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Greens Member of the NSW Legislative Council



Biodiversity Reforms - Have Your Say
PO Box A290
SYDNEY SOUTH NSW 1232

28 June 2016

Dear Madam/Sir

Re: Submission on the Proposed Biodiversity Conservation Reform Package

Thank you for the opportunity to comment on the proposed Biodiversity Conservation Reform Package. I am making this submission in my capacity as the Greens NSW Spokesperson for the Environment.

Biodiversity is life – it is fundamental to the sustainability of all life on earth and biodiversity conservation is crucial to maintaining ecological integrity and healthy ecosystems as well as providing ecosystem services.

Since 1788, sixty-one per cent of the original native vegetation of NSW has been cleared, thinned or significantly disturbed, most of it in the last 50 years.

The New South Wales State of the Environment Report 2015 highlights the large number of species, almost 1,000, considered at risk of extinction and the number continues to rise. The Report also clearly recognises the clearing of native vegetation and the associated destruction of habitat as one of the greatest threats to biodiversity in NSW.

Biodiversity legislation, such as the Native Vegetation Act 2003, the Threatened Species Act 1995 and the National Parks and Wildlife Act 1974 have been instrumental in protecting our environment in the face of challenges.

With the impacts of climate change adding and exacerbating threats to biodiversity it is essential that we further strengthen our biodiversity conservation legislation and policies, and provide adequate resources and funding for their effective implementation.

Native vegetation is crucial essential environmental, social and economic benefits. Healthy landscapes where native vegetation is protected and restored make good environmental and economic sense: the New South Wales Office of Environment and Heritage cites many reasons for this including controlling erosion through protecting soils and river banks, and improving water quality and availability. Farms with good native vegetation coverage can increase productivity and reduce operating costs. More specifically, native vegetation leads to increased crop yields, improved pasture growth, health benefits to stock including reduced stress and morbidity.

In my view, the proposed new system of land management including two new bills (the proposed Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016) that would abolish the Native Vegetation Act 2003 and the Threatened Species Conservation Act 1995 will

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drastically weaken the current system of environmental protection and are a recipe for further land clearing and destruction of native vegetation, land and water.

The new system for land management will remove the 'improve or maintain environmental outcomes' test for land clearing and make way for broad-scale clearing. There will be little to no compliance checks on clearing, just a reliance on 'self-assessable codes' instead. It will also further expand the biodiversity offset system which we know doesn't work. Even worse, developers will no longer be required to even find offsets themselves or meet the 'like for like' criteria – instead they can just pay into a fund. In most cases, regardless of environmental values, there is a pathway to clearing.

The proposals will exacerbate a number of key threatening processes that have already been identified by the NSW Scientific Committee is established under the Threatened Species Conservation Act 1995. These include anthropogenic climate change, clearing of native vegetation, and loss of hollow-bearing trees.

It is concerning that despite more than 80 per cent of the submissions to the Biodiversity Legislation Review calling for retaining or strengthening environmental protections, the recommendations call for the wholesale repeal of the Native Vegetation Act 2003 as well as the Threatened Species Conservation Act 1995 and parts of the National Parks and Wildlife Act 1974 Act, and include only parts of them in a mooted new Act.

A large number of community and environmental groups, individual community members, ecologists and scientists including the Wentworth Group of Scientists have publicly opposed these laws based on research and sound evidence.

The Greens NSW are in agreement with their concerns. We strongly object to the proposed laws and ask the Government to withdraw these completely.

I have addressed my key concerns in detail below.

1. No clear case for scrapping the Native Vegetation Act 2003

The NSW Government has not made the case for abolishing the Native Vegetation Act 2003.

The Native Vegetation Act 2003 was introduced to stop widespread land clearing that had led to 61% of the original native vegetation of NSW being cleared, thinned or significantly disturbed since 1788, much of it in the last fifty years. The World Wildlife Fund has estimated the Act resulted in an 88-fold reduction in areas approved for clearing, a 20% decline in actual clearing of remnant bushland and a 14% drop in native mammal deaths.

There are a significant number of successful Property Vegetation Plans (PVPs) developed under the Act that have resulted in over 4 million hectares of native vegetation on rural land being preserved and managed.

The Biodiversity Legislation Review Panel recommended in 2014 that the Native Vegetation Act 2003 should be repealed because it had not stopped biodiversity loss. This approach completely ignores the huge reduction in broad-scale clearing as a result of strong laws (despite inadequate resourcing for their enforcement). Moreover, it overlooks the fact that there are a multitude of government policies that have resulted in major biodiversity losses, for example, mining approvals that clear swathes of forest and animal habitat.

Implementation of the Native Vegetation Act 2003 needs to be matched with sufficient resources. Having an adequate number of environmental officers on the ground across the state would decrease the amount of time taken to produce Property Vegetation Plans and allow for increased availability of expertise to rural landholders and farmers, while also monitoring compliance and reporting on the state of biodiversity.

2. Self-assessable codes will lead to more clearing

There is no doubt that the proposed changes to land management, especially the self-assessable codes, will lead to increased land clearing and more biodiversity loss. The introduction of self-assessable codes under the Native Vegetation Regulation 2013 has already led to increased clearing. Many of the codes of practice proposed require just notification to the Local Land Services with no commitment to monitor compliance of the code.

For example, recent figures show that the rate of paddock tree clearing under the self-assessable 'Clearing of paddock trees in a cultivation area' had increased 140% under the Native Vegetation Regulation 2013 with absolutely no compliance checking. At least 21,716 paddock trees have been removed in 498 days equating to an average of 48 trees being removed every single day. These numbers are from self-assessable code notifications, as the Office of Environment and Heritage only reports on these and not actual monitoring of tree clearances.

Paddock trees and small clumps can be vital habitat for native wildlife and provide corridors and connectivity for fauna. Isolated paddock trees are important in breaking up larger areas of cropping that offer no other habitat for life. Endangered ecological communities exist as components of small isolated clumps, and their clearing will pose a significant threat to this invaluable biodiversity. Paddock trees also help improve land quality, reduce salinity, improve water quality and reduce erosion.

The Office of Environment and Heritage has a pamphlet on their website showing the value of paddock trees, including reducing stock and crop stress, reducing salinity risk, reducing erosion & improving water quality, increasing nutrient cycling, providing wildlife habitat and controlling insects

The pamphlet, from 2002, also expresses concern that "Current research indicates that unless the management of paddock trees changes within 40 years they will be gone".

The NSW Government's proposed new land management reforms currently under exhibition propose expanding the number of codes requiring only notification (not certification) to a further 8 activities.

With this further expansion of the self-assessable codes, rates of tree clearing will be further exacerbated. Even those codes that require certification by the Local Land Services, it is clear that this is limited to ensuring 'set aside' areas, which still allow for net biodiversity loss.

With the repeal of the Native Vegetation Act 2003, there will no longer be any legislative commitment to preventing broad-scale clearing and protections for native vegetation of high conservation value will be lost. Removal of the 'maintain-or-improve' test means that there will be no mechanism to ensure no-net-loss of vegetation at a local scale.

The loss of the 'improve or maintain environmental outcomes' standard will damage the environment immensely. It is this standard that has been responsible for the massive reduction in clearing, especially broad-scale clearing, in NSW. There will be no legislated principles to retain native vegetation on land covered by the Draft Local Land Services Amendment Bill 2016.

Under the proposed Native Vegetation Regulatory Map, large parts of the state will be declared as 'Category 1', that is, land exempt from any land clearing regulations. Even in 'Category 2' land, there are virtually no 'off limits' areas and Endangered Ecological Communities can still be cleared if there is a 'set aside' area provided, however they are not even required to be the same quality as the area being cleared. This will lead to a net loss of biodiversity. In fact, under these laws, there is virtually no part of private land where clearing is prohibited. Landholders will be able to just apply to their Local Land Services and satisfy flawed biodiversity offset requirements to proceed with clearing.

In addition, regulated land that is successfully cleared under the proposed Land Management Framework will then be recategorised as Category 1 (unregulated). This will mean the amount of land that can be cleared without any government oversight will increase markedly over time.

There is no ban on broad-scale clearing in these codes or in the allowable activities. For example, clearing of up to a maximum width of 40 metres of vegetation for linear infrastructure such as roads and fences, as well as around fixed point infrastructure such as a shed or dam is listed as an 'allowable activity' which requires not even notification to the Local Land Services. Whilst some clearing around infrastructure may be required, 40 metres without any oversight or advice is not justifiable.

3. Biodiversity offsets lead to biodiversity loss

The proposed package expands the already flawed biodiversity offsetting system in NSW. Biodiversity offsets manifestly result in a net loss of biodiversity value. For example, even if an equivalent area of endangered ecological communities is located and preserved as an offset, it is at the expense of the original area which is destroyed.

The effectiveness of offsetting biodiversity loss as a policy for ecological restoration is not supported by evidence. There are numerous technical limitations to offsetting including poor measurability, uncertainty about recreating biodiversity which has been lost and large time lags. It is not possible to assure that biodiversity in two locations is the same or equivalent in quality. Biodiversity offsets that

involve rehabilitation or new planting are not established before the clearing occurs. In fact, it could take hundreds of years before an offset replaces a destroyed ecosystem, if ever, and often enforcement and monitoring of offsets is inadequate.

Market-based processes and trading mechanisms such as offsets and bio-banking that trade-off high conservation areas for development result in biodiversity losses.

The Draft Biodiversity Assessment Method proposed as part of these reforms is based on the NSW Biodiversity Offsets Policy for Major Projects. This policy and the principle behind it represent the lowest standard for biodiversity offsetting. For example, instead of finding offset sites that match the ones that will be destroyed, the so-called 'like for like' principle, proponents can just find broadly similar areas or undertake 'conservation actions', which is defined as measures that are 'known to improve biodiversity values'. This is very vague will lead to irreversible loss of vegetation and habitat.

For the first time, proponents can now satisfy offsetting obligations in their consent conditions by paying into a new Biodiversity Conservation Fund, which places the onus of locating equivalent offsets on the proposed Biodiversity Conservation Trust, a public organisation. Even if the Trust is unable to locate an equivalent offset, clearing can take place regardless, resulting in biodiversity loss. In short, even if an area cannot be offset, it can still be destroyed simply by paying into a fund.

It is also unacceptable that the approval authority for activities will have the power to discount the offset requirements if they think the development or clearing has social, environmental or economic benefits. The fact is that any social or economic value of a project cannot undo potential biodiversity losses that may happen as a result of that project.

4. Weakening of Private Land Conservation

With unprecedented declines in biodiversity and the very slow pace of increases to public reserves such as National Parks in NSW, private land conservation plays a key role in protecting high conservation value land and its precious biodiversity in perpetuity.

Many private landholders have entered into voluntary and legally binding agreements to place conservation land title covenants on their rural property in order to ensure it is protected in perpetuity. The new regulations will allow the conversion of existing stronger private conservation agreements to offset development (despite already being protected). Many people want their land protected in perpetuity, not to become part of a flawed biodiversity offset system.

It is unacceptable that "land subject to a private land conservation agreement or that has been conserved with public funds" is categorised as Regulated Land, which is land that can be cleared in accordance with an allowable activity or code under the proposed Local Land Services Amendment Bill 2016. This means that land that is currently protected, such as land subject to biobanking, now has a pathway to be cleared. This further makes a mockery of the already weak biodiversity offsetting approach.

5. No plan to monitor compliance

There is clearly no plan to monitor compliance with self-assessable codes. Instead there is a proposed reliance on unproven and undeveloped satellite mapping at the expense of monitoring and enforcement of OEH compliance officers. The experience of self-assessable codes under the Native Vegetation Regulation 2013 has shown that no on-ground compliance checks have taken place of the almost 22,000 paddock trees that have been removed in less than 18 months.

There are real concerns about the ability of satellite monitoring alone to detect native vegetation loss at the individual tree level. For example, a paper by John Hunter, an ecologist and lecturer at the University of New England, found that the automated mapping system that uses pattern-recognition technology has just 17% accuracy in identifying and determining individual plant communities in the Upper Hunter Valley.

With no compliance officers from Office of Environment and Heritage monitoring native vegetation, it is likely that even these very weak laws won't be complied with and unrestricted clearing will occur. It is objectionable that the only way clearing can be detected, if at all, is months or even years after the damage has already occurred.

6. Reduced role of the Minister for the Environment and the Office of Environment and Heritage

Whilst the Environment Minister currently administers the Native Vegetation Act 2003 and issues regulations, under the proposed changes the Minister for Primary Industries will be allocated primary responsibility for the Local Land Services Amendment Bill with just joint responsibility for native vegetation management for the Minister for the Environment.

There is very little detail of how compliance will be managed, though it appears that it will rely almost entirely on self-assessment. The role of the Office of Environment and Heritage will be limited to producing mapping, which deprives rural land holders of their environmental expertise and advice.

It is very unlikely that the NSW Government will be able to detect instances of misuse of the self-assessable codes, such as clearing of paddock trees, by satellite alone. The reality is that the new laws will legitimise and legalise increased land clearing, but abuse of those codes will not be detected.

Local Land Services, which will administer the self-assessable codes, has no remit for environmental protection and has a focus on improving primary production and management of natural resources. There is little environmental expertise in Local Land Services and there is a real risk that the objectives of short-term gains in productivity will override that of long term land, water and environmental conservation.

7. The two proposed laws are contradictory

The tension between the roles of the Minister for the Environment and the Minister for Lands and Water becomes even more evident because the Draft Biodiversity Conservation Bill 2016 and the Draft Local Land Services Amendment Bill 2016 are contradictory to each other.

The Biodiversity Conservation Bill carries over many provisions from the Threatened Species Conservation Act 1995 that are focused on protecting threatened species, whilst the Local Land Services Amendment Bill will no doubt increase those threats, leading to increased extinctions. For example, the Biodiversity Conservation Bill lists “loss of hollow bearing trees” as a key threatening process, while at the same time, the Local Land Services Amendment Bill allows clearing of paddock trees without approval.

A Biodiversity Conservation Reform package that has pieces of legislation with such contradictions will be difficult to implement and administer, let alone result in poor outcomes for the environment and landholders.

8. Any positive environmental gains are budgetary, not legislated

Any financial investment in land conservation, private or public is welcome, this should however be invested to assist landowners not only maintain, but improve the biodiversity value of their land. The funding provided with the proposed package, though, is linked to the biodiversity offsets program, which merely legitimises a net loss of biodiversity. The financial assistance announced by the NSW Government, which is one of the few positives announced in this package, is not legislated and can be cancelled by the NSW Government at any time. It is noted that a similar funding announcement was made at the enactment of the Native Vegetation Act 2003, which petered out over time. There is no guarantee this funding will continue.

The amount of funding announced is also not enough to compensate for the amount of clearing that will occur as a result of the provisions within the Draft Local Land Services Amendment Bill 2016, especially with the expansion of self-assessable codes.

9. Risk-based licensing reduces oversight

This package envisions a move to a risk-based approach to licensing human-wildlife interactions. This will lead to less Government oversight and a greater reliance on self-assessment. This is opposed and license based systems should be retained.

It is acknowledged that there are weaknesses in the current wildlife licensing system, for example, the current licensing framework for wildlife licensing, offences, and defences lacks transparency and is poorly enforced. In addition there is little data publically available regarding how many licenses are distributed and for what purpose.

This is, however, not a justification for a move to risk-based licensing which will mean less Government oversight and less transparency. Rather, licensing needs to be further strengthened and resourced.

10. Impact on animals and their welfare

These proposed reforms, and the resulting expected increase in land clearing will invariably lead to habitat loss and a significant negative impact on native animal populations. Habitat loss, including destruction and fragmentation, results in changes to the distribution and populations of these animals.

For example, NSW has lost around a third of its koalas since 1990, primarily as a result of habitat loss which has led to koalas being exposed to wild animals as well as car strike as they attempt to move across fragmented habitat. Although core koala habitat cannot be cleared under the self-assessable codes, but there is no prohibition on potential koala habitat.

Loss of habitats not only has significant impacts on native animals, but puts stress on human-animal interactions. For example, large populations of endangered grey-headed flying-foxes in urban areas, such as at Batemans Bay and Sydney's Northern Beaches, are as a result of loss of habitat in other areas, forcing them to roost in larger numbers in urban areas. We can only expect these events to continue with more land clearing and more habitat loss.

The move to 'risk based licensing' of regulating human interactions with native animals, poses a big risk to animal welfare. For example, the proposed 'Code of practice for commercial kangaroo harvesting in NSW' does not require licensing, just registration, although there are significant animal welfare concerns with this activity.

11. Increased Green House Gas emissions and exacerbation of climate change

Impacts of climate change are already affecting us by way of rising temperatures, changes to rainfall and seasonality and extreme weather events. Evidence shows that the impacts of climate change on biodiversity are also likely to be substantial due to widespread environmental change.

Increasing land clearing will reduce vegetation and trees that act as a carbon sink leading to the release of more carbon while also reducing habitat and increasing fragmentation of native vegetation.

When the Queensland Government severely weakened native vegetation laws, there was a resulting doubling of land clearing, the removal of almost 300,000 hectares of bushland (20 times the size of the Royal National Park in Sydney) and the resulting release of 35 million tonnes of carbon dioxide, further exacerbating climate change. This essentially cancelled out eighty percent of the greenhouse gas abatements recently purchased by the Federal Government at a cost of \$557 million.

Native vegetation is a carbon sink which allows us to meet our international obligations. These proposed laws make a mockery of any NSW Government or indeed Australian Government initiative to combat climate change.

12. Ignoring key Ecologically Sustainable Development (ESD) principles

The Biodiversity Conservation Law 'reform' package, including the objects of both the Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016, make reference to the principles of Ecologically Sustainable Development.

However, the approach in the bills appears to be removing the environmental focus of the legislation and replacing it with a heavy reliance on the economic pillar of the tripartite (economic, social, environmental) nature of sustainability. A strong version of sustainability demands a focus on environmental aspects since the conservation of biological diversity and ecological integrity underpin social and economic well-being. At the very least the three pillars should be supporting each other for long-term sustainable outcomes.

The changes proposed ignore the precautionary principle and the inter-generational equity principle. It is critical that decision-making, when there is uncertainty, be underpinned especially by the precautionary principle which is about ensuring that serious or irreversible environmental damage is prevented.

Conservation of biodiversity must be underpinned by the principles of Ecologically Sustainable Development, including the precautionary principle. This is the only way of ensuring that further irreplaceable biodiversity is not lost.

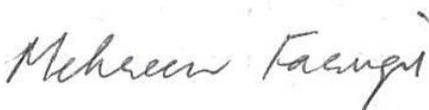
In addition, there clearly is a societal benefit in maintaining ecosystem services and preserving the environment for the long term. These laws facilitate land clearing which is against the interests of the community, the environment and the economy.

13. Conclusion

In conclusion, I strongly object to the Biodiversity Conservation Law 'reform' package, including the proposed Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016. As a bare minimum, biodiversity conservation laws should be designed to improve environmental outcomes, halt extinctions, reduce land clearing and address climate change. The proposed laws fail on all counts. The NSW Government must withdraw these proposals and commit to evidence-based policy to strengthen laws that conserve the environment and improve land and water resources as well as providing additional resources for their implementation.

Please do not hesitate to contact me or my office for further information.

Kind Regards



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Greens NSW Environment Spokesperson.