals. These frequently lead to cost and time blow-outs and reduce certainty for developers (see **Attachment B**).

Strategic assessments allow for the cumulative impact on a threatened species to be quantified and sufficient protections to be put in place. While it will be necessary to retain single project assessments, real efficiency and environmental benefits could be gained by moving to greater use of Strategic Assessments and regional planning tools. These strategic approaches will better protect matters of national environmental significance, while supporting sustainable development.

Strategic approaches have significant benefits to proponents by increasing certainty and improving investment opportunities at an early stage, reducing approval timeframes and costs and by reducing the need for individual project referrals.

Recommendation 3: Increase the use of Strategic Assessments in key growth areas to unlock environmental benefits through landscape scale solutions and to streamline the approvals process for businesses.

Implementing a biobanking scheme

Environmental offsets are often required as part of the conditioning process to offset unavoidable residual impacts. The quantum of the offsets is calculated on a project by project basis, leading to piecemeal environment outcomes (see above).

Unlike the position in some states, there is only limited ability at the Commonwealth level to pay a financial settlement (which can be pooled by government with other offset funds) instead of providing a land-based offset, and little flexibility in how an offset obligation can be satisfied. Further, the methodology for calculation has changed many times over the past few years for some species on the Threatened Species List (e.g. koalas). This makes it difficult for property project proponents and offset providers to enter into agreements which deal adequately with changes to the various calculations.

The EPBC Act reforms should, consistent with states, consider offsets as a last resort, after avoidance and mitigation of impacts on biodiversity have been maximised and where a proposal is otherwise able to manage its environmental impacts and strike an appropriate balance between the development/environment dilemma.

However, where offsets are required in order to balance the impact that a proposal may have on the environment, the reformed EPBC Act should ensure that rigorous standards are applied to these offsets to ensure that they deliver desirable biodiversity outcomes. They should have a dual focus on achieving both biodiversity retention and restoration ecology.

A biobanking or eco-market scheme could be established. This would take the form of a market-based system which is aimed at addressing environmental decline. Decision makers could put a cap on environmental degradation and allow the market to resolve the cost of offsetting the impacts above the cap. This would deliver the additional benefit of engaging private landowners by providing incentives for them to manage their land in ways that conserve and enhance the environment.

Successful examples of this type of scheme include BushTender, EcoTender and Bushbroker which are all used in Victoria where 65% of land is under private land ownership. The Bushbroker database, allows developers seeking offsets to search a database for native vegetation credits which meet their requirements and purchase credits to satisfy their required offset.

A similar co-ordinated national approach could help ensure that the offsets are proportional to the native vegetation and habitat lost as a result of a project with consideration of how these losses can be offset.

Recommendation 4: The Commonwealth should deliver greater environmental outcomes and facilitate the offsetting process for proponents by implementing a nationwide biobanking scheme. This would have the co-benefit of engaging private landowners in conservation efforts and generating new environmentally and economically driven land-uses.

A streamlined and improved EPBC Act

Reducing approval costs and timeframes

The property industry is Australia's largest industry, larger than mining and manufacturing combined. It is one of the pillars of the Australian economy and is needed more than ever to provide stimulus to reinvigorate the economy in the wake of COVID-19. Unnecessary delays to projects caused by the approvals process must be removed as a matter of priority.

The Property Council has received widespread reports of significant delays and cost increases caused by the assessment and approval process. To illustrate this, we have compiled a list of case studies containing real-life examples of these issues (**Attachment B**). Some of these case-studies have been de-identified to protect the privacy of ongoing approval processes.

Some key issues highlighted by the case-studies are:

- **Timing and delays:** some developers are reporting that the assessment and approval process took in excess of 4 years to be completed. These delays are not uniform across the country. Analysis undertaken by Urbis², on behalf of the Property Council, has calculated the cost for homebuyers caused by delays in the assessment of Greenfield sites in Queensland. These delays are adding an additional \$36,800 to the price of a new home. The research shows that if greenfield development could receive approvals within 2 years of the application, this additional cost could be avoided. The EPBC Act does provide statutory timeframes for assessments, but there are no substantive consequences if these are not met.
- **Increased costs:** That there must be costs associated with obtaining environmental approvals and offsetting impacts is self-evident. There is however a recurring theme of multiple, disaggregated, follow up requests from departmental representatives, who at times cover the spectrum of capability and experience. There is routinely little understanding of the significant cost increases on environmental consultancy and legal services that each separate

² Greenfield Cost Impact Assessment, Urbis on behalf of Property Council of Australia (2016)

tranche of inquiry imposes on the proponent. These costs are eventually passed on to homebuyers leading to increased issues with housing affordability.

- **Duplications and complex regulatory obstacles:** The lack of recognition between Commonwealth and state and territory processes leads to duplications of processes. While for large projects, Environmental Impact Statements are recognised by both layers of government, the same is not true for assessments on preliminary documentation. This leads to smaller projects having to replicate their environmental input during the assessment process.
- **Varying views of Departmental officers overriding *status quo* policy:** The Property Council has also been apprised of many instances of inconsistent Departmental approaches to interpreting existing legislation, exacerbated by high turnover. This is not a universal experience, nor a reflection on the great many experts working in the Department, but it remains an occurrence frequently raised with us. In order to address this issue, we suggest considering:
 1. Favouring Strategic Planning over individual lot assessments;
 2. Improvements in the spatial information available to departmental staff for decision making purposes;
 3. Ensuring true handover processes are in place for staff so that continuity is assured for ongoing projects;
 4. Hiring staff with experience in obtaining environmental approvals; and
 5. Greater budget allocations for Departmental training and systems management.

Recommendation 5: The Department should place a priority on hiring at the right level and driving down turnover in frontline roles that are crucial to the advancement or delay of projects with significant job and home creating potential.

Recommendation 6: Improve the efficacy of EPBC Act statutory assessment timeframes and introduce deemed compliance events in the case of excessive 'stop-the-clock' decisions and other incentives for timely resolution.

Avoiding duplication between the EPBC and state and territory legislation

The Commonwealth and state levels of government have concurrent powers in respect to making laws related to the environment. As such, there is the potential for inefficient legislative and judicial duplication and friction between the EPBC Act and the environmental laws of the states.

Key areas of overlap identified as part of this review are the following (these are expanded upon in **Attachment A**):

- (a) threatened species;
- (b) offset regimes;
- (c) governmental approvals; and
- (d) reporting requirements.

The reforms to the EPBC Act should focus on strengthening and streamlining these initiatives, in particular bilateral agreements. The benefits of bilateral agreements in generating efficiencies in environmental management and harmonising Commonwealth and state and territory processes are widely recognised and supported.

It is pleasing to note the establishment of a new assessment bilateral agreement between the Commonwealth and NSW Governments signed in April 2020. The agreement specifies that assessments conducted by NSW will also be accepted by the Commonwealth providing they meet certain requirements. It also commits NSW to use its best endeavours to coordinate its approvals process with other relevant jurisdictions when an action forms part of a multi-jurisdictional process. This agreement will serve to apply environmental protections more consistently and streamline environmental assessments to deliver more certainty for industry.

There has been some uptake of the bilateral agreements framework across Australia but there is much more to do. As noted in Table 1, despite some preliminary work on approval bilateral agreements, none have been implemented to date. Further, many assessment bilateral agreements are now several years old and require updating.

The Commonwealth Government must lead a coordinated effort to put in place approval and assessment bilaterals across all states and territories. These should aim to be harmonised wherever possible and rely on shared information and databases.

Table 1. Uptake of assessment and approval bilateral agreements across Australia.

	NSW	VIC	QLD	TAS	ACT	NT	SA	WA
Approval Bilateral Agreement	Draft not progressed (2014)	Notice of intent (2013)	Draft not progressed (2014)	Draft not progressed (2014)	Draft not progressed (2014)	Notice of intent	Draft not progressed (2014)	Draft not progressed (2015)
Assessment Bilateral Agreement	Yes (2020)	Yes (2014)	Yes (2014)	Yes (2014)	Yes (2014)	Yes (2014)	Yes (2014)	Yes (2015)

Recommendation 7: The Commonwealth should work with state and territory governments to develop and implement assessment and approval bilateral agreements across Australia by July 2021. These will coordinate better environmental outcomes and deliver certainty for business.

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ATTACHMENT A: AREAS OF LEGISLATIVE AND JUDICIAL OVERLAP BETWEEN THE EPBC ACT AND STATE AND TERRITORY LEGISLATION.

Prepared by Margie Tannock, Partner – Squire Patton Boggs

Area of Overlap	Premise
Threatened species list	<p data-bbox="587 421 1114 454"><i>Single and national list of threatened species</i></p> <p data-bbox="587 495 1385 734">One of the key regulatory mechanisms for protecting biodiversity is by way of threatened species lists. However, difficulties can arise where there are inconsistencies or overlap between Commonwealth and State or Territory threatened species lists. This has the potential to lead to less effective management of biodiversity, as well as an increasing uncertainty for developers and regulators, and poor environmental outcomes.</p> <p data-bbox="587 775 1372 1055">Under the EPBC Act, threatened species are (consistent with the International Union for the Conservation of Nature) divided into the categories of extinct; extinct in the wild; critically endangered; endangered; vulnerable or conservation dependent. An ecological community is an assemblage of native species inhabiting a particular area and meeting any criteria stipulated by regulation. An ecological community may be either critically endangered; endangered or vulnerable.</p> <p data-bbox="587 1095 1353 1196">While a species or ecological community remains listed, the Minister for the Environment must keep ‘approved conservation advice’ setting out:</p> <ul style="list-style-type: none"> <li data-bbox="651 1236 1372 1337">(a) the grounds on which, and the main factors that cause the species or community to be eligible to be included in the category which it is listed; and <li data-bbox="651 1377 1372 1727">(b) either: <ul style="list-style-type: none"> <li data-bbox="722 1449 1361 1550">(i) information about what could be appropriately be done to stop the decline or support the species or communities’ recovery; or <li data-bbox="722 1590 1366 1727">(ii) a statement to the effect that there is nothing about what could be done to stop such decline, or information that could support the recovery, of the species or community. <p data-bbox="587 1767 1390 1973">The approach of the current EPBC Act focuses on recovery planning as the primary tool for managing threatened species and communities. As was suggested in Australia’s State of the Environment 2016 report (SoE Report), the effectiveness of this approach is difficult to assess. There are only a few examples of long-term improvements in the conservation status of individual</p>

	<p>species and communities that can be attributed to management actions and recovery planning arising out of an EPBC Act listing.</p> <p>The SoE report suggested that there is a need for further investment in biodiversity management and for a more realistic approach to be taken about what objectives are achievable, particularly under a changing climate.</p> <p>In addition, EPBC Act provisions do not necessarily integrate with or always compliment the State and Territories' own threatened species list and associated recovery planning and/or other management requirements.</p> <p>A broad national framework is provided in the form of Australia's Biodiversity Conservation Strategy 2010-2030 (Strategy) which is a strategy that was agreed to by the Commonwealth, State and Territory governments in 2010. The Strategy aims to coordinate efforts at a national level to suitably manage biological resources and ensure their long-term resilience, health and viability.³</p> <p>A 2015 review of the Strategy found it was not possible to report achievement against its targets due to insufficient national-scale data to comprehensively report on national progress and some targets being inadequately specified in order to assess progress.</p> <p>Following that review, the Australian Environment Ministers agreed to revise the Strategy, based upon recommendations from the 2015 review. This revised strategy was released for consultation between December 2017 and March 2018 and in November 2019, Australia's Strategy for Nature 2019-2030 was released (Strategy for Nature).⁴</p> <p>Objective 6 of the 2019 Strategy for Nature is to maximise the number of species secured in nature. In order to achieve this objective, the Strategy for Nature makes reference to the importance of the protection and restoration of native habitats, mitigation of threats, management of risks to environments and management of environments to their species.</p> <p>The Strategy for Nature suggests that conservation efforts could include cross-border collaboration and 'consistent, robust and</p>
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³ Australian Government, Department of Environment, *Australia's State of the Environment Report: 'Biodiversity (Management Context)'*, 2016

< <https://soe.environment.gov.au/theme/biodiversity/topic/2016/management-context> >

⁴ Australian Government, Department of Agriculture, Water and the Environment, 'Australia's Strategy for Nature', <<https://www.environment.gov.au/biodiversity/conservation/strategy>>.

	<p>transparent assessment and listing of threatened species applied across all jurisdictions'.⁵</p> <p>In 2015, Australia also introduced the Australian Government's Threatened Species Strategy⁶ this was a more specific policy which intended to be a plan for how the Commonwealth government will prioritise effort and work in partnership with the community and State and Territory governments over a five-year period.</p> <p>As this five-year period is about to conclude, analysis of the effectiveness of the approaches adopted in the Threatened Species Strategy should inform what the universal assessment and listing process looks like in practice, and how the process can be improved from the current process.</p> <p>The adoption of a more consistent, robust and transparent assessment and listing process across the nation may help to reduce the overlap and duplication between State and Commonwealth processes.</p> <p>As per the Environment Institute of Australian and New Zealand, there is currently a significant overlap and duplication of objections, processes and regulatory requirements for the identification and conservation of endangered and threatened species and communities across Commonwealth and state/territory jurisdictions.</p> <p>This should be addressed in the EPBC Act reforms in order to help support Australia to meet the objectives of its 2019 Strategy for Nature over the next ten years, in anticipation of the Strategy for Nature being revised ahead of 2030, and the EPBC's next review period.</p> <p>Adopting a more consistent, robust and transparent assessment and listing process will also create greater certainty for developers and regulators alike, which generally leads to higher levels of compliance and improved environmental outcomes.</p> <p><i>Urgent management intervention</i></p> <p>Further and ancillary to the adoption of a single, national list of threatened species, reforms should consider the inclusion of an urgent management intervention provision within the EPBC Act. An urgent management intervention provision would allow measures</p>
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⁵ Commonwealth of Australia, *Australia's Strategy for Nature 2019-2030: Australia's national biodiversity strategy and action plan*, 2019

<[https://naturehub.govcms.gov.au/sites/default/files/2019-11/Australia s Strategy for Nature %20web.pdf](https://naturehub.govcms.gov.au/sites/default/files/2019-11/Australia%20s%20Strategy%20for%20Nature%20web.pdf)> p 23

⁶ Australian Government, Department of Agriculture, Water and the Environment, 'The Australian Government's Threatened Species Strategy',

<<https://www.environment.gov.au/biodiversity/threatened/publications/strategy-home>>.

	<p>to be taken immediately in cases of extreme urgency in respect of threatened ecological communities and species. The need for such a provision was seen in the 2019/20 bushfires.</p> <p>The adoption of an urgent intervention management provision would also provide for greater resources to assist in the research and recovery of threatened species and ecological communities after catastrophic natural events such as bushfires and severe, ongoing drought. Including an urgent management intervention provision in legislation at a single, Commonwealth level would therefore ensure that resources are effectively utilised, preventing inefficiency at multiple levels.</p> <p>In adopting a single, national list of threatened species, the inclusion of a provision which allows for the urgent assessment of species which have been impacted by threatening events, such as fires, but are not currently listed under national environmental law, should also be considered. This would ensure greater outcomes for said species and ensure a transparent listing process.</p>
Processes for determining offset regimes	<p>There are currently various processes for determining offset regimes at a Commonwealth and state/territory level and a distinct lack of uniformity or coordination between these different approaches and prioritisation of offsets. The duplication highlights inconsistencies between the processes, and results in less favourable environmental outcomes.</p> <p>In order to address this overlap and inconsistency between jurisdictions, the review process should consider a national uniform approach to offsets and how this might be agreed within the current legislative and jurisdictional framework.</p> <p>This could involve, by way of an example, advanced offsets to achieve landscape-scale environmental outcomes across the nation. Mechanisms and processes to support the establishment of a national eco-market, a market-based system which could be based off the Victorian model. This system provides private landholders with the opportunity to manage their land in ways that conserve and enhance the natural environment – these initiatives include BushTender, EcoTender and Bushbroker.</p> <p>The establishment of an offset database, similar to Victoria’s Bushbroker database could help ensure that the offsets are proportional to the native vegetation and habitat as a result of a project, and open up more land and options for developers and governments seeking to use offsets.</p> <p>Overall the EPBC Act reforms should ensure that there is a consistent approach across Australia and across different levels of governments in considering offsets as a last resort. Offsets should be considered after avoidance and minimisation of impacts on biodiversity have been contemplated. Further, offsets should</p>

	<p>support other actions such as contribution to research and recovery plans in addition and as an ancillary to offsets.</p>
Governmental approvals	<p>Most developments which require approval under the EPBC Act also require separate approvals under relevant state or territory legislation. It may be argued that this is unnecessary duplication, resulting in additional costs and delays for those developments.</p> <p>However, to counteract this, generally the use of bilateral approval process allows the Commonwealth to delegate the assessment of the environmental impact assessment to the State environmental protection agencies. This limits the duplication in real terms, meaning the approval is subject to one environmental impact assessment, which results in two separate approval decisions from the State and Commonwealth Minister for the Environment, rendering the duplication more administrative.</p> <p>Although there are ways the bilateral approvals process could be strengthened and streamlined, the bilateral approval process allows for the Commonwealth and States and Territories to coordinate their approval process and encourages cooperation. This should be retained.</p> <p>The new EPBC Act should aim to strengthen these processes and provide further clarity, so that the government and government agencies have a greater awareness of what lies within their statutory and administrative responsibility in terms of environmental regulation.</p>
Reporting requirements	<p>A lack of standardised and centralised environmental databases, in addition to no standardised measurement or formatting requirements has led to a need to report to two levels of government, often concurrently.</p>
Natural resource management programs	<p>Natural Resource Management is the integrated management of the natural resources that make up Australia's natural landscapes such as land, water, soil, plants and animals.</p> <p>These programs seek to ensure environmental, social and economic sustainability for present and future generations through the coordinated management of land, water and biodiversity.</p> <p>The state programs are administered by an individual department in each respective state, e.g. in WA it is the Department of Primary Industries and Regional Development and the legislation is the <i>Environmental Protection Act 1986 (WA)</i>.</p> <p>The outcomes of state and regional NRM programs overlap with the scope of the EPBC Act, particularly in the areas of species listing, recovery planning, biodiversity management and protected areas management.</p>

ATTACHMENT B: CASE STUDIES ON THE GENERAL COST AND, IN SOME CASES, UNCERTAINTY OF THE ASSESSMENT LANDSCAPE

CASE STUDY 1	
Background	<ul style="list-style-type: none"> • Site location: NSW. • Circa 1000 lots. • The site was zoned, and precinct planning had been completed (endorsed) in Dec 2011 by Local Council. • Detailed ecological assessments were completed to guide the rezoning and precinct planning processes and the rezoning assumed extensive areas of Endangered Ecological Communities (EEC) clearing and in some cases retention through specific environmental controls. • Development of the site by the former developer commenced circa 2012. • In April 2017, the developer commenced negotiations to purchase the balance of the subject development site. • At the time Due Diligence commenced, Offsetting provisions were available to enable the clearing of EEC on the land. • Due Diligence was undertaken between April 2017 and June 2017 with exchange of contracts on 30 June 2017.
Issues Encountered	<ul style="list-style-type: none"> • During the due diligence period the Biodiversity Conservation Act 2016 was undergoing “final consultation” and the developer had concluded that the development would likely be assessed under this framework in the future. • The developer completed thorough environmental due diligence over the land and received advice from its ecologist that the land was suitable for clearing to enable the subdivision works under either the existing Threatened Species Conservation Act 1995 or proposed Biodiversity Conservation Act 2016 through the Biodiversity Offsets Scheme. • The Biodiversity Conservation Act 2006 was repealed, and the new Biodiversity Conservation Act 2016 was introduced 25 August 2017. • The accompanying Biodiversity Conservation (Savings and Transitional) Regulation 2017 provided for certain areas (including the subject site) to be nominated as “interim designated areas”. • The developer completed the purchase in Sept 2017. • Between November 2017 and early 2018, the developer submitted various development applications necessary to progress the development (Circa 800 Lots). • Based on legal advice received by Local Council in early 2018, the developer was advised that the applications would go on “stop the clock” as Council were not able to assess the biodiversity elements (BDAR reports) until the deferred status under the new regulation concluded on 25 November 2018 after which time they would commence assessment of the application affected by removal of EEC.

	<ul style="list-style-type: none"> • The developer explored with Council and OEH pathways to enable the assessment and determination of its various DA's involving the clearing of EEC. These included: <ul style="list-style-type: none"> . Threatened Species Conservation Act 1995 (TSC Act) – No longer available Repealed 24 August 2017. . BCA 2016 – not available until 25 November 2018 due to interim designated status of Lower Hunter Region. . EPA Part 5 – Council refused to accept an SIS prepared in support of the applications, advice from the project ecologist was that the scale and extent of proposed EEC management would result in an unlikely basis for successful appeal. • To enable release of land to meet immediate market demand, the developer re-staged the entire subdivision to enable approvals on land not impacted by EEC (assessed under the EPA 1995). • The re-staging involved the release of land geographically disconnected from the existing development front requiring significant bring forward of infrastructure works and impacting on sales rates. • On 24th November 2018 the legislation (clause f1) was again amended and Local Council received advice from the Environment Division, Hunter Joint Organisation that the balance of the developer's applications could no longer be assessed under the Biodiversity Conservation Act 2016 having lodged prior to 25 November 2018. • The developer was subsequently required to re-submit each outstanding development applications to Council and recommence the assessment including notification periods etc causing extensive approvals delays and impacting the developer's deemed refusal rights. • The applications are yet to be determined by Council and assessment is ongoing.
Impacts on project	<ul style="list-style-type: none"> • Additional cost to re-stage project. • Total delay to date 18+ months. • Additional DA fees were in the order of \$100,000. • Impact on sales rate and cost by selling land disconnected from the exiting development front / established community.

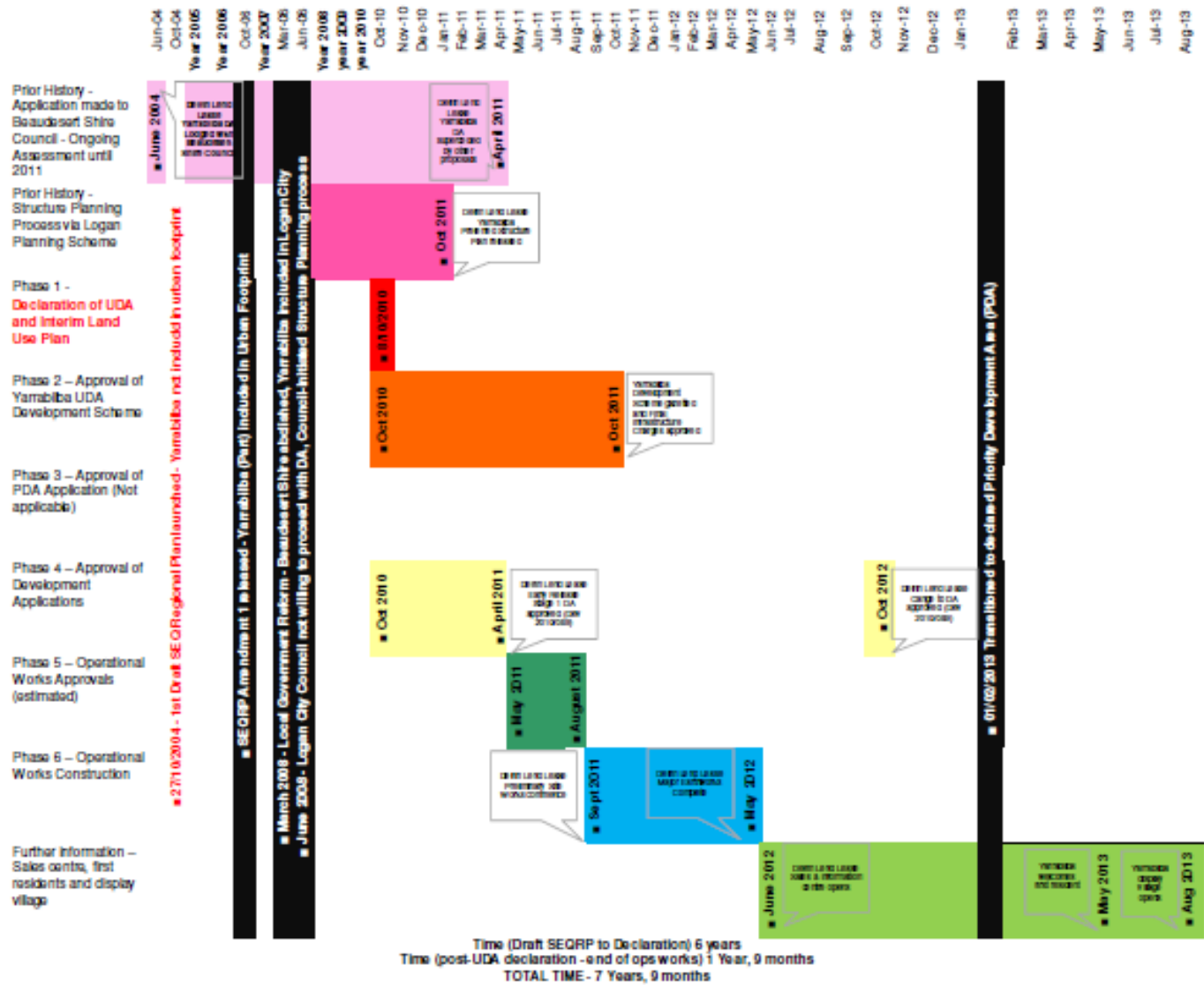
CASE STUDY 2	
Background	<ul style="list-style-type: none"> • Site location: NSW. • Circa 1,700 lots. • Impacts upon Shale/Sandstone Transition Forest (SSTF). • Impacts upon Cumberland Plain Woodlands (CPW). • Impacts upon Koala Habitats.
Issues Encountered	<p><u>Timing</u></p> <ul style="list-style-type: none"> • Assessed and approved as a controlled action. • Application Lodgment: August 2015. • Controlled Action Notice: January 2016. • Variations: March 2017 (Amended action (additional lands) & proponent). • Variation Approval: August 2017. • Approval: December 2018. <p><u>Commonwealth management outcomes</u></p> <ul style="list-style-type: none"> • Onsite & offsite credit offsets. • Onsite conservation via Bio Banking. • Koala Management Plan (5 years providing outcomes valued at \$250,000).
Impacts on project	<p><u>Time delays</u></p> <ul style="list-style-type: none"> • Application process took in excess of 3 years to complete. • Variations to include additional land (combining another application) and changing proponent. • Elevation of status of Flora Community to critically endangered requiring additional offsets and assessment. <p><u>Costs incurred</u></p> <ul style="list-style-type: none"> • Additional ecological input was required. • Additional studies & assessment. • Proactive fencing and weed management to increase quality of existing bushland areas to meet offset quality standards. • Additional legal input required to review draft conditions. • Additional strategic planning input required to align with requirements and outcomes from NSW Biodiversity Certification assessment and agreement. • Additional internal management input required to manage other obligations in purchase agreements and authority consents.

CASE STUDY 3	
Background	<ul style="list-style-type: none"> • Site location: QLD. • Circa 4,000 lots. • Impacts upon Koala habitats.
Issues Encountered	<ul style="list-style-type: none"> • Environmental management was required when crossover between development sites and koala habitats was detected. • The issue was deemed to be a controlled action. • Documentation lodged November 2013. • Controlled action confirmed December 2013. • Approval received December 2015.
Impacts on project	<p>Application process took 24 months.</p> <p>Approx. \$4 million budget set aside for:</p> <ul style="list-style-type: none"> . Management of conservation land, weed removal & small pockets of rehabilitation associated with weed removal. . Erection of fauna proof fencing between conservation land and development site. . Track maintenance, and erosion prevention on conservation land . Pest and fire management. . Other environmental initiatives – signage etc. . Consultants fees/monitoring/annual compliance reports. <p>Individual lot owners adjoining conservation required to put fauna proof fencing involving extra cost for developer where providing fencing plus administration cost of enforcing.</p>

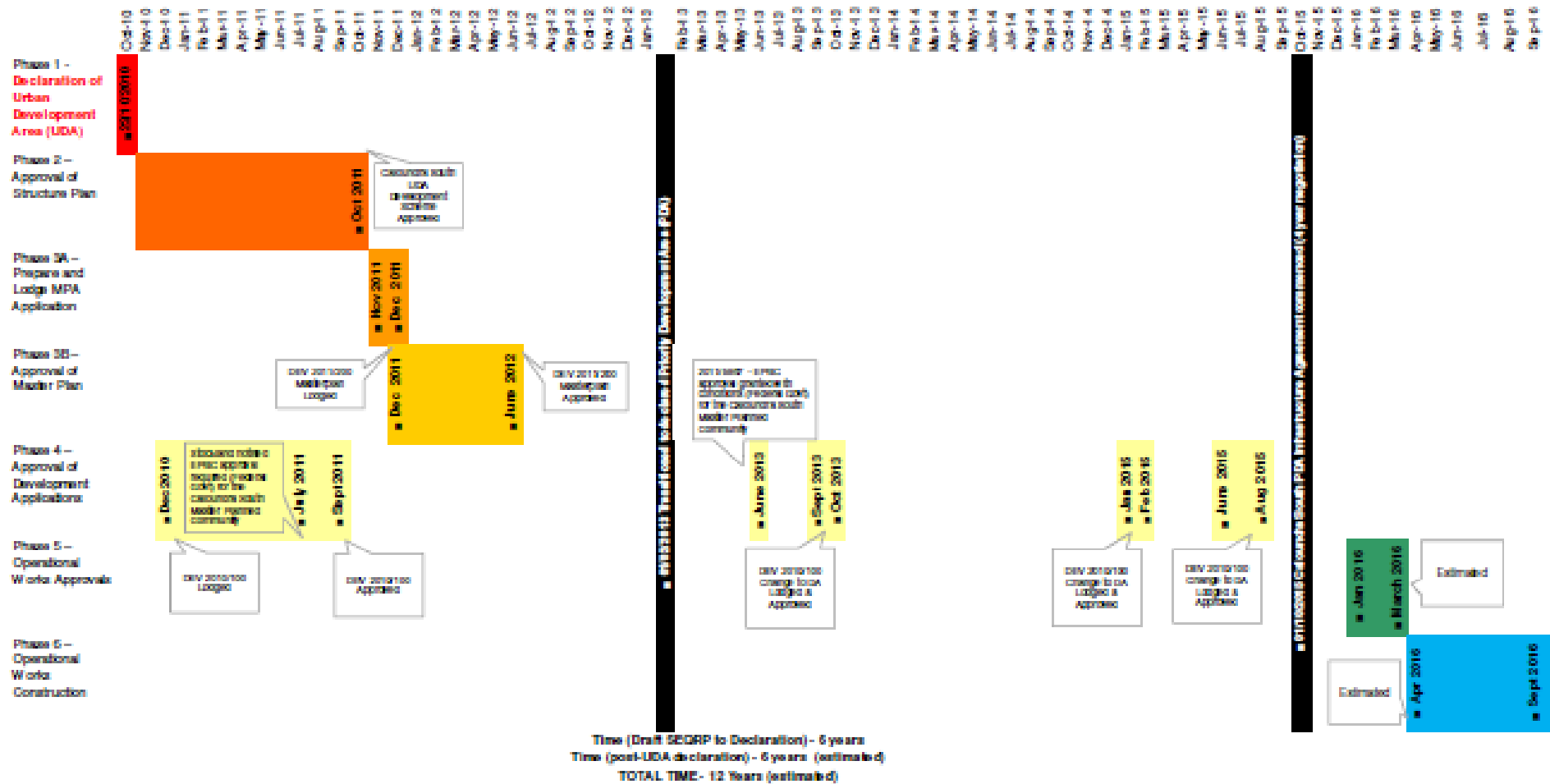
CASE STUDY 4	
Background	<ul style="list-style-type: none"> • Site location: NSW. • Circa 1,800 lots. • Trigger-critically endangered ecological community.
Issues Encountered	<ul style="list-style-type: none"> • Issue assessed as a controlled action. • Documentation lodged January 2015. • Approved December 2018. • Environmental Management Plan (EMP) approved May 2019 • Commonwealth management outcomes: onsite & offsite biodiversity offset requirement, ongoing management under the EMP for the life of the approval (2038) following commencement of action.
Impacts on project	<p><u>Timing</u></p> <ul style="list-style-type: none"> • Application process took in excess of 4 years to be completed. <p><u>Costs incurred</u></p> <ul style="list-style-type: none"> • Offsets on-site agreed, consisted of Environmental Protection Recreation Lands (EP&R) which land ownership sits with the Community Association. • Offsets off-site equated to approx. \$5 million. • EMP budget was approximately \$2 million: <ul style="list-style-type: none"> . Management of conservation land, weed removal & small; pockets of rehabilitation associated with weed removal . Erection of fauna proof fencing between conservation land and development site; . Erosion & sediment control; . Pest and fire management; . Other environmental initiatives – signage etc ; and . Consultants fees/monitoring/annual compliance reports. • Previous & ongoing legal, planning & ecology- \$1 million.

CASE STUDY 5	
Background	<ul style="list-style-type: none"> • Site location: WA. • Circa 600 lots. • Trigger: Carnaby Cockatoo clearing of habitat.
Issues Encountered	<ul style="list-style-type: none"> • Issue: assessed as a controlled action. • Timing: lodged 23/5/14, approved 30/03/17. • Commonwealth management outcomes: purchase of offset land, rehabilitation of adjoining Regional Open Space, \$50,000 donation to Community Koala Care foundation, other onsite measures, ongoing management of Regional Open Space for 5 years and ongoing management for 20-year period (until 2037).
Impacts on project	<p><u>Timing</u></p> <ul style="list-style-type: none"> • Application process took in excess of 3 years to be completed. <p><u>Significant costs incurred</u></p> <ul style="list-style-type: none"> • Cost of original approval ~\$245,000. • Cost of satisfying approval condition ~\$275,000. • Cost of offsets \$1.1 million.

Yarrabilba Priority Development Area – 20,000 Dwellings



Caloundra South – 20,000 dwellings – “Early Release Area”



Park Ridge – 12,000 Dwellings

