

Concerns about land clearing legislation

Please be advised.

Submission on proposed changes to NSW biodiversity and conservation laws

by Scott Sledge , President , on behalf of the Northern Rivers Guardians, Inc
which has more than 600 members. PO Box 309 Murwillumbah NSW 2484
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Dear Sir/Madam,

I am writing to make a submission on the Government's Draft
Biodiversity Conservation Bill 2016
and Draft Local Land Services Amendment Bill 2016, currently on public exhibition.

Overview: The changes to laws regulating destruction of native habitat may appear at first glance to be consistent with better management and use of land in NSW but first and foremost their likely affects on our overall ecology must be considered and especially the crisis involved with land clearing on native species.

Australia is one of the world's leading countries when it comes to species extinction and we are mostly agreed that we can do better. But will the proposed changes better protect native species? If the laws do not require accountability and designate strong policing by regulators then they will do the opposite. The main concern among members are clauses which would allow land holders to **self-assess** the ecological value of holdings, especially in native regrowth areas.

The intention to cut through "red tape" is foolish if it results in land use which has a deleterious effect on the ecology of surrounding lands and indeed the nation and the Earth. Without some realistic requirement for approval by authorities who are accountable to the community anyone can damage the environment with impunity.

This proposed laissez-faire system flies in the face of our cultural norms. As a society we require people to obey restrictions which make life safer for us all, now and into the future. The Germans allow unrestricted motoring speeds on their autobahns, but we have speed limits. We do not allow drivers to decide for themselves what is a safe speed. This is but one example. Why do we want to change this when it comes to the ecology of rural lands?

I suspect it is a sop to those landowners who want to do whatever they like with "their" land. Our land does not belong to any one generation, but will be here long after the despoilers are gone. What next? Will we allow factories and nuclear missile stations to be built all over Australia - without regulations - on a self-assessment basis? We already make laws to hold mining companies accountable to rehabilitate their mess with no effective enforcement. The results speak for themselves. It seems this mproposed new system lacks suitable supervisory provisions and puts the self-assessed interests of some ahead of the long-term best interest of the many. This equates to poor governance and a system of privilege for elites at the expense of the rest.

We recognise that the new Biodiversity Act provides financial incentives for landholders to look after land, but if the criteria are based on self-assessment then the potential for corrupt conduct is enormous. Unless well-trained environmental officers assess the lands and monitor improvements a landowner may easily be tempted to claim subsidies for land

which is of little environmental value or claim credit for setting aside regrowth forests which were never in danger.

The greatest insult to good governance is the offset fund, from which the incentive payments presumably will be drawn. This money is to be paid (also by self-assessment?) into a fund to compensate society for damage to our natural world in lieu of the offset system of supposedly like-for-like land held for ecological sustainability. This latter system was deeply flawed as the land which was offered to offset clearing for development was often of low quality and could later be ripped off (despite it being held "in perpetuity") for mining or any other purpose agreed by the government of the day. Surely we can do better.

I suggest that land set aside for wildlife be given strong legal protection and protected lands be closely monitored for compliance to given parameters. Landowners could be assisted with replanting or other improvements using trained LLS staff or Land Care volunteers. Designated offices should employ field staff who will enforce protections. They also could be charged with mapping and improving the connectivity of wildlife corridors. At present the changes to land use do little beyond statements of good intent, with most of the lollies going to the tricksters and few to help landowners with genuine projects that could enhance the biodiversity of our state.

Any government that amends laws to benefit vested interests (such as farming and mining) at the same time as it increases penalties for those protecting the environment increases the bias in favour of elites at the expense of everyone else, and indeed facilitates the destruction of the natural world to the benefit of no one.

Issues of Concern with the new changes (summary of points):

1. Developers can now pay 'cash for clearing' called a Biodiversity Offset
2. A heavy reliance on the Biodiversity Offsets has several important aspects:
 - a. Puts a price on Nature so it can be traded
 - b. Threatened species and ecosystems can be destroyed if they are "offset"
 - c. Offsets lack proper assessment and have no long-term protection
3. Public participation is no longer mandatory. Public consultation is reduced to a sham process of document review, participants are on a register and lack of consultation will no longer invalidate decisions. Taken together with proposed changes to Planning the public is effectively shut out after the initial review stage.
4. Downgrading of standards for maintaining environmental protection areas
5. Contradictions: The Bill is supposed to protect Threatened Species but at the same time will enable landowners to clear isolated paddock trees (frequently habitat of threatened species) without approval.
6. Resourcing: the new laws don't fund the enforcement capabilities of regulatory bodies.
7. Development Approval: Local Land Services (in charge of assessing projects) lacks the expertise and experience of the existing authorities which are soon to be abolished.
8. Approval will be based on assessment of maps rather than actual site surveys

9. These maps have yet to be created and the methodology of similar mapping systems have overlooked threatened species which require careful on-site inspections.

10. Lost Opportunity to protect biodiversity:

a. Mining is still permitted in sensitive areas and in Offset areas.

b. "State significant" Major Projects are still exempt from assessment .

c. Requires opponents of developments to demonstrate permanent damage will be incurred.

The proposed new laws do not provide any absolute protection for environmentally sensitive areas such as no-go zones, or red flags. While it is intended that the Biodiversity Assessment Method will trigger a 'red flag' for 'serious and irreversible impacts on biodiversity values', information on what constitutes 'serious and irreversible impacts' is currently missing from the draft BAM. Further, the application of the 'serious and irreversible impacts' red flag is discretionary for major projects.

- The NSW Government must provide absolute protections for areas of high conservation value. These areas must be off limits to land clearing and development, and subsequently eligible for protection in the NSW Reserve System, or funded management under a relevant conservation agreement.

- While the draft Biodiversity Conservation Bill 2016 does make provision for the Environment Minister to declare 'Areas of Outstanding Biodiversity Conservation Value', it is unclear how these provisions will operate in practice and whether they will be used more widely than the current 'critical habitat provisions' in the Threatened Species Conservation Act, which to date have only be used to declare four areas of NSW as critical habitat.

- Important information on what constitutes 'serious and irreversible impacts on biodiversity values' is missing from Biodiversity Conservation Bill 2016, Local Land Services Amendment Bill (2016) and the Draft Biodiversity Assessment Method (Appendix 4). The Government should provide further information on its intention, and undertake further consultation, before any reforms can proceed.

- I am concerned that there is discretion for a consent authority in determining whether there are serious and irreversible impacts on biodiversity values. There should be clear, objective criteria for determining whether there are serious and irreversible impacts on biodiversity values. These important decisions may also need specific input or oversight from the Office of Environment and Heritage.

I oppose the NSW Government's proposed new land clearing laws, and support stronger protection for bushland and wildlife. I am concerned that the proposed changes will increase land clearing and carbon pollution, push wildlife closer to the brink of extinction and undermine the sustainability of our farmland.

I am particularly concerned with proposed changes that will:

- Repeal the Native Vegetation Act 2003 and Threatened Species Conservation Act 1995 -

these are important laws that have led to a significant decrease in land clearing and habitat loss;

- Remove the requirement to 'maintain or improve biodiversity values', leading to a decline in environmental outcomes, soil health, water quality and salinity;
- Limit important safeguards, such as exclusions for environmentally sensitive areas.
- Expand the use of 'self -assessable' codes, allowing landholders to clear trees with little or no oversight;
- Reduce the role of the Environment Minister in important biodiversity decisions, with the primary regulatory role for land clearing sitting with the Local Land Services and Minister for Primary Industries.
- Increase the scope for Ministerial discretion, including the application of offsets;
- Increase the use of biodiversity offsets, with variations to 'like for like' offsetting and allowing proponents to clear trees in exchange for paying money into a fund;
- Drive regional climate change and increase greenhouse gas emissions from the land use sector;
- Rely on Government funding to achieve biodiversity gains, while reducing environmental protections in law.

I am also concerned that the Government has provided little explanation of how the new laws will be monitored in order to determine changes in land clearing rates and whether biodiversity values are enhanced. It is also unclear which agencies will be responsible for enforcing the new law. Most egregious of all I am told the new laws would allow ignorance of regulations to be a defence against prosecution for illegal land clearing. This is contrary to the basics of our criminal code.

I call on the Government to withdraw the Draft Bills, and commit to laws which will genuinely improve outcomes for nature.

Yours sincerely,
Scott Sledge

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