



## Community Environment Network Inc.

*An alliance of community and environment groups from Lake Macquarie, Wyong and Gosford.*

5 September, 2014

Biodiversity Legislation Review  
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### **Community Environment Network (CEN) Submission on the Biodiversity Legislation Review August 2014**

Dear Sir / Madam,

The Community Environment Network (CEN) is an alliance of community and environment groups from Gosford, Wyong and Lake Macquarie. Our aim is to work for ecologically sustainable development and against threats to it. CEN is a not-for-profit, community based organization with about 400 members including approximately 90 groups.

Thank you for the opportunity to provide a submission on the Biodiversity Legislation Review.

The current legislative framework for biodiversity lacks consistency, clarity and purpose. Legislative changes over the last 15 years have progressively removed protection for, and adequate assessment of impacts on, biodiversity (including threatened species, populations and communities), native vegetation and riparian areas.

The *Threatened Species Conservation Act 1995* (TSC Act) objectives include to conserve biological diversity, prevent the extinction and promote the recovery of threatened species, populations and communities and ensure the impact of any action affecting threatened entities was properly assessed. The TSC Act has been bypassed in such a multitude of ways that it has been rendered seriously ineffective. Failure to implement a new planning act has compounded the uncertainty surrounding biodiversity assessment and strategic planning.

A Biodiversity Strategy has not been in place in NSW since the first and only NSW Biodiversity Strategy was released by the state government in 1999 which provided a framework for a range of government agencies to work together over a period of 4 years to conserve biodiversity in NSW. Since then there has been a 2008 discussion paper and a draft NSW Biodiversity Strategy (2010-2015) that was never finalised and adopted. This represents a major failure of government to provide guidance on state biodiversity objectives and actions.

The terms of reference for the Independent Biodiversity Legislation Review Panel are in themselves weak. To facilitate the conservation of biological diversity sets a low bar but the other two objectives to support sustainable development and reduce red tape speak volumes about the Government's priorities. CEN considers that this review should not weaken or diminish biodiversity protection but should seek to improve the effectiveness of biodiversity protection, assessment processes, recovery planning and addressing threats to biodiversity.

CEN considers that it is not possible to consider the various biodiversity Acts without also considering how recent legislative changes have switched off and effectively watered down the original strength and intent of the TSC Act. For example, the RAMAs and excluded clearing under the *Native Vegetation Act 2003* (NV Act), former Part 3A and now Part 4 State Significant Development (SSD) and Part 5 State Significant Infrastructure (SSI), the Codes State Environmental Planning Policy (SEPP) for complying and exempt development, Infrastructure SEPP and

other legislative changes have bypassed and diminished aspects of the TSC Act. They have reduced environmental assessment requirements, in many cases removing them all together by excluding certain activities from the need to consider environmental impacts. The latest 10/50 clearing code continues this trend, removing any need to consider threatened species, population or community or its habitat.

This has occurred at the same time that comprehensive Local Environmental Plans (LEPs) across the state have been standardised, leading to an overall loss of environment protection as a result of few environmental zones and a weakening of biodiversity provisions so that for example the standard biodiversity protection clause only provides heads of consideration when consent is required rather than any prohibitions on development.

There is now a perverse situation where some local development has far more rigorous threatened species assessment requirements than major developments and rezonings. Major Projects (State Significant Infrastructure and State Significant Development) and rezonings can have major environmental impacts. The impacts can be offset but there is no rigorous or transparent method for assessing what these should be to match the impacts that are occurring or to ensure that the offsets are secured before the impacts occur. This may be improved with the introduction of the Framework for Biodiversity Assessment. However, the Government must ensure these offsets are secured before impacts occur and that there is no exploiting of loopholes or discounting for offsets permitted.

For Planning Proposals the assessment of environmental values is very limited. A Planning Proposal must address one question only on whether there will be environmental impacts. There is no requirement for a rigorous impact assessment (unlike say the Secretary's Environmental Assessment Requirements (SEARs) for Major Projects) even though the impacts at rezoning stage are likely to be the most significant.

Added to the weakening of environment protection the loss of Section 94 contributions for acquiring land for conservation purposes has severely limited local government options for purchasing of environmentally sensitive lands. The NSW Government has articulated its priorities most clearly by the recent amendment to the Mining SEPP that prioritises economic considerations over social and environmental considerations.

SEPPs and Regional Environmental Planning Policies (REPs) can provide important regional planning controls but are proposed to be replaced by a single biodiversity policy in the latest round of planning reforms. REPs have now been downgraded by incorporation into LEPs. There have been no new SEPPs for biodiversity and no revision or consideration of the adequacy of for example SEPP 44 Koala Habitat, SEPP 14 Coastal Wetlands and SEPP 26 Littoral Rainforest. SEPP 14 for example is based on very out of date mapping. Why is there only a SEPP for littoral rainforest and coastal wetlands? Why for example is there no SEPP for Critically Endangered and Endangered Ecological Communities (CEECs and EECs) for example?

There is a need to urgently address climate change impacts on biodiversity. The legislation should include this as an objective and incorporate actions to address the threats.

Land clearing is emerging again as major state environmental issue, as is private forestry and illegal land clearing in North East NSW.

The Recent 10/50 clearing code which applies a 350 metre buffer to bushfire prone mapped land applying to great areas of the state with no need for consent or consideration of biodiversity values of vegetation that will be removed is of great concern. It dramatically erodes the small and hard fought for biodiversity gains that have been made to protect and conserve biodiversity in this state. NSW is very different to Victoria where the laws were adopted from. The need for the 10/50 Code has never been justified. Since the Planning for Bushfire Protection Guidelines came into effect in 2006 there has been no loss of life and the balanced approach to bushfire management appeared to have been working, despite the inevitable risks and loss of some houses in bushfire risk areas.

The Central Coast has to a large extent retained its natural setting, vitally important for biodiversity but also for its resident's amenity, tourism and natural resources values (such as fishing and tourism industries). This is under increasing threat with the diminution of biodiversity protection.

Finally the reforms to biodiversity legislation have to be considered in the broader context of other legislative changes. It is no good having a strong biodiversity act if other legislation overrides or switching off provisions. Biodiversity protection needs to be integrated with other legislation and elevated but not diminished, switched off or otherwise ignored.

### **A Way Forward**

- NSW needs a Biodiversity Strategy that provides clear guidance and protection mechanisms for state, regional and local biodiversity priorities.
- Conservation priorities should be clearly articulated at state, regional and local levels.
- Regional biodiversity management plans that provide meaningful targets and enforceable actions.
- Legislative change should strengthen environment protection and provide an overarching strategy for biodiversity in NSW – monitoring, reporting, implementing and enforcement.
- There must be an overarching object to protect and conserve biodiversity. The principles of ecologically sustainable development, that underpin existing legislation, must be maintained.
- There must be a clear legislative commitment to maintain or improve environmental outcomes and to end broad-scale land clearing across NSW. The NSW government should commit to 'no nett loss' of native vegetation reflecting its diversity.
- Where development is approved that significantly impacts native flora and fauna, the "like for like" offsetting principle is fundamental and must not be weakened.
- The role of the Independent Scientific Committee under the TSC Act should be retained and listing must continue to be based on the professional advice of the Scientific Committee.
- The Government should address the under resourcing and loss of environmental departments as this has consequent impacts on recovery planning, biodiversity management planning and other conservation initiatives. The Office of Environment should be separate department from the Department of Planning and accorded the same status. Catchment management roles need to be integrated into biodiversity legislation.

### **Theme 1. Objects and Principles for biodiversity conservation**

#### **1. Should there be an aspirational goal for biodiversity conservation?**

Yes but there is a need for a framework for biodiversity. Goals must be measurable, given timeframes and be reported on. They must be more than a set of vague, non specific and non targeted objectives.

#### **2. Are existing legislative objects still valid?**

Yes even more so. These should not be diluted or lost as was proposed for the Planning Act which was to remove ecologically sustainable development from the objectives.

#### **3. To what extent are objectives being met?**

As discussed above the various Acts have been sidelined and diminished and government delivery for programs such as species recovery and enforcement underfunded. As the Discussion Paper concludes on p3 the outcomes of recent legislative and policy measures "are mixed". If the results are mixed why is this? Why is there no comprehensive, long term evaluation and monitoring? Where is the scientifically based measurement of success for these measures? How effectively are Government budgets being spent?

#### **4. Could the objects be simplified and integrated?**

There is merit in integrating biodiversity legislation (i.e TSC and NV Acts) into a unified act but the objectives must not be simplified or diluted. The *National Parks and Wildlife Act 1974* should remain a stand alone Act.

### **Theme 2. Conservation Action**

#### **1. Is the current system encouraging landowners?**

More effort should be made to value privately owned high conservation lands and preserve them through scheme such as the Biobanking Scheme. There is a need for greater resourcing, brokering and promotion of these schemes to increase the uptake and give the scheme whole of government support. There is a need to highlight the value of these schemes for conservation, including the long term management of high conservation value sites.

#### **2. Are there impediments?**

In perpetuity conservation and management and is the preferred outcome for high conservation lands however there are a range of measures that can be used. Property vegetation plans for example provide the opportunity for rural landowners to preserve parts of their land for conservation while maintaining productive agricultural activities.

#### **3. Role of the Nature Conservation Trust**

The Nature Conservation Trust has been established to use market mechanisms to conserve high conservation value land. It is a significantly different role from that performed by the Environment and Heritage (OEH) staff from the Conservation Partners Programs. The Conservation Partners Program is to use mechanisms within the legislative framework such as voluntary conservation agreements and wildlife refuges to promote voluntary action by landholders to conserve biodiversity. In this role, OEH staff are able to integrate the actions of the Conservation Partners program with the management of the National Parks Estate (National Parks and Nature Reserves) to maximize the biodiversity outcomes for the estate.

**4. How should government determine priorities?** Priorities should be under-represented vegetation communities, keystone habitats and species, state and regional biodiversity corridors.

#### **5. How can effectiveness be monitored and evaluated?**

Money should be effectively spent but should include adequate monitoring and reporting to ensure that programs work and if not that they are retargeted. Government should provide guidance on reporting and measurement standards and be involved in monitoring the effectiveness of the measures. What happened to the reporting on CMA targets?

#### **6. How can tradeoffs be assessed?**

The intent of this question is not clear.

#### **7. To what extent is system forward looking or dealing with legacy impacts?**

System is constantly dealing with legacy impacts, changes to government departments, fragmenting and reducing the status of environment departments including the Office of Water and the OEH and the ongoing changes to legislation that impact on biodiversity legislation and policy. These all result in mostly negative impacts including on the effectiveness of government environment programs.

#### **8. To what extent does current practice (other than legislation) determine outcomes?**

The intent of this question is not clear.

### **Theme 3. Conservation in land planning**

#### **1. How effective are current arrangements at ensuring that biodiversity values are identified early and properly considered in strategic planning systems?**

For planning proposals very poorly. There is little guidance and environmental impacts are not adequately addressed. For Major Projects the SEARs provide an opportunity for agency input on assessment requirements but there is much confusion for example about offsetting and environmental issues are not given the same weight as economic issues. Regional Growth Plans and other strategic land use plans have been prepared and finalised without supporting environmental assessments or framework. The Central Coast still has no biodiversity or conservation plan despite various drafts. There are no regional corridor and high conservation lands mapped for example. This means that biodiversity values are not identified early and considered properly.

#### **2. How effective are current arrangements?**

As discussed above they are not very effective. Changing the status of government departments, under resourcing and reducing environmental considerations to a lower order all reduce the ability for environment issues to be considered and addressed.

#### **3. How should effectiveness be monitored and evaluated?**

Against clear and measurable objectives but as discussed above there is no state biodiversity strategy and for the Central Coast particularly no regional biodiversity plan despite resources being spent on developing one. Thus there is no framework for strategic biodiversity planning and nothing to measure our progress. The State of the Environment reports on changes but does not have any influence on policy shifts or changes needed.

### **Theme 4. Conservation in development approval**

#### **1. To what extent has the current framework created inconsistent assessment processes, environmental standards, offset practices and duplicative rules?**

To a thorough extent. There is a myriad of rules, standards and practices. Harmonisation is needed but this should not be at the expense of protection measures as has happened with standardising of LEPs.

#### **2. Can we have a single integrated approach?**

There is a greater need to recognise that NSW is not just rural and urban. The Central Coast has high biodiversity values but does not face the same pressures found in rural landscapes west of the state and in highly urbanised urban areas. There are unique but important differences that should be recognised for all coastal NSW areas as a result of development pressures. Climate change impacts on biodiversity, particularly coastal flooding, shoreline recession and sea level rise impacts on coastal ecosystems need to be given more consideration. Bushfire and fire management practices also impacts.

#### **3. What are the advantages and disadvantages of the different biodiversity assessment methodologies?**

Harmonised assessment method is supported. Assessment method is for biodiversity only, should not aim to incorporate social and economic values although separate systems could be developed to assess these. There is inconsistency with what activities and developments need assessment. The assessment method should be proportionate to the impacts, for example Major Projects and major Planning Proposals should have a higher level of assessment requirement.

#### **4. Does regulatory system adequately protect listed threatened species?**

As above no. CEN is very concerned that the 10/50 code requires no assessment of impact on biodiversity. Stricter environmental assessments are required for development that will have the most serious impacts such as open cut mining, coal seam gas extraction and projects that involve extensive vegetation clearing and major impacts on waterways and/or groundwater. Impacts on groundwater

dependent ecosystems and aquifers are poorly understood and the assessments should err on side of caution.

**5. Are there other relevant models that regulate activities impacting on biodiversity?**

We note that New Zealand has a natural resources Act that incorporates all natural resource issues and provides regional biodiversity regulatory powers and policy.

**6. To what extent has the current regulatory system resulted in lost development opportunities and/or prevented innovative land management practices?**

No development has ever been stopped in NSW by TS Act.

**7. What impacts cannot be offset?**

This needs to be defined in a Regional Biodiversity Strategy – in consultation with the community and stakeholders. At the very least, critically endangered and endangered ecological communities and threatened species with limited populations or distribution. Also, old growth forests.

**8. How can offsets be strategically located?**

If identified in a regional biodiversity strategy.

**9. Are there areas that would be better left to self regulation?**

This is already happening via RAMAs, Codes SEPP and the like. Is it effective, the government should advise on this – however our informal view is that it is not effective and these mechanisms have been abused.

## **Theme 6 Information provisions**

**1. What information should be generated?**

Could include how much vegetation we are losing every year, what the offsets are and where they are, what land has been rezoned for urban development, results of the Save our Species programs. This needs to be readily accessible – perhaps via an interactive online State of the Environment website.

**2. What type, quality and frequency of data?**

Reporting could include the extent of clearing and vegetation type as a result of major projects and other development approvals in a centralised database with associated mapping.

**3. Is current data highly credible and readily accessible?**

No, the data is not readily accessible. Despite a multitude of vegetation mapping projects there is still no complete and comprehensive mapping covering NSW with a consistent vegetation classification system that is consistent with TSC and EPBC listings. Cumulative impacts are not represented and should be in order to give a “real time” assessment of current status.

**4. How effective is the threatened species listing process?**

Listing has been a very effective process – what is ineffective is recovery plans and actions. Recovery planning has been under resourced for many years. Many recovery plans remain in draft form (for example Yellow-bellied Glider) and there have been no periodic reviews even though this is a legislative requirement. Where are the measures for effectiveness of actions, what species are being recovered? How well is the money being spent? How has new information been incorporated into the recovery planning process?

**5. Should threatened species listing decisions be decoupled from decisions on conservation actions?**

The intent of this question is not clear.



**6. Does having national and state lists of threatened species cause confusion, regulatory burden or duplication of conservation effort?**

Yes. And red tape could be reduced. CEN supports streamlining environmental assessments if they will improve the biodiversity outcomes. Differences between state and federal lists of species and communities creates a complicated and confusing system, with few demonstrated benefits for environmental assessment or better conservation outcomes. CEN considers that specific examples should be provided as to where red tape is a constraint as there is little compliance checking now, so it is about getting rid of environmental laws such as Threatened Species legislation and Sea Level Rise considerations which constrain land development.

**7. To what extent is the identification of critical habitat an effective tool?**

Reasonably effective as it is still not switched off for example in the Codes SEPP.

**8. Should private conservation data be collected and if so how?**

Yes there should be reporting mechanisms where there is the expenditure of public money for private land conservation for example biobank sites.

Thank you again for the opportunity to provide a submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John R. Asquith'.

John Asquith  
Chairman