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NCEC Submission for the 'Review of Land-clearing Regulations.'

Statutory Review of Land clearing regulations Part 5A of the Local Land Services Act 2013

The North Coast Environment Council (NCEC) is the peak regional conservation group on the NSW North Coast which has been active in protecting the environment for more than forty years. Our organisation receives no government funding, relying on the' in kind' contribution of dedicated volunteers to highlight issues of environmental concern and campaign for an end to environmental destruction.

Introduction

It is clear that the introduction of the new, more relaxed regulations for land clearing following the repeal of the Native Vegetation Act 2003 (NV Act) have been a total failure in achieving sustainable outcomes and that if allowed to go on as 'business as usual' will continue to accelerate the decline in NSW biodiversity. The NSW Audit Office, Natural Resources Commission and a Parliamentary inquiry have all already raised serious concerns about the regulation of habitat clearing and the regulatory framework in NSW. Their recommendations should be acted on in full as an outcome of this review.

The impacts on our biodiversity due to climate change related factors such as unprecedented drought, extensive, intensive bushfires and record flooding since the introduction of Land clearing regulations Part 5A of the Local Land Services Act 2013 have been further exasperated through the massive increase in land clearing it has facilitated.

Land clearing data shows that since Part 5A of the LLS Act commenced a significant increase in rates of native vegetation clearing for agriculture; data shows that land clearing rates for woody vegetation across NSW have increased from 8500 ha in 2011 to 27,100 ha in 2017, 29, 400 in 2018, 23, 400 in 2019, and 13,000 in 2020. Additionally, in 2020, 46,100 ha of non-woody vegetation was cleared for agriculture on rural land. A review of the Framework, conducted in early 2019 by the Natural Resources Commission (NRC Report), but not publicly released until late March 2020, found that: 'Clearing rates have increased almost 13-fold – from an annual average rate of 2,703ha a year under the old laws to 37,745ha under the new laws'. This significant increase in land clearing rates triggered the government's own internal review process in October 2018, yet policy settings remain largely unchanged. It is essential this review results in a significant reduction of the largely unregulated clearing currently occurring.

It should also be made clear that not all vegetation removal under the LLS Act is related to productive agriculture as the discussion paper would have us believe. Land clearing is undertaken by property developers, miners and increasingly by 'weekend cowboys, 'predominately on relatively small, marginal, cheap blocks of rural land which often has high conservation values due to its remoteness, ruggedness or other marginal factors. Subdivisions into these smaller, marginal blocks often results in a significant, negative, cumulative impact as each individual small landholder exercises their 'rights' to undertake self-assessed , code based or allowable clearing activities. 'The death of a thousand cuts', for local biodiversity.

The statutory review process

We understand that the expected increase in land clearing resulting from the introduction of the new approach to land clearing were to be offset by gains made through investment in conservation initiatives provided through the Biodiversity Conservation Act. We have little confidence that this is the case. We note that the review of the Biodiversity Conservation Act is being held separately to the LLS Act review. - It does not make sense to conduct the review of the LLS Act separate to the review of the BC Act. As noted in the Discussion Paper, Part 5A and Schedules 5A and 5B were introduced as part of broader Land Management and Biodiversity Conservation reforms. Section 212(2) of the LLS Act explicitly states that the review of Part 5A of the LLS Act is to be undertaken in conjunction with the review of the BC Act. It is not clear how the terms of reference for either the review of Part 5A of the LLS Act or the review of the BC Act intend to examine the legislative framework as a whole and determine whether checks and balances across the framework are sufficient. We doubt very much that this is the case.

Objectives

The objective of the native vegetation provisions in the *Local Land Services Act 2013* is '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'. It is clear that this objective is not being met and considerable changes will be required for it to be in any way considered to be delivering ecologically sustainable outcomes . The LLS Act removed the key objectives of preventing broadscale land-clearing and the requirement to ensure clearing 'improves or maintains environmental outcomes', either at the site scale or at the landscape scale. This objective should be urgently reinstated.

Transparency

Compared to the previous regime under the Native Vegetation Act 2003 (NV Act), there is a significant reduction in information included in public registers under the new framework. This is essentially because most clearing is now undertaken as self assessed, code-based clearing, or via allowable activities provisions which go unreported.

Code based clearing and Allowable Activities

The outcomes of this review should ensure that a policy reset to reverse this trend of wide ranging exemptions is implemented. This should be through the significant reduction in code based clearing and 'allowable activities' as well as a more wide ranging, rigorous assessment of potential negative impacts on environmental values, particularly Threatened species, prior to approvals for clearing to

be granted. Self-assessment should not be allowed for high-risk activities that could result in harm to Threatened species or excessive erosion. This will of course require an increase in dedicated staff and resources and more importantly the political will to rein in a land clearing' free for all' the present regime under the current State Government have allowed to get out of control. During this review 'the precautionary principle' should be a primary factor in determining what is a genuine low risk activity and code based self-assessable and allowable activities significantly reduced accordingly.

.A case study

In January 2022 the NCEC was made aware of extensive, ongoing, land clearing in a high conservation value part of the Richmond Catchment at Upper Mongogarie in NE NSW. The area is recognised as a biodiversity hotspot. The clearing was to establish a predator proof fence on a recently purchased 1500 H property to establish a conservation reserve. A detailed report was provided to us including photographs and eye witness accounts of the activity. The clearing comprised a network of tracks totalling some 6.8 k in length which in many places exceeded thirty metres in width and many areas cleared vegetation, including hollow bearing trees were pushed into windrows at the side, adding another ten metres to the actual track clearing. Parts of the clearing was up and across slopes well in excess of 35 degrees on highly erodible soils and through rocky outcrops in areas we understand to be considered Category 2 Vulnerable regulated land. Additionally, parts of Crown Reserve roads were also cleared, which we understand requires approval and consultation with Native Title holders which did not occur. The total area cleared to establish these tracks was approximately 27H. Following 90mm of rain in a short event in mid-January extensive erosion was observed at the site, prior to the unprecedented February floods in the region.

The matter was reported to the 'Clearing Hotline' in late January with the complainant assured that the matter would be promptly investigated. He queried whether Fisheries should be involved due to extensive pollution of Mongogarie creek, (habitat of the endangered Giant Barred Frog and potential habitat of the endangered Southern Purple Spotted Gudgeon) and that also Crown Lands, regarding clearing of Crown Road reserves. They left it to the complainant to inform these agencies.

A few days later the complainant was contacted by clearing hotline staff to be informed that as there was a Private Native Forestry approval on the property there was uncertainty as to who was responsible for compliance. If the activity was related to PNF it was a matter for the EPA. Attempts to contact the land holder for clarification delayed any action for a further fortnight before it was ascertained that in was not related to PNF. This delay saw the onset of heavy rainfall events which culminated in the major flooding of the region in late February following some 700mm of rain. The end result of the clearing was an environmental disaster with an estimated 100mm average of sediment eroded across the network of tracks, totalling some 27,000cubic metres of soil loss into nearby waterways and ultimately the Richmond River. The flooding then prevented any ability for inspection of the site by compliance officers.

In May the complainant was contacted by DPE staff and told that no action would be taken as it was an allowable activity to establish tracks up to thirty metres wide in this area west of the Summerland Way. It was explained that this exemption was provided so farmers could move their large harvesting machinery around their properties. This is on land of 30–40-degree slopes on highly erodible soil and was in no way associated with agricultural activity. The DPE staff member informed

that not all of the clearing had been inspected due to the inaccessible nature of the terrain and that the landholder had been advised to contact LLS for advice before further clearing was undertaken.

The above example highlights the environmental risk of such an allowable activity, the regulatory confusion about who was responsible for compliance and the failure of Fisheries or Crown lands to be involved. More importantly was the delay between when the complaint was made until when compliance staff inspected only part of the site. If acted upon immediately the massive degradation resulting from ongoing clearing prior to the devastating flooding on the exposed ground could have been mitigated.

A follow up email to the DPE staff member involved in the investigation seeking more information about how this destruction could be considered a legal activity, particularly regarding rocky outcrops being trashed (with a photo provided) and asking what was the regulation regarding buffers to protect rocky outcrops? This and a follow up email to his senior supervisor were never answered.

Clearly given the impending threat of a major erosion /pollution event and further environmental damage as the clearing had been ongoing, a stop work order and mandatory remediation orders should have been immediately put in place back in early February. Given the excessive rainfall in the months since this was first reported we feel it is a case of gross negligence that this did not happen.

We believe that when a suspected illegal clearing event is reported to the hotline it should not be up to the complainant to contact EPA, Fisheries, Crown Lands or Local Government. The clearing hotline should provide a 'one stop shop', where delegation of responsibly for compliance should be made and it not be up to complainant to contact other relevant agencies.

The NCEC is aware of other clearing activities being reported with similar delays in action to inspect alleged breaches of regulations. We believe that complaints should be acted on promptly to avoid possible further environmental damage due to possible non-compliance.

Given our experiences over the past five years the NCEC believes that government agencies are loathe to enforce compliance or penalties for land clearing offences and we have little faith that any regulatory action will be taken.

Conclusion

It is clear to the NCEC that the land clearing provisions in the current LLS Act have failed to adequately protect high conservation value vegetation, Threatened species and their habitats as well as catchment values.

We are currently experiencing a Biodiversity crisis with more than 1000 species now on the threatened species list. This number will no doubt grow significantly as a result of the 2019-20 wildfires. Protection of Threatened species habitat is becoming more critical if we are to reverse this trend. Loss of habitat is now compounded by the effects of climate change to accelerate the reduction of our biodiversity which is becoming a major community concern.

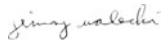
Similarly, the community is presently raising concerns about the deteriorating state of the Richmond River. The recent North Coast floods resulted in massive sediment transport from steep upper catchments as a result of extensive landslips and other forms of erosion, predominately where

vegetation had been removed from steep slopes. While much of this clearing occurred many decades previously, an increasing relaxation of regulations governing the management of steep protected lands (over 18 degrees) in recent times, through an increase in allowable and code-based and allowable activities will further exasperate this process. The source of much of the river sedimentation is the result of poor management practices in the upper catchments. Increases in rainfall intensity and flooding events are predicted to occur as a result of climate change. A thorough risk assessment review should acknowledge this fact and limit high risk code based and allowable activities regarding the clearing of native vegetation accordingly.

There are many clearing related issues which should be mitigated through this review that have not been addressed in this submission. The NCEC fully supports the more detailed submission provided by the NSW Environmental Defenders Office.

Yours Sincerely,

On behalf of the North Coast Environment Council.



Jimmy Malecki

Secretary North Coast Environment Council