

Dear Local Land Services Policy Team

## REVIEW OF PART 5A OF THE LOCAL LAND SERVICES ACT

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I appreciate the opportunity to comment on the 5-year review of Part 5A of the *Local Land Services Act*.

### Overall Comments

It is clear that many threatened species and vulnerable ecosystems are at extreme risk due to the inadequate protections for native vegetation and threatened species habitats in NSW.

This is not unique to NSW indeed it is global phenomenon. This is why on 19 December 2022, a new global policy framework was adopted by 188 representative nations, including Australia that promotes the conservation of at least 30% of global terrestrial and marine areas by 2030. The GBF places emphasis on the adequate representation of biodiversity, ecosystem functioning, and connectivity under equitably governed systems of protected areas (PAs) and other effective area-based conservation (OECMs) (Ainsworth et al., 2022; Convention on Biological Diversity., 2021). The discussion paper released as part of the review of land clearing laws lacks any serious consideration of the disastrous impacts of vegetation loss on biodiversity and should be revised to be allow more agility in realizing conservation outcomes.

This is particularly disturbing given that:

- The introduction in 2016 of new, far weaker vegetation clearing laws by the NSW Government saw land clearance increase 13-fold, from an annual average rate of 2,703 ha per year under the old laws to an astonishing 37,754 ha under the new laws.
- It would also appear the current approach lacks rigour. The Natural Resources Commission has questioned the integrity of the regulatory system, noting that “compliance frameworks are inadequate.” This echoes the negative assessment of the integrity of the biodiversity offset scheme by the NSW Auditor.
- Australia has recently signed an international agreement to restore and protect a minimum of 30% of each nation by 2030. In 2020, NSW had 2136 terrestrial protected areas under the NRS (aligned to IUCN categories), covering 7,696,641 ha or 9.6% of NSW's total land size- this well short of the 30% to be realized. That is there is much work to be done
- This review seems to be ‘closing the window’. There is some flexibility in the type of protection that can be realised under the treaty as there are six IUCN categories. The gap could be partially filled through joint governance, such as through the *Crown Land Management Act, 2016*, or through covenants with private land owners through the *Biodiversity Conservation Act, 2016* (Biodiversity Conservation Trust., n.d ; DPE., n.d.).

Clearly there needs to be a diversity of ‘tools’ in the ‘toolbox’ if NSW is to meet its obligations under the UN treaty. Unfortunately in the current document there is no hint of the need to address either biodiversity decline or that it can used to help make the existing patches of native vegetation on privately held and public land more resilient. Instead the Discussion Paper presents a fractured, confused, presentation focused on an application process rather than an outcome underpinned by scientific rigour (de Mello et al 2021, Gibbons and Lindenmayer 2007).

## Changes Required

- The Native Vegetation Code is an inappropriate regulatory tool for managing impacts on biodiversity in rural areas. It permits broadscale clearing without any robust environmental assessment or approval requirements (although notification or certification may be required). Moreover there is limited ability for LLS to refuse certification and prevent unacceptable and cumulative impacts on threatened species. Both issues need to be addressed
- The Native Vegetation Code needs to be modified so it can more adequately manage the environmental risk associated with substantial amounts of clearing undertaken with limited environmental assessment and oversight. The Native Vegetation Panel has a greater role to play in this context. Fewer alternative approval pathways (allowable activities provisions and the Code) should be allowed as it will provide greater scrutiny. The Panel should also provide an avenue that provides for wider monitoring of and reporting on land clearing as it is important to understand how much clearing is occurring across the state and what impacts clearing is having on biodiversity.
- Code-based clearing cannot be undertaken on category 2 sensitive land. While this provides some protection for environmentally sensitive areas, the scope of category 2 sensitive land is limited. Indeed this approach needs to be review in the context of the new NSW Koala Strategy and the range of conservation actions it outlines that are designed to provide more habitat for koalas.
- The use of an arbitrary set ratio for determining set asides requirements under the Native Vegetation Code is not ecologically sound as the Code does not specify that the vegetation to be set aside should be the same condition or of ecological equivalence (de Mello et al 2021, Gibbons and Lindenmayer 2007).
- Critical elements of the regulatory regime, notably the Native Vegetation Regulatory Map, remain incomplete. Of particular concern is that the mapping for land likely to be either categorised as either Category 2 (regulated land) or Category 1 (unregulated land) is incomplete. This needs to be finalised as , landholders are allowed to 'self-categorise' unmapped land in accordance with transitional arrangements.
- There is a significant lack of information about the activity that is proceeding. Detailed information would allow the community to understand better where land clearing activities are being undertaken lawfully, and where illegal clearing may be occurring. A public register is a useful tool for ensuring transparency and accountability. Indeed a lack of effective monitoring was highlighted by the Audit Office, which found that the LLS undertakes only limited monitoring of whether landholders are meeting the requirements of the Code, including whether set-asides are being established and managed appropriately
- Finally it appears that this process focused on Part 5A is working separately and not in a parallel timeline with the review of the *Biodiversity Conservation Act*. This is entirely inappropriate given the highly integrated and interdependent operation of the two Acts. The NSW Government should discontinue the current separate processes and commission an integrated review of both the *Local Land Services Act* and the *Biodiversity Conservation Act*.

## Literure Cited

Ainsworth, D., Collins, T., & d'Amico, F. (2022). *Nations adopt four goal, 23 targets for 2030 in landmark UN biodiversity agreement* <https://prod.drupal.www.infra.cbd.int/sites/default/files/2022-12/221219-PressRelease-Final.pdf>

Convention on Biological Diversity. (2021). *First Draft of the Post-2020 Global Biodiversity Framework*.

de Mello, K., Fendrich, A. N., Borges-Matos, C., Brites, A. D., Tavares, P. A., da Rocha, G. C., ... & Metzger, J. P. (2021). Integrating ecological equivalence for native vegetation compensation: A methodological approach. *Land use Policy*, 108, 105568.

Gibbons, Philip, and David B. Lindenmayer. "Offsets for land clearing: no net loss or the tail wagging the dog?." *Ecological Management & Restoration* 8.1 (2007): 26-31.

Yours faithfully

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