

Submission to the Statutory Review of Part 5 A and Schedules 5A and 5B of the Local Land Services Act 2013.

The Terms of Reference state the purpose of Part 5A of the Act 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'.

The principles of economically sustainable development are described in section 6 (2) of the Protection of the Environment Administration Act 1991. It states ecologically sustainable development can be achieved through the implementation of the following principles and programs -

(a) the precautionary principle - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by -

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity - namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

So this is what Part 5A of the Local Land Services Act should be achieving - managing native vegetation consistent with the principles of ecologically sustainable development, which includes making biological diversity and ecological integrity a fundamental consideration.

Yet the discussion paper does not reference biodiversity impacts nor the wider environmental context that has emerged since 2017 when the Local Land Services Act 2013 came into effect nor whether this key aspect of the objective, ecologically sustainable development, is being achieved.

During the review period, overwhelming evidence has emerged that New South Wales and the rest of Australia is facing a current, existential, catastrophic loss of biodiversity. Iconic species including koalas and platypus are under threat in NSW from extinction largely due to loss and degradation of habitat. The clearing of native vegetation cannot be separated from this loss nor can the policies and practices governing it.

The discussion paper states it is being carried out 'in conjunction' with the statutory review of the Biodiversity Conservation Act 2016 by the Minister for Environment and Heritage while the Terms of Reference: Part 5A of the Local Land Services Act Five-Year Statutory Term state that the review of Part 5A 'will run in parallel to but independent from the review of the Biodiversity Conservation Act.'

It seems strange that a review of how well native vegetation is being managed 'in the social, economic and environmental interests of the state, consistently with the principles of ecologically sustainable development' would not be informed first and foremost by how well biodiversity had fared during the review period. In other words, conduct the review of the Biodiversity Conservation Act first and make it a key input to inform this discussion paper. There is a disconnect between the native vegetation and the wildlife inhabiting it.

In addition to loss of biodiversity during the review period, there is other evidence the current provisions are not delivering the policy objectives, with the two 2019 audits, by the NSW Audit Office and the Natural Resources Commission, both raising serious shortcomings.

Climate change and the bushfires and floods which occurred widely in NSW during the review period caused significant losses to flora and fauna but is mentioned only as a reason authorised clearing may not have occurred. Why not strategically pause activity where native vegetation still flourishes and protect remaining biodiversity while impacted areas recover?

Nor does the paper set out how Part 5 A of the Local Land Services Act could play its part and contribute to reversing the effects of climate change even though the link between clearing of native vegetation and greenhouse gas emissions is well understood.

Instead the discussion paper is primed for a continuation of a policy of deregulation of native vegetation management and self assessment which is clearly at odds with the principles of true ecologically sustainable development. The scope of reasons for clearing are overly generous, the process is largely self regulated, there is no requirement to audit for wildlife (a lack of evidenced-based decision-making) and ignorance of the presence of wildlife is an acceptable mitigating factor.

There is no sense of urgency that unless existing policies change, the trajectory of loss will remain unchanged. Instead, more of the same except far worse, for knowing the threat to biodiversity from human activity and the impacts of climate change.

Reporting is problematic. A key provision of this part of the Act is to publicly report on the estimated rates of allowable clearing and maintain a public register of the level of notifications, certifications and areas set aside under the Code. Yet it is not known how much native vegetation is being cleared. The Land Council acknowledges in the discussion paper that despite being required to publicly report every year on the estimated rate of allowable activity clearing, it is unable to do so as the Local Land Services Act does not require landholders to report on allowable activities. This is extraordinary.

Where certificates were issued and notifications made under the Code, according to Figure 5, the amount of land authorised for clearing on rural regulated land from August 2017 to December 2020 was 510,274 hectares. This represents 1.2% of all rural regulated land in NSW. If that approval rate was sustained, a third of all rural regulated land would be authorised for clearing in less than 100 years. This is an unsustainable approach to a finite resource and inconsistent with the principle of intergenerational equity.

The discussion paper describes the low utilisation of the Native Vegetation Panel pathway, an option using the Biodiversity Offset Scheme if proposed clearing falls outside the requirements for allowable activities. Only one application was received during the review period. Isn't it possible interest has been so low because the existing provisions are so generous few need to go down this path? Further, biodiversity offsetting is of itself flawed, relying on a non-existent interchangeability of species, habitats, ecosystems and landscapes.

The paper would benefit from additional information and statistics. Is there an up to date, state-wide biodiversity map informing the clearing of native vegetation to ensure a critical mass of each species is preserved? What mechanism other than self-regulation identifies whether endangered species have been impacted by clearing? What is the percentage of native vegetation in NSW preserved for wildlife? What percentage of applications for certificates were rejected? How much land was defined as being cleared illegally during the review period and how successful were prosecutions?

A holistic view between the different tiers of government and different land categories is also needed so that the true level of activity and its impact can be accounted for and understood at a local level. All tiers of government need to work together to reverse the mass extinctions occurring in NSW and more widely Australia.

The current policies are demonstrably not working or biodiversity would not be in the parlous state it is in and a major reset is required. The Local Land Services Act needs to apply the precautionary principle as required under the Protection of the Environment Administration Act 1991, to avoid serious or irreversible damage to the environment, to assess the risks, to maintain or enhance diversity for future generations and to make biological diversity and ecological integrity a fundamental consideration.

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16.12.22