

North Coast Forests' Taskforce



18 September 2014

Biodiversity Legislation Review
PO Box A290 Sydney South NSW 1232
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Review Co-ordinator
[REDACTED]

Dear Dr Byron,

Re: Submission on Biodiversity Legislation Review

Thank you for the opportunity to make a submission on an issue which is extremely important to the NSW North Coast Forests Taskforce. The Taskforce supports the submissions made by the NSW Division of the Institute of Foresters and the NSW Forest Products Association.

The North Coast Forestry Taskforce is an industry based initiative comprising industry representatives from across the North Coast of NSW and the broader community.

The mission of the Taskforce is to substantially improve community understanding of, support for and confidence in, the environmentally sustainable management of North Coast forests and their timber products.

North Coast NSW is the stronghold of the native forestry industry in Australia. Equal amounts of timber are supplied from Crown land and private property. Through ongoing reservation of State forests and private lands together with heavy regulation, the industry has been greatly reduced over the last 3 decades.

State wide there is approximately 1.8 million hectares of State Forests of which less than 60% is available for harvesting. There is approximately 12 million hectares of private and leasehold timbered lands of which a fifth is potentially harvestable (approximately 10,000 individual property owners). Generally the private estate is less productive than the Crown estate.

Terrestrial biodiversity is dependent on the vegetation and its ability to supply habitat for fauna. To maintain the vegetation, effective management of common threats is the key to biodiversity conservation. Altered fire regimes and mega-fires; pests, weeds & diseases; climate change; unsustainable and illegal activities; and land-use change are all key threats to our native vegetation. The focus must be directed to the active and adaptive management of these threats if we are to have any chance of stemming further biodiversity decline.

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It also should be recognised that the majority of the vegetation is either owned or managed (leasehold) by private individuals. The Crown has more latitude in the management of its lands and should not be seen to be imposing more restrictive regulations on private lands than it does on Crown land. On private lands the vegetation is owned by the landowner but who owns the fauna is a question not yet resolved. As such, if society wants to conserve the fauna it needs to contribute to the cost. The North Coast Forest Taskforce recommends Stewardship payments for private landowners and managers. If society is unwilling to contribute to the costs, then it places no value on fauna and thus Government should not be imposing regulations upon the landowner.

Forestry can be a critical tool for the future managers of biodiversity conservation. It provides a cost effective mechanism to undertake active and adaptive management at least cost. Forestry can also be used to provide effective and efficient fire hazard reduction services.

If society does not wish to see further biodiversity decline it must seek to design a new cross governance model that includes a role for landowners and the NSW timber industry.

Yours sincerely,

Trevor Sargent
Acting Chair and Coordinator
North Coast Forests Taskforce



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Submission on the Biodiversity Legislation Review from the North Coast Forest Taskforce

A summary of the key issues raised in this submission include:

- i. The current legislative framework has too many layers and complexities leading to confusion for landowners, land managers and regulators. This in turn leads to persons unknowingly breaching legislation and/or stifling good management innovation;
- ii. Across all land tenure (freehold, and all crown land) regulation is required for activities the results of which cannot be contained within the property boundaries;
- iii. Where activities or their results can be contained within freehold land and society wants these activities restricted then, society needs to provide support to the freehold landowner. This is a principle of natural justice. Those who benefit from the use of an asset need to contribute to the cost of the benefit;
- iv. The State cannot impose on freehold land, legislation and regulations that are more restrictive than those that apply to Crown land. However, the State can impose more restrictive regulations on its own land;
- v. The legislation needs to cater for adaptive management as this allows flexibility to address uncertainty and macro environmental changes; and
- vi. The current system is either failing or its settings are wrong. The list of threatened species and communities is growing despite the increasing area of reserved Crown land and increased area of private land under Conservation Agreements.

The vegetated landscape needs to have functioning vegetation communities that provide the ecosystem services, that is, a full range of habitats for the fauna to occupy. If the vegetation community is unable to provide those services then it is of course unable to supply the full range of niches for the suite of native fauna species in NSW. Attention in the first instance must be given to the longest lived dominant structural vegetation and in the forest - the tree stratum. To that end poor silvicultural practices will inevitably lead to poor environmental outcomes. Good silvicultural practices can produce a range of outcomes desired by the community (e.g. wood fiber, clean water, increased carbon capture and biodiversity). The legislation needs to guide and encourage good silvicultural practices.

REGULATION AND ADMINISTRATION OVERLAP

There are multiple pieces of policies, licenses, legislation and regulation covering biodiversity and vegetation affecting landowners and these include;

- Lands Act;
- Forestry Act;
- Rivers and Foreshore Improvement Act 1948;
- Soil Conservation Act in 1972, for vegetation issues was replaced by SEPP46;

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- The National Parks and Wildlife Act 1974 introduced the concept of endangered fauna and protected flora. Licenses were required to pick specific flora and the land manager had to take into account endangered fauna in their activity. These provisions were replaced by the Threatened Species Conservation Act 1995.
- The Environmental Planning and Assessment Act 1979 (EPA Act)
- Local Environmental Plans. Some Councils introduced tree protection measures and environmental zones. Approvals under the Soil Conservation Act, SEPP46, Vegetation Conservation Act 1997 and Native Vegetation Act 2005 were consents under the EPA Act.
- State Environmental Policy (SEPP) 14 – Coastal Wetlands was introduced in 1985;
- State Environmental Policy (SEPP) 26 – Littoral Rainforests was introduced in 1988;
- The National Forest Policy (1992) which included the need to introduce a code of practice for private native forestry;
- Local Government Act 1993;
- Various Regional Forestry Agreements;
- Integrated Forestry Operations Approvals;
- State Environmental Policy (SEPP) 46 - Protection and Management of Native Vegetation was introduced in 1995 then replaced by the Native Vegetation Conservation Act 1997;
- Threatened Species Conservation Act 1995 introduced the 8 part test for consents under the EPA Act, SEPP14, 26 and 46;
- State Environmental Policy (SEPP) 44 – Koala Habitat Protection (1995) for activities requiring consent;
- Native Vegetation Conservation Act 1997 (NVC) replaced SEPP 46; and
- Native Vegetation Act 2005, vegetation removal required a Property Vegetation Plan or consent. The provision for forestry activity was still subject to the SEPP46 processes. In July 2007 the Native Vegetation Regulation was amended to include private native forestry Code of Practice, some 15 years after the signing of the National Forest Policy.

To further add to the confusion multi agencies are involved in the administering of biodiversity and vegetation regulation. This has led to public servants providing poor advice to landowners who have unknowingly breached the legislation, or landowners “expert shopping” to utilize the inconsistencies to breach.

Native vegetation management on freehold land is a classic example of multiple agencies involved in the Act and Regulations There is at least 7 Government agencies involved;

- Office of Environment and Heritage (regulator, policy and land manager),
- Department of Primary Industries (advisory and policy),
- Environment Protection Authority (regulator and advisory for forestry activities),
- Forestry Corporation (land manager and regulator),
- Natural Resources Commission (policy),
- Department of Trade and Investment (land manager and regulator), and
- Local Land Service (advisory and regulator).

Throw in Local Government (with multiple variations) and various Federal Agencies, no wonder there is confusion. There is a need to reduce red and green tape and duplication. It could be as simple as Local Government becoming responsible for urban, recreational, business and industrial zoned areas and the State responsible for all other areas. This would ensure consistent of outcomes for biodiversity management on rural lands.

LEGISLATION AND FUTURE

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The current national and state criteria for lists of threatened species and communities cause confusion, regulatory burden and duplication of conservation effort. The listing criteria should be consistent and in this case NSW should follow the Federal lead as landowners can have properties in multiple jurisdictions.

For the State Government, land management agencies should not be involved in regulation. A Natural Resources agency needs to be reformed and responsible for policy and regulation of biodiversity, vegetation and other natural resources. Vegetation regulation in the Environment Protection Authority could be described as the “odd man out” in its brief. The other areas of its brief are “end of pipe” industries and activities.

The State's natural resource and land management agencies are operating autonomously with their own biodiversity conservation priorities, objectives and budget and their own performance indicators and reporting standards. With little commonality between their indicators and standards there is no mechanism for Government to measure or benchmark their performance or ensure that services are delivered in an integrated fashion.

A serious question then arises about the reliability of advice to government which comes from these agencies and their senior officer group representatives? It is known that that they can benefit from maintaining the status quo and that they are always inclined to put the interests of their own respective agency/sector ahead of others.

Aspirational goals are readily available for biodiversity conservation from the draft NSW Biodiversity Strategy however the legislation objectives should include only those that are achievable. The basic test to meet is to maintain biodiversity. The aspirational test is to improve. These tests need to be incorporated across tenure.

Effective delivery of biodiversity and native vegetation regulations needs a three pronged approach and these are;

1. Legislation, regulation and enforcement;
2. Incentives; and
3. Education and training.

Normally, due to budget pressure, Governments opt for the first and sometimes get involved in the third. This creates a series of winners and losers. Those who own or use the assets (and vegetation is an asset) end up paying and those who do not end up getting the benefit.

If the Governments want to include the community and landowners as a partner and active participant in biodiversity management it needs to include the three prongs. In most cases landowners are unwilling to inform government of sightings of flora and fauna (also heritage items). Having something rare or endangered is seen as a burden not an asset. If society values these items it should be willing to contribute to their management.

Future approvals need to be simple codes, rule sets or where approval is required the effort should be proportionate to the risks involved. It should be outcomes focused rather descriptive. If the land use is on-going (e.g. forestry) then less work is required. A change of land use requires more comprehensive approach.

Codes of Practices can set out the outcomes and methods to achieve those outcomes. Accreditation schemes have high cost of entry and high cost of maintenance beyond the reach of the majority of landowners.

There is currently over 1,000 species and communities listed under the Threatened Conservation Species Act. Current action takes a species specific approach results in iconic high profile species

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attracting the bulk of scarce resources at the expense of other lower profile species which are sometimes more at risk.

The importance of managing individual threatened species should not be completely discounted but it must not continue to be the central driver of biodiversity conservation management.

PRIVATE LANDS AND BIODIVERSITY

Under our land title system the vegetation (flora) is owned by landowner. The situation for fauna is not as clear cut. Some fauna are very sedentary and its whole life cycle can be carried out within one property. However, most fauna move between properties either on a local, regional or international scale.

Society places a value on flora and fauna but currently expects the landowners to pay for its protection. For flora the burden falls on the owner but for fauna the burden falls upon where the animal is domicile at any given point in time.

If the fauna species becomes a pest then it is up to the landowner to take action (that is society considers they own the fauna). For certain pest species the State provides assistance (wild dogs, feral pigs) and hindrance (flying fox colonies) to the landowner.

A very strong argument can be made for society to contribute the cost of management of fauna species in terms of stewardship payments in particular if it reduces the income from the land. If society does contribute then society does not value fauna species. Then fauna protection should not be regulated on freehold lands.

Bio-banking works well for urban expansion and mining activities. However, it is not an effective tool for rural settings as rural economic activity is not intense enough to warrant the costs.

PRIVATE NATIVE FORESTRY AND CONSERVATION AGREEMENTS

Forestry can be split into those operations on the Crown estate and those on private estate. Native Vegetation Act and regulations allow access to vegetation on private lands. The Act recognises forestry as an ongoing management on freehold lands. What the landowner does with the vegetation (timber) within the rule set is their business. Normally the landowner will seek to optimize their income.

A Property Vegetation Plan (PVP) approved under the Native Vegetation Act is for a period of up to 15 years where future changes to various acts and regulations did not affect the PVP. For forestry the approval length needs to cover at least one cutting cycle so that the landowner can invest in good silviculture instead maximize current returns.

In most cases approvals are not required for removing vegetation that has grown since 1990. In parts of the north coast of NSW these trees can be excess of 50 cm diameter at breast height. Ensuring compliance in these high growth areas will become increasingly problematic overtime.

Private Native Forestry PVP relies on mapped rainforest and old growth. These maps were derived from aerial photography with token field checks. These maps are highly unreliable, in particular the old growth maps. Currently the Environmental Authority on validating the old growth mapping layer is finding 50% or more do not meet the old growth definition. Unfortunately this process can take in excess of 12 months to complete.

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If society wants to reduce or restrict the earning capacity of landowners then society needs to contribute. It is a matter of natural justice. What now happens, the landowner has no incentive to undertake active management to maintain or improve biodiversity outcomes. Thus the objectives of the Native Vegetation Act 2005 will not be met. The Southern Cross Group (2006) set out some valid ideas for stewardship payments. These concepts provide a blueprint for stewardship payment for biodiversity and native vegetation generally.

One of the incentives for freehold landowners is Conservation agreements; unfortunately it is reactive to those wanting to sign rather than targeted areas. Another drawback is the binding nature of the agreements. Government are allowed to change their minds on land tenure why not private owners?

CROWN FORESTRY

In the discussion paper, *"Remake of the Coastal Integrated Forestry Operations Approvals"* Environmental Protection Authority fails to consider any threats to biodiversity aside from timber harvesting. This means there are no provisions which enable holistic consideration of these risk elements and adaptive management response. The Environmental Protection Authority has no interest in threatening processes beyond timber harvesting simply because it does not fall within its legal jurisdiction. The Native Vegetation Act and its Private Native Forestry code of practice also falls into this trap.

CROSS TENURE ISSUES

The creation and management of a world class, comprehensive, adequate, and representative reserve system has come at a high cost. With most ecosystem reserve targets met or exceeded yet the list of threatened species and communities continue to increase whilst significant economic impact occurred to rural populations. This seriously questions the use of preservation as the major tool in biodiversity management.

A core and building issue is that the lands (mainly former forestry estate) that have been 'protected' by tenure change have not been managed as they once were – by the indigenous peoples using fire over some 40,000 years and then by European's using forestry over some 150 years. The net effect of the absence of any real management in the new 'protected' areas is that their ecology is changing undesirably; for example, fuel loads are increasing, vegetation density is increasing, vegetation type is changing away from forest and woodland to bush and scrub types, weeds and other pests, including termites, are becoming more prolific.

The 'protection' in effect is, perversely, counter-productive.

A far better, and more modern approach, would be to manage the entire forestry estate as an estate with locally relevant, science based principles with due regard to environmental, social and economic needs, rather than the current simplistic tenure approach that measures protection 'outcomes' by way of hectares of tenure title – known as the 'tenure trap'.

The current biodiversity acts and regulations fail to make a clear connection between conservation outcomes and the management of key threats. Similarly, some of the laws pertaining to the management of key environmental threats remain disconnected from the management of biodiversity.

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Since vegetation has evolved, nature often uses fire or lack fire as a means to reset vegetation to adjust to climate change. In addition the use of fire management by humans over many millennia has had a major influence on biodiversity.

There is now no doubt that Indigenous Australians actively manipulated biodiversity over vast tracts of the landscape over many thousands of years to meet their own requirements. Despite this evidence our legislation is yet to embrace the 'fire-stick' role of humans and its importance in biodiversity conservation.

The NSW biodiversity has evolved with fire and has inbuilt coping and recover mechanisms. Wildfire impacts occur very rapidly in contrast to biodiversity recovery which occurs over a longer period. If the frequency and intensity is altered then many species are unable to adapt or evolve. Thus altered fires regimes and mega-fires are now arguably the single biggest threat to biodiversity.

Unless biodiversity and vegetation legislation recognises and embraces the importance of integrating fire management with conservation the decline in the State's biodiversity will continue.

Soil and water conditions are not applied equally across all land tenure. Conditions for road construction and maintenance attached to forestry operations and major road construction are not applied to non-forestry activities. There are many examples in National Parks and on council road networks where active erosion is occurring and that would be a breach of Private Native Forestry Code of Practice or the Integrated Forestry Operation Approvals.

Another issue is the resourcing and effectiveness of pest and weed control. Bell Miner associated dieback (BMAD) is closely associated with dense understorey, in particular lantana. This is a cross tenure issue for the North Coast.

NSW lacks a Biodiversity Data Plan to under-pin its own legislative objects. Such a plan would articulate the role of the community, industry, researchers and consultants in providing quality data, accessing that data and importantly putting a value on that data. Anecdotal evidence suggests much of the quality biodiversity data currently collected by consultants is not being provided to Office of Environment and Heritage via its information portals because of the prohibitive cost of data entry (ultimately borne by the client) and lack of incentives to do so.

Currently the system relies on mapped and point source data layers that have been generated by remote sensing or various levels of survey. Greater level of ground truthing is required for the mapping to have any reliability. The information should be challengeable. If the information is found to be wrong then the State should have to pay for challenge. If correct then those challenging should pay.

ADAPTIVE MANAGEMENT

The last two decades have seen rapid changes in agriculture, horticulture and forest management, harvesting and planning technologies. The associated level of environmental risk has also changed. To accommodate this change, forest managers had to employ adaptive management principles. However the basic fundamentals of these management systems have not changed.

Adaptive management is a tool to achieve an outcome thus should be incorporated into the regulative framework. The Taskforce strongly advocates for adaptive management approach.

FINAL STATEMENT

Finding real solutions to stem biodiversity decline demands a comprehensive approach. The approach taken to date however has been both timid and piecemeal and this is constraining opportunity for more fundamental and critical reform.

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If government is serious about stemming biodiversity decline it must commit to a more holistic legislative reform process and seriously question the quality and motives of some of its key advisers.

References

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