FRIENDS OF FERNHILL AND MULGOA VALLEY INC

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Our goals are to "*safeguard Fernhill Estate and ensure protection, through legislation, of the Mulgoa Valley as an area of outstanding cultural and natural significance to NSW*".

The **Friends of Fernhill and Mulgoa Valley Inc.** is a community based, non profit organisation, dedicated to:

- **safeguard the cultural and natural heritage of Fernhill Estate and the Mulgoa Valley**
- oppose the expansion of suburbia into Mulgoa Valley
- **protect the present rural character of Mulgoa Valley and Mulgoa Road**
- **protect the biodiversity of the critically endangered Cumberland Plain flora and fauna**
- **keep the Mulgoa Valley unspoiled for present and future generations.**

We have read the Local Land Services Act and the Discussion Paper and note that the Act, as well as its administrative objectives for Local Land Services, seeks to:

(e) to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development (described in section 6 (2) of the Protection of the Environment Administration Act 1991),

(f) to apply sound scientific knowledge to achieve a fully functioning and productive landscape,

(g) to encourage collaboration and shared responsibility by involving communities, industries and non-government organisations in making the best use of local knowledge and expertise in relation to the provision of local land services,

(i) to provide a framework for financial assistance and incentives to landholders, including, but not limited to, incentives that promote land and biodiversity conservation.

SCHEDULE 5A – Allowable activities clearing of native vegetation
SCHEDULE 5B – Provisions relating to members and procedure of the Panel

The purpose of the Statutory Review is to "*carry out a five-year statutory review of the native vegetation provisions contained in Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act 2013" ie "whether any changes are needed to improve land management outcomes for landholders, the community and the environment*".

FFMV makes the following general points:

- The Discussion Paper makes almost no mention of the role of the Statutory Review in assessing the performance of the Act against its Objectives. On the contrary, the consultation document focuses almost exclusively on how navigable the regulations are to landowners. Nor does the Discussion Paper canvas how sound scientific knowledge can be used to achieve a fully functioning and productive landscape.

- The consultation process is flawed. The Discussion Paper was released before Christmas with a 5 week consultation period (now fortunately extended) with Local Land Services engaging with key environment groups, farming groups, industry groups and local government. **Why wasn't the Discussion Paper distributed to all owners of rural properties? Why wasn't our local Mulgoa Landcare group informed?**

- Evidence collection to inform the review will occur Nov 2022 to April 2023. **Why hasn't this occurred previously to be included in the Discussion Paper?**

- **For an informed public response, up to date information on land clearing and biodiversity investment rates should have been provided in the Discussion Paper**

- If the statutory review is not a comprehensive review of the *Land Management (Native Vegetation) Code 2018* (the Code), the *Local Land Services Regulation 2014* or the other components of the Land Management and Biodiversity Conservation reforms per se (as stated in the Discussion Paper), how can the Review make recommendations on changes needed to meet the objective of this part of the Act?

"Sound scientific knowledge to achieve a fully functioning and productive landscape"

- **For an informed public response, up to date information on biodiversity monitoring and land clearing rates should have been provided in the Discussion Paper including:**
    - The spatial and temporal characteristics of land clearing (including historical, current and projected rates of clearing).
    - The implications of actual versus approved clearing and biodiversity conservation investment rates
    - The type of vegetation cleared.
    - Investment in private land conservation eg improving farm dams, protecting paddock trees, establishing native plants alongside streams, and fencing around patches of native bush.
    - The effects of climate change.
- The NSW Audit Office, the Natural Resources Commission and the official vegetation clearing figures published by the NSW Government all confirm a regulatory failure to achieve environmental outcomes and effectively administer the law. While the law has certainly reduced regulatory requirements on landholders, the balance has tipped significantly against ecologically sustainable development, with the laws resulting in a return to broadscale land clearing in NSW.[1]

[1] Report: Restoring the balance in NSW native vegetation law - Environmental Defenders Office (edo.org.au)

- The Final Advice of the Natural Resources Commission on Land Management and Biodiversity Conservation Reforms, July 2019[2] stated that land clearing rates had increased 1300% since the biodiversity conservation laws were weakened in late 2017. **What has occurred from 2017-2022?**
- The Audit report[3] found the clearing of native vegetation on rural land was not effectively regulated and managed. The processes supporting the regulatory framework were weak and there was no evidence-based assurance that clearing of native vegetation was carried out in accordance with approvals. **How has the situation changed since the 2019 Audit Report? The report of the Audit Office seems to have been ignored? Why?**

Effective biodiversity monitoring is critical to evaluate, learn from, and ultimately improve conservation practice. Well conceived, designed and implemented monitoring of biodiversity should:

1. deliver information on trends in key aspects of biodiversity (e.g. population changes);
2. provide early warning of problems that might otherwise be difficult or expensive to reverse;
3. generate quantifiable evidence of conservation successes (e.g. species recovery following management) and conservation failures;
4. highlight ways to make management more effective; and
5. provide information on return on conservation investment. [4]

Land Management Framework

In the Mulgoa Valley within the Penrith City Council area, rural land on which agricultural pursuits are conducted is zoned either E2 and/or E3 and is part of the Metropolitan Rural Area. But as stated in the Discussion Paper (p 10)[5] as part of the Metropolitan Rural Area it is outside the Land Management Framework, yet farmers are serviced by LLS. **Why is Metropolitan rural land not considered in the Land Management Framework when our Local Land Services Rates are stated to "*support sustainable lands and forests under the new land management framework*" and "*help protect the environment*"?**

From A Metropolis of Three Cities: *"areas such as the **Mulgoa Valley** have been recognised as important scenic and cultural landscapes. With rising demand for biodiversity offsets and continuing support for traditional forms of agriculture within the Metropolitan Rural Area, more opportunities can be realised to protect and enhance natural landscapes".*

By 2050, the rarest asset within the Greater Sydney area will be rural landscape: simple, uncompromised farming land. Sophisticated infrastructures of public space are needed, but they are built, renewed, and replaced. Rural landscape, like wilderness areas, is as necessary to urban communities' wellbeing as more structured amenities.

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[2] Land management and biodiversity reforms (nsw.gov.au)

[3] Managing native vegetation | Audit Office of New South Wales (nsw.gov.au)

[4] Lindenmayer, D.B., Gibbons, P., Bourke, M.A.X., Burgman, M., Dickman, C.R., Ferrier, S., Fitzsimons, J., Freudenberger, D., Garnett, S.T., Groves, C. and Hobbs, R.J., 2012. Improving biodiversity monitoring. *Austral Ecology*, *37*(3), pp.285-294.

[5] Section 60A, Local Land Services Act identifies land that is outside the Land Management Framework.

Penrith City Council has recently endorsed a Rural Lands Strategy and is allowing small businesses such as trucking companies to be established on rural land in the Mulgoa Valley to the detriment of rural activities, biodiversity and the scenic and landscape values of the Valley. **Surely LLS should have a role in protecting the rural lands, native vegetation and biodiversity of the Metropolitan Rural Area** as per the Local Land Services Act *(e) to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development?*

As the Environmental Defenders Office has stated[6], the rules on removing vegetation in urban areas need to be clarified.

- For clearing that falls below the Biodiversity Offset Scheme threshold (**BOS Threshold**)102 landholders are required to obtain a council permit, but only if the vegetation is covered by the council's Development Control Plan (**DCP**).
- The BOS Threshold provides that the BOS will be triggered if:
  • the amount of native vegetation being cleared exceeds an area threshold (prescribed in clause 7.2 of the *Biodiversity Conservation Regulation 2017* (**BC Regulation**)), or
  • the impacts occur on an area mapped on the Biodiversity Values Map (**BV Map**) published by the Minister for the Environment.
- legislative clarity should be provided regarding the relationship between the Vegetation SEPP and EP&A Act, **particularly in relation to the clearing of vegetation that requires development consent and the enforcement of breaches of the Vegetation SEPP.**

The process for Major Projects in the Metropolitan Rural Area should require those projects requiring significant land clearing should be refused where the project will or will be likely to have serious or irreversible impacts on biodiversity.

Without inclusion of Metropolitan Rural Areas in the Land Management Framework, the review cannot establish whether the social, economic and environmental interests of the State have been achieved consistent with the principles of ecologically sustainable development.

Lack of confidence in compliance and enforcement of native vegetation regulation to protect biodiversity

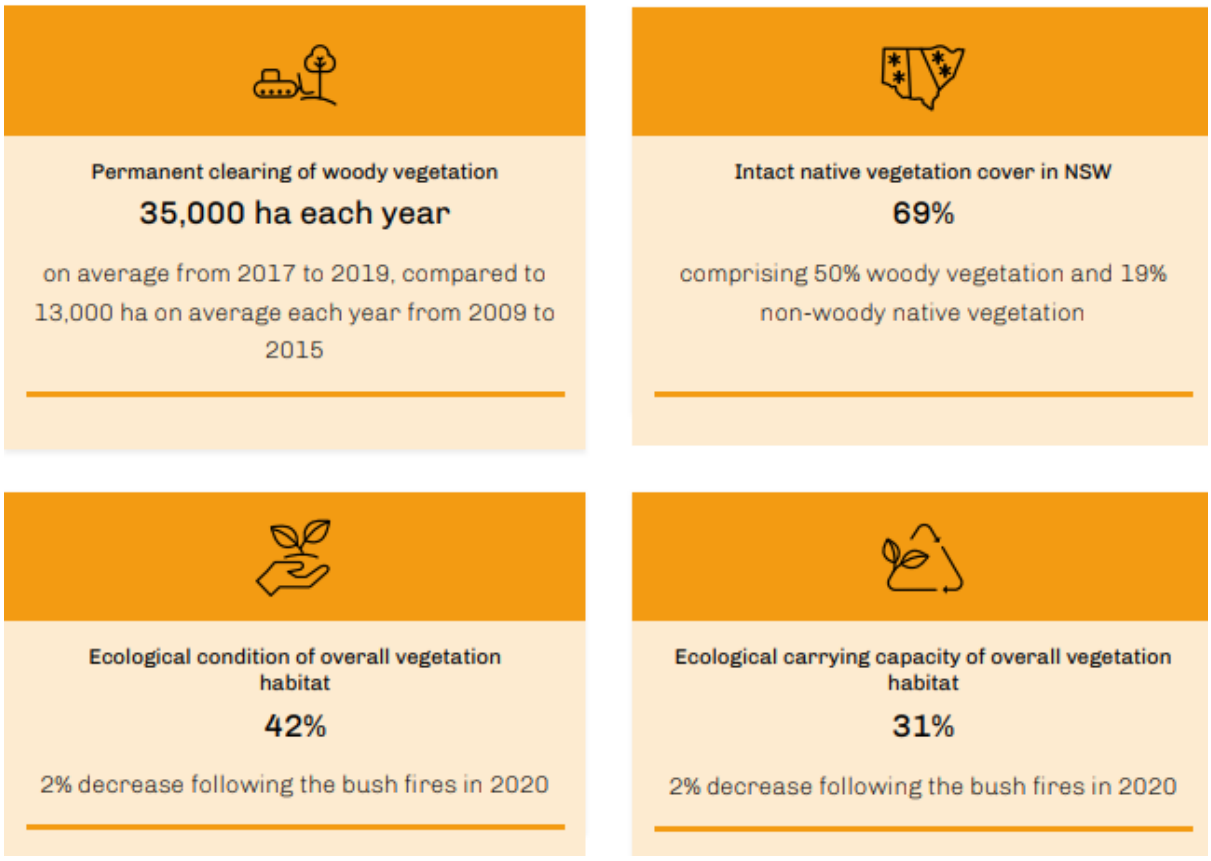
Australia has ratified the Convention on Biological Diversity and there is a suite of federal and state level governance arrangements and policy instruments aimed at improving biodiversity conservation. This includes voluntary, bottom-up approaches such as the Landcare model, regulatory approaches such as native vegetation legislation, and market-based instruments. But Australia's key piece of national environmental legislation, the Environmental Protection and Biodiversity Conservation (EPBC) Act, has been considered to be ineffective in halting the loss of habitat for endangered and threatened species and communities.

The NSW State of the Environment Report (2021) states that the number of species listed as threatened in NSW continues to rise. These species are at the greatest risk from threats including vegetation clearing, the spread of invasive species and the mounting impacts of climate change. The condition of most native vegetation continues to deteriorate. The state's major inland river systems

[6] Report: Restoring the balance in NSW native vegetation law - Environmental Defenders Office (edo.org.au)

continue to be affected by water extraction, altered river flows, loss of connectivity and catchment changes such as altered land use and vegetation clearing. These affect water availability, river health and ecosystem integrity.[7]

The reasons for this ineffectiveness are complex, including insufficient funding, poor monitoring and ineffective laws against the backdrop of the high vulnerability of Australian ecosystems.[8] NSW Government's response has been allocating $175 million to the Saving our Species (SoS) program for the 10 years to 2026 and $240 million over five years to support a greater commitment to long-term conservation of biodiversity on private land[9]. **But is this enough investment and a worthwhile use of resources?**



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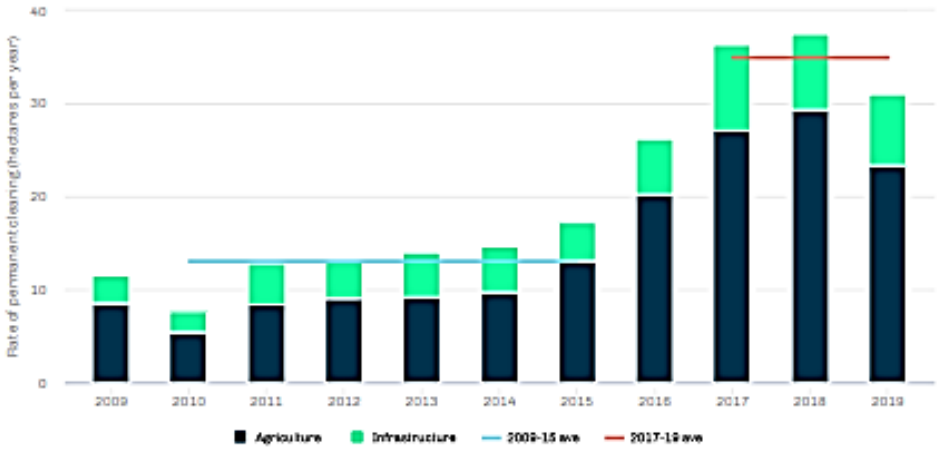
[7] NSW State of the Environment 2021

[8] Schaal, T., Jacobs, A., Leventon, J., Scheele, B.C., Lindenmayer, D. and Hanspach, J., 2022. 'You can't be green if you're in the red': Local discourses on the production-biodiversity intersection in a mixed farming area in south-eastern Australia. *Land Use Policy*, *121*, p.106306.

[9] NSW State of the Environment 2021

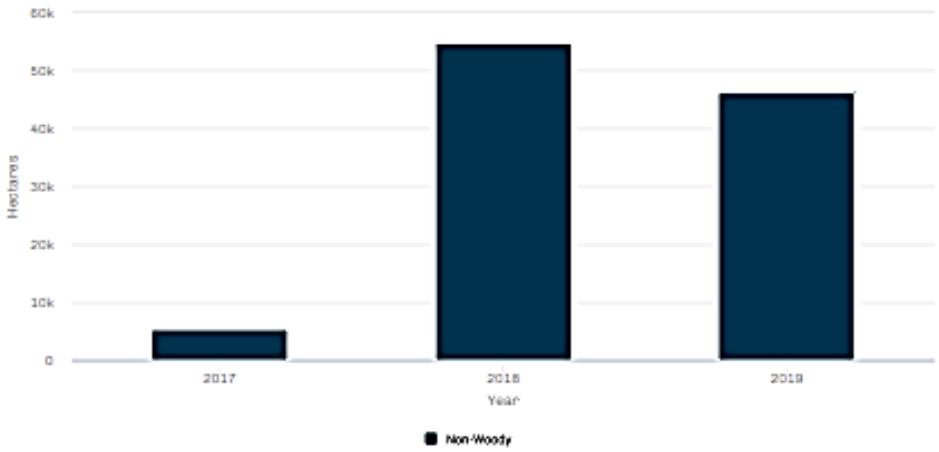
[10] NSW State of the Environment 2021

Spotlight figure 13a: Permanent clearing of woody vegetation each year in NSW 2009–2019



Notes:
Rate of permanently removal of woody vegetation from DPIE analysis of satellite imagery to classify landcover types. Satellite imagery used for this analysis was captured by SPOT and Sentinel 2 remote sensing.

Spotlight figure 13.b: Non-woody vegetation clearing on regulated land



Notes:
Regulated land is where authorisation may be required from Local Land Services for native vegetation clearing. This category makes up around 54% of land in NSW. The non-woody vegetation removal figures above depict only clearing that occurs on Category 2 regulated land. Additional clearing of non-woody vegetation, on excluded or category 1 exempt land, has not been included. Landholders also have a range of allowable clearing activities available to them for use without approval from Local Land Services.

[11]

A 2018 report on the interaction between the EPBC Act and the agricultural sector highlighted that awareness of obligations under the EPBC Act is limited, processes for designating threatened species and ecological communities are considered to be unclear, and that support to the agricultural sector to achieve environmental objectives is insufficient (Craik, 2018[12]).

[11] NSW State of the Environment 2021

[12] Craik, W., 2018. Review of interactions between the EPBC Act and the agriculture sector. *Independent report prepared for the Commonwealth Department of the Environment and Energy*.

Finally, climate change adds further pressure to the challenge of integrating profitable farming with successful biodiversity conservation. Biodiversity in south-eastern Australia is projected to decrease by approximately 8% by 2050–2070 solely due to climate change and notwithstanding further land use changes (Drielsma et al., 2017[13]).

Encourage collaboration and shared responsibility

Policy makers, resource managers and scientists need to more explicitly articulate and demonstrate the case for biodiversity conservation. If conservation programmes are poorly articulated or have vague objectives it is difficult to measure progress and implementation problems.

Healthy natural assets support biodiversity, which in turn helps underpin the ecological systems that support agriculture.[14] Natural assets on farms include remnant native vegetation, large old paddock trees, native grasses, shelterbelts, rocky outcrops, riparian areas along creeks, dams etc. Biodiversity conservation is not just planting trees! There needs to be better collaboration between LLS and University scientists eg ANU Sustainable Farms in managing and assessing biodiversity conservation.

"*Australian agriculture's ability to continue exporting to the world is really tied to our performance on sustainability*," Agriculture Minister Murray Watt stated on January 17, 2023. "*Australian farmers must boost environmental credentials and cut greenhouse emissions if they want to maintain access to the $72 billion export market to the EU"*.[15] This demonstrates another aspect of the cost-effectiveness of expenditure on biodiversity conservation.

Dr Michael Barkley,
FFMV President
21 January 2023.

[13] Drielsma, M.J., Love, J., Williams, K.J., Manion, G., Saremi, H., Harwood, T. and Robb, J., 2017. Bridging the gap between climate science and regional-scale biodiversity conservation in south-eastern Australia. *Ecological Modelling*, *360*, pp.343-362. PowerPoint Presentation (researchgate.net)

[14] https://www.sustainablefarms.org.au/wp-content/uploads/2021/07/Ten-Ways-Booklet-2020_Screen-Viewing.pdf

[15] https://www.smh.com.au/politics/federal/farmers-told-to-beef-up-green-credentials-to-trade-with-europe-20230116-p5ccub.html
https://www.abc.net.au/radio/programs/worldtoday/agriculture-minister-seeks-green-farmers-for-trade-deal/101863164