To Whom it May Concern,

Thank you for the opportunity to participate in the Review into the LLS Act Part 5A, Schedule 5A and 5B.

I would ask that this submission is considered anonymous, in that it may be published but have no name or contact details attached.

I agree to being contacted regarding this submission.

This submission will outline the many failures of the LLS Act to protect pristine native bushland on the Central Coast. It is an example of the failure of the LLS Act to protect native vegetation and Threatened species across the State. It will show the failure of DPE to enforce the Act and how Compliance Officers constantly sought out loopholes to retrospectively consider all clearing as an “Allowable Activity”. This caused the clearing to escalate with many hundreds of mature native trees felled.

DPE staff refused to instigate a Stop Work Order.

Following the merger of Gosford and Wyong Councils, the Central Coast Council was required to create a Consolidated Local Environment Plan.

This CLEP should have been adopted by January 2019 and new Zonings given to many properties. However this did not occur and some properties were then considered as Deferred Matters.

These Deferred Matters properties were then placed under the control of the LLS Act.

In November 2018, clearing began on an 80 acre property on the Central Coast that was considered a Deferred Matter. This meant that C.C Council had no control over the clearing. The property then fell under the LLS Act Part 5A with D.P.E (then OEH and then DPIE) responsible for Compliance.

The property is Zoned 7a Conservation and under the Draft Central Coast CLEP is slated to be Zoned C2 (Conservation 2) the highest protection for private land due to it’s extremely high ecological value.

The property in question is an integral part of the wildlife corridor that stretches from its boundary with Bouddi National Park and C.C Council Reserve to a neighbouring Conservation Covenanted property, through Threatened Ecological Community Rainforest and on to Cockrone Lagoon only a short distance downstream.

The property and surrounds provide habitat for up to 12 Threatened Species.

It has never been Zoned as Rural land.

We always questioned how the LLS Act could override the Conservation zoning on this property and allow the destruction of vast areas of native forest.

A Compliance Officer from the Newcastle /Hunter Office of DPE undertook the first site visit and began an investigation, which was flawed from the outset and resulted in the clearing continuing for over three years. During this time myself and many neighbours noted the failure to enforce the many breaches of the LLS Act Part 5A and Schedule 5A as well as the Biodiversity Conservation Act.

LLS staff were contacted many times but proved to be out of their depth , having little knowledge of Part 5A and Schedule 5A of the LLS Act beyond the most basic of facts.

Apparently when the landholders representative contacted LLS staff to enquire about clearing native trees, he was sent a 2 page Fact Sheet and given verbal approval to clear 15 metres from the boundary to construct a boundary fence.

There was no mention in the Fact Sheet of the “minimum extent“ law, nor the fact that clearing cannot occur “where native vegetation comprises or is likely to comprise a Threatened Species (including their habitat) or Threatened Ecological Communities (TEC)”.

Both these rules were ignored by the landholder, then ignored by the Compliance Officers charged with investigating the case. Following the many site visits following complaints of massive clearing that were obvious breaches of the LLS Act, the response from DPIE staff was that it was all clearing was considered an “Allowable Activity”.

Clearing also occurred on my family's Conservation Covenanted property when the land clearer trespassed on our land and cleared native vegetation that should have been protected by law.

Compliance Officers refused to take action and claimed that the clearing was lawful, despite it being an obvious breach of the LLS Act.

It was discovered by lawyers that under the Conservation Agreement with the Biodiversity Conservation Trust that applies to our property, there is no provision for penalties to apply to trespassing neighbours who unlawfully clear protected native vegetation.

This is a massive oversight and a clause needs to be inserted into such Agreements.

The land clearer also cleared on Crown Land with impunity. DPE Compliance Officers took over the investigation that had been launched by Crown Lands and no penalties were issued.

We have seen the disastrous ecological consequences of the failure of the law to protect pristine native vegetation and habitat for many Threatened species.

It is reprehensible that the NSW Government has not implemented recommendations from the Audit Office and Natural Resources Commission that showed the obvious failure of the laws they introduced to regulate land clearing. The pendulum has swung too far in favour of economic outcomes to the detriment of our environment. Often clearing occurs on marginal land and the economic benefit is temporary. Loss of habitat and biodiversity is often permanent.

DPE are also responsible for the preparation and publication of the Native Vegetation Regulatory map. The fact that this map has not been completed has enabled huge areas of the property in question to be cleared without penalty as it has not been categorised.

Compliance Officers originally claimed that most of the property was Category 1 - Exempt Land, which meant it was clear on January 1st 1990. This was most definitely not the case, as many locals confirmed.

No clearing had occurred on the property since the late 1950s and then in only a few small areas.

Subsequently DPE Compliance Officers changed the category of the land and considered it to be mostly Category 2 - Regulated , with a small area categorised as Category 2 - Vulnerable due to susceptibility to erosion.

There was no consistency in the Categorisation, with Compliance Officers allowing self-assessment by a person determined to clear vegetation for unapproved development and unapproved access roads.

The failure of the Environment Agency Head to prepare and publish the completed NVR map proved disastrous for this property.

The fact that the owners could self-assess the category of their land under the Transitional NVR map once again allowed massive clearing to occur on land that should have been protected.

The completion and publication of the NVR map should be a priority, as listed in Section 60G (1) of the Act.

Clause 14-15 and 20-21 of the Biodiversity Conservation Act was ignored in this investigation, as DPIE allowed the collection of firewood and the felling of mature hardwood trees for fence posts to occur on the property in question. The land clearer had been informed that native vegetation on the property provided habitat for Threatened species yet was allowed to continue clearing without penalty. Subsequently clearing also occurred throughout a TEC on the property . The lack of action by Compliance Officers and their repeated retrospective findings that all clearing was an “Allowable Activity“ meant the destruction of essential habitat continued unabated.

It is obvious that the Native Vegetation Framework does not increase voluntary compliance with native vegetation clearing rules and hence reduce illegal clearing.

The investigation into this case also ignored the rule against “stacking” with over 30 metres cleared by a shredding machine along a boundary fence.

In another area of the property mature large girth eucalypts were felled near a newly constructed boundary fence.

This was also claimed to be an “Allowable Activity” by Compliance Officers from DPE.

When this was questioned by neighbours, the staff actually claimed that all clearing was considered “reasonable”. They had changed the wording of the LLS Act from “the minimum extent necessary” to “reasonable” and so had applied the wrong test.

This is reprehensible behaviour by public servants who are charged with upholding the law as it stands.

It is no wonder that all neighbours and our wider community have absolutely no confidence in Compliance and enforcement of native vegetation regulation.

The penalties for illegal clearing seem adequate in writing but they are rarely applied.

Compliance Officers in this case claimed that the vague wording of the LLS Act would make it difficult to prove breaches of the law in court.

They hence did not consider any legal action against the land clearer, and then began to maintain that the clearing was “Allowable”.

They also claimed the huge work load associated with such court cases when they were under staffed and over worked was another disincentive to pursue legal action. The huge cost to the Department of any legal action was also a deterrent.

Compliance Officers also spoke of the huge amount of clearing that was occurring “out west” where the LLS Act Part 5A allowed farmers to bushbash a track through native vegetation (including TEC’s) and then clear 15 metres on either side of the “road”. Using this loophole, massive areas of vegetation was cleared, supposedly legally and unchallenged by Compliance Officers.

This fact is backed up by data collected by the State of the Environment Report and the review into the EPBC Act, which documented the fact that since 2016 about 200 native plants and animals have been added to the Threatened Species List.

The iconic koala is one of these now Threatened species.

The top cause of wildlife losses was found to be land clearing, with at least 7 million hectares cleared between 2000 and 2017.

Future statistics will no doubt show another huge increase in areas cleared.

These reports also called for urgent action to beef up compliance and enforcement to end catastrophic losses of wildlife.

It is no coincidence that the amendment of the LLS Act that replaces laws that once provided protection for native vegetation has exacerbated the loss of biodiversity.

The fact that 53% of the state is covered by this law is cause for serious concern.

The LLS Act Part 5A and Schedule 5A does not ensure proper management of natural resources consistent with environmental and social interests of the State. It primarily favours the economic interests of landholders, developers and farmers to the detriment of our native flora and fauna.

The wording of the LLS Act is deliberately vague with emphasis on self-assessment that allows the many loopholes to be exploited by landholders.

Advice to landholders by LLS staff as to “Allowable Activities” is rudimentary, with no advice given regarding prohibited activities, or limits to clearing such as the “minimum extent” law.

Compliance Officers in this case refused to acknowledge the many breaches of the LLS Act and failed to enforce the law.

New legislation needs to be enacted by the State Government to halt the massive clearing of native vegetation that has occurred under the LLS Act Part 5A and Schedule 5A.

This new legislation needs to be enforced by Government Agencies charged with protection of our environment.

Thank you for reading this submission.

Yours sincerely,

[redacted]