

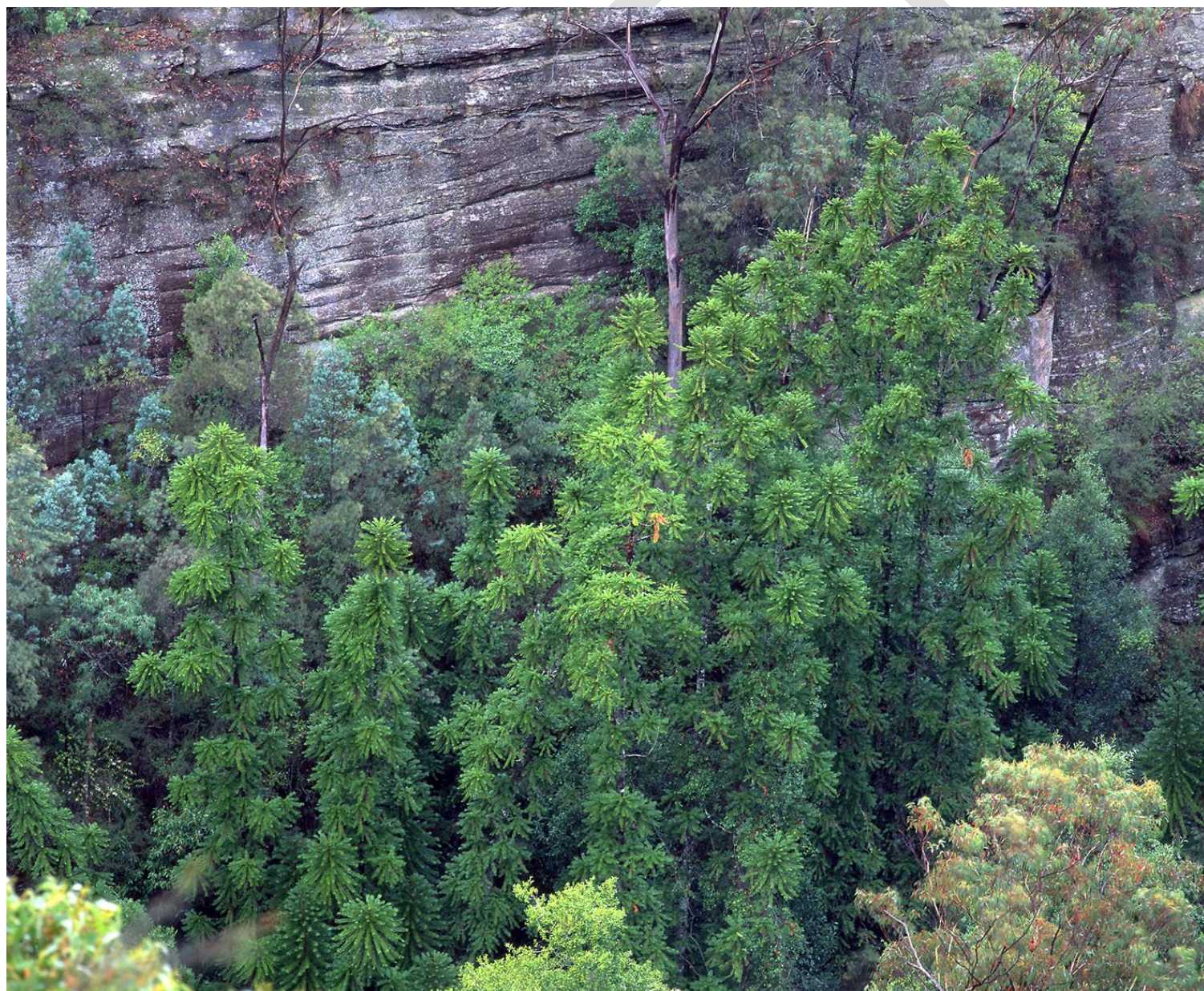


CONSULTATION DRAFT

DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Areas of Outstanding Biodiversity Value

Nomination guidelines



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1. Purpose of this document

These guidelines outline the requirements for nominating an Area of Outstanding Biodiversity Value and the process the Environment, Energy and Science group of the Department of Planning, Industry and Environment will follow for assessing and recommending them.

2. What are Areas of Outstanding Biodiversity Value?

The *Biodiversity Conservation Act 2016* (BC Act) gives the Minister for Energy and Environment the power to declare Areas of Outstanding Biodiversity Value (AOBVs). These are special areas that contain irreplaceable biodiversity values that are important to the whole of NSW, Australia or globally.

Areas are selected on the basis that they meet at least one of the key scientific criteria specified in the legislation. They encompass elements that contribute significantly to the persistence of biodiversity, including the maintenance of structural diversity and functional processes that support connectivity across the landscape, as well as the delivery of ecosystem services, for instance in connection with species diversity, climate refuges, connectivity and supporting migratory species.

AOBVs have a high level of flexibility across a range of features. They have no size requirements. This means that they can be applied to sites as small as cave systems, hot springs or boulder outcrops, as well as to larger landscapes, such as wetlands, grasslands or forests. They can be targeted across a range of scales, locations or themes. AOBVs can be declared on public or privately-owned land. These characteristics give AOBVs a high level of flexibility in comparison with other instruments designed to conserve biodiversity in NSW.

2.1 Effect of declaration

The BC Act provides a level of legal protection for AOBVs, recognising these areas will represent the most valuable sites for biodiversity conservation across NSW. It is an offence to damage an Area of Outstanding Biodiversity Value without an appropriate approval such as a development consent. Any development proposal located on an Area of Outstanding Biodiversity Value must be assessed using the Biodiversity Assessment Method.

AOBVs are excluded from the land management framework set out in the *Local Land Services Act 2013*. This means clearing under the land management codes is not permitted.

3. Nomination, assessment and declaration process

3.1 Making a nomination

Who can make a nomination?

Anyone can nominate a place as an Area of Outstanding Biodiversity Value. Nominations can be made by completing the nomination form, which is available on the Department of Planning, Industry and Environment website.

Before completing the nomination form

Before you complete the nomination form, consider carefully whether the place is likely to satisfy the scientific criteria set out in clause 3.1 of the Biodiversity Conservation Regulation 2017 (BC Regulation). Only places that are important at a state, national or global scale and meet at least one of the scientific criteria are eligible to be declared an Area of Outstanding Biodiversity Value. The scientific criteria are explained in more detail in the Draft Guidelines for interpreting listing criteria for AOBVs (EES 2019).

Getting help

Nominators are encouraged to seek expert advice where appropriate to assist in making a nomination. Incomplete nominations or nominations with inadequate information may not be accepted.

Landholder consent

If a nomination is on, or partly on, private land, then nominators must provide the consent of the landholder to the nomination.

Completing the nomination form

Nominators must provide the following information in the nomination form:

- address/location details of the nominated area, including an indicative map of the area being nominated
- whether the area is on private or public land
- land use information, including what the land is being used for
- nominator's contact information
- landholder details and consent
- assessment of the area against all of the scientific criteria

Refer to the *Draft guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value* (EES 2019) for assistance in applying the scientific criteria. The guidelines also provide indicative significance thresholds.

Include references to published journal articles or other material that support the information you have provided. Unsupported or anecdotal information may not provide sufficient evidence to demonstrate the area meets the criteria for declaration as an Area of Outstanding

Biodiversity Value. Supporting evidence such as ecological reports, studies and photos can also be included in the nomination as attachments.

Do not quote or provide information you have obtained from other people (usually referenced as personal communications) unless you have obtained the agreement of those people to use those statements in the nomination.

Do not provide information you have obtained on a confidential basis or data under a data licence that prohibits its release to other parties unless you have obtained permission to publicly release the confidential information or data.

Indicate if you are providing information you have obtained on a confidential basis or data under a data licence that prohibits its release to other parties and if you have obtained permission to publicly release the confidential information or data.

Ensure you know and agree to how the Department will use and share your nomination and the information contained in the nomination and any attachments including your personal details by signing the declaration section of the nomination form. If you request confidentiality please ensure you have not included your personal information, or any information that can be used to identify you, in the nomination or attachments.

Once you have submitted the nomination, EES officers will contact you to discuss the nomination and to request further information if needed.

Important:

Incomplete forms or forms with insufficient information may not be accepted. The Department may reject nominations that, in its opinion, are vexatious in nature or made in bad faith.

Lodging an Area of Outstanding Biodiversity Value nomination form does not signify that a nomination has been accepted and is under assessment.

3.2 Assessment and declaration process

Nominations are made to the Environment, Energy and Science Group

Completed nominations should be submitted to the following address:

Online: to be confirmed

Hard copy: to be confirmed

Nominations are received and assessed by the Environment, Energy and Science Group (EES) of the Department of Planning, Industry and Environment. EES will send a notice of receipt of the submission. Note that this should not be taken as notice of acceptance of the nomination.

Nominations can be made by individuals or organisations.

EES may accept and assess nominations as they are received or put out a call for nominations at a particular time during the year.

Nomination review

EES will review the nomination to determine if the information provided is complete and adequate. An EES officer may contact the nominator to discuss the nomination or request additional information.

If EES is satisfied with the information provided, including that it addresses all the scientific criteria in sufficient detail, the nomination will be accepted. If not satisfied, EES may reject the nomination and give reasons.

Scientific assessment

Once accepted, EES will conduct an assessment of the nomination against the scientific criteria set out in the BC Act and Regulation. The area must meet at least one of the criteria and be important at a state, national or global scale to be declared an Area of Outstanding Biodiversity Value.

The scientific assessment could include an inspection of the nominated area by EES officers, so access for a site inspection may need to be arranged.

If the scientific assessment indicates that the nominated area satisfies at least one of the criteria, EES will make a preliminary determination to proceed. If the assessment indicates that the nomination is unlikely to satisfy the criteria, the nomination will be rejected at this stage.

Preliminary landholder and public authority consultation

If EES determines to proceed with the nomination, EES will consult with the landholder and relevant public authorities to gauge support and gather information about current land management regimes, planned development and any other activities affecting, or likely to affect, the nominated area.

EES will consider submissions from the landholder and relevant authorities in relation to the nomination.

EES may also engage informally with the local community to gauge the level of community support and understanding of the nomination.

Public consultation

In addition to engaging with the landholder and relevant authorities, the legislation requires public consultation.

The nomination and associated documentation will be made publicly available for a minimum of four weeks. Anyone can make a submission on the proposal.

EES will consider any submissions received during the public consultation period.

Advisory bodies

EES is required to seek and consider the advice of certain advisory bodies with regards to any nominations, under the BC Act. These are the Biodiversity Conservation Advisory Panel and the NSW Threatened Species Scientific Committee, as well as the Biodiversity Conservation Trust (BCT).

The advisory bodies may provide advice, guidance and other input into the assessment process.

Final assessment

EES will complete a final assessment report, incorporating the scientific assessment, all submissions and advice from the advisory bodies for internal consideration and determination as to whether to make a recommendation to the Minister for Energy and Environment that the area should be declared an Area of Outstanding Biodiversity Value.

Recommendation to the Minister

If the Coordinator General EES decides to make a recommendation and the land is land on which the Land Management (Native Vegetation) Code applies, then the area will be mapped onto the Native Vegetation Regulatory (NVR) Map, established under Part 5A of the *Local Land Services Act 2013*, as category 2 sensitive regulated land.

This limits the activities that can be undertaken on the land and provides it with a level of protection in accordance with that classification.

Declaration

If the Minister decides to declare the Area of Outstanding Biodiversity Value, a notice will be published on the NSW legislation website. The notice will include an indicative map showing the spatial extent of the area and a statement of reasons. EES will notify all landholders and relevant authorities.

Once the Minister has made a declaration, the area is removed from the NVR Map and the land is then excluded from the application of the Land Management (Native Vegetation) Code. The land is then mapped on the Biodiversity Values Map, established under Clause 7.3 of the BC Regulation, and the AOBV is listed in the public register for AOBVs.

No declaration

If the Minister decides that the area should not be declared an Area of Outstanding Biodiversity Value, EES will notify landholders and relevant authorities of the Minister's decision. The categorisation of the area on the NVR Map area may be reviewed under the next annual review of the map.

Private land conservation agreement

Land declared an Area of Outstanding Biodiversity Value is automatically a priority for investment. The BCT must take reasonable steps to enter into a private land conservation agreement with any landholder(s) of land within the Area of Outstanding Biodiversity Value.

Information about private land conservation agreements can be found on the BCT website <https://www.bct.nsw.gov.au/>.

3.3 Restricted access to some information

The Coordinator General EES is authorised by section 9.10 of the BC Act and clause 3.2(3) of the BC Regulation to restrict access to information about the proposed Area of Outstanding Biodiversity Value if satisfied that it is in the public interest to do so. This means that information such as the location may not be published if publication may pose a threat to the proposed area. A relevant example is the Wollemi Pine Area of Outstanding Biodiversity Value, where maps and other location information have not been published to help prevent unauthorised visits to the area.

3.4 Timeframes

The following factors can affect the assessment time for a nomination:

- The nomination is incomplete or contains only anecdotal information and further information is required from the nominator. The nomination may be rejected on this basis.
- Advice is required from experts and researchers.

- EES has difficulty locating and accessing unpublished information relevant to the assessment.
- There are insufficient data, published information or other evidence with supporting information available to assess the nomination against the criteria.
- Conflicting or complex advice is received as a result of the consultation period.

Assessment can be delayed for one or more of the above reasons. Where information is readily available it is estimated that the assessment and recommendation process can take a minimum of 6–8 months.

Proposals for AOBVs must also be made publicly available for a minimum of four weeks.

There is no statutory timeframe for the Minister to make a declaration.

4. Criteria

The criteria below are set out in the BC Regulation.

For definitions of scientific terms in these guidelines, refer to the *Draft guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value* (EES 2019).

Clause 3.1 Criteria for declaring AOBVs

3.1(a) The area is important at a state, national or global scale

3.1(2) An area makes a significant contribution to the persistence of multiple species or at least one threatened species or ecological community if:

- (a) it provides resilience during periods of environmental stress that is important for their continued existence, or
- (b) it sustains adaptive capacity or evolutionary potential because it contains high levels of unique components of genetic or phenotypic diversity that will enable species to adapt to changing environments or it functions as an important ecological or evolutionary refuge able to sustain viable populations of species at risk due to climate change or other environmental stresses, or
- (c) it supports migration or dispersal of animals and plants, currently or in the future, that will contribute significantly to the persistence of species at risk, or
- (d) it is habitat critical for the survival of a threatened species

3.1(3) An area makes a significant contribution to the persistence of irreplaceable biological distinctiveness if:

- (a) it has a very high structural, functional or compositional diversity, or
- (b) it is an essential site for the persistence of evolutionary or ecological distinctive species, endemic species or ecological communities, or
- (c) it is an essential site for the persistence of 2 or more threatened species or ecological communities in any combination.

3.1(4) An area makes a significant contribution to the persistence of ecological processes or ecological integrity if:

- (a) it has ecological integrity, being an area that is:
 - i) an outstanding, relatively intact example of a functioning ecosystem type, or if a fully intact ecosystem does not remain, then the best remaining example of that ecosystem type that contributes to maintaining the persistence of biodiversity and ecological integrity, or
 - ii) the most intact remaining site of a species occurrence that provides habitat requirements vital to the conservation of a species, or
 - iii) the last known remaining site of a species occurrence, or
- (b) it is a primary contributor to the continuation of essential ecological processes, or
- (c) it is an essential site for a significant proportion of the population of a species during one or more key life history stages or processes.

3.1(5) An area makes a significant contribution to the persistence of outstanding ecological value for education or scientific research if it contains established infrastructure or data related to long-term ecological research monitoring programs that establish an irreplaceable historic baseline, being the best site anywhere in NSW for long-term research on particular species, ecological communities or ecological processes.

5. References

Biodiversity Conservation Act 2016 (NSW)

Biodiversity Conservation Regulation 2017 (NSW)

Environment, Energy and Science Group, 2019, *Draft guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value*, NSW Department of Planning, Industry and Environment.

Local Land Services Act 2013 (NSW)