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SUBMISSION
to
Office of Environment
on
Biodiversity Conservation Regulation 2017 [NSW]

Introduction

The Clarence Environment Centre (CEC) has maintained a shop-front in Grafton for over 28 years, and has a proud history of environmental advocacy. The conservation of Australia's natural environment, both terrestrial and marine, has always been a priority for our members, and we believe the maintenance of healthy ecosystems and biodiversity is of paramount importance. As a result, we see regulations that protect the environment are supremely important to us.

We freely acknowledge that biodiversity in general, and numbers of almost all threatened species continued to decline under the previous regulations, a fact the government took advantage of when calling for changes. However, we assert that there was little wrong with those regulations, and the reason was the complete failure of successive governments to monitor and enforce compliance.

All regulatory agencies have been routinely restructured, 'trimmed' and starved of resources for decades, leaving them impotent and ineffective, completely unable to manage the environmental assets in their charge. There are many that believe this has been a deliberate ploy to ensure poor outcomes, allowing government to further reduce the national parks estate, or open reserves up to commercial exploitation.

The resultant introduction of the Biodiversity Conservation Bill 2016, and now the Biodiversity Conservation Regulation, saw the abolition of the one single piece of legislation, The *Native Vegetation Act 2003,* that had contributed to the slowing, if not stopping, the uncontrolled clearing of native vegetation that has occurred over the last 230 years. That alone is a grave concern to us.

Foreword

We draw your attention to the "**National Strategy for the Conservation of Australia's Biological Diversity, 1996",** signed by the heads of all Australia' States and Territories, which opens with an explanation that: *"The Convention on Biological Diversity, was ratified by Australia on 18 June 1993, and deals at a global level with the full range of biological diversity conservation, its sustainable use, and the fair and equitable sharing of the benefits arising from this use".*

So why would any sane person replace the Native Veg Act with a mess of unenforceable self-assessment codes?

The National Strategy goes on to to explain that:

"Maintaining biological diversity is much more than just protecting wildlife and their habitats in nature conservation reserves. It is also about the sustainable use of biological resources and safeguarding the life-support systems on Earth. Ecologically sustainable management of all Australia's terrestrial and marine environments is essential for the conservation of biological diversity.

The benefits of conserving biological diversity are numerous. Biological diversity is the primary source for fulfillment of humanity's needs and provides a basis for adaptation to changing environments. An environment rich in biological diversity offers the broadest array of options for sustainable economic activity, for nurturing human welfare and for adapting to change.

The world's species provide us with all our food and many medicines and industrial products. For example, the fishing, forestry, and wildflower industries rely on the harvest of biological resources from the wild. There is great scope for developing new or improved food crops from our biological diversity".

In short, without biodiversity, life on Earth cannot exist.

That 1996 document promised us that: *"This National Strategy for the Conservation of Australia's Biological Diversity aims to bridge the gap between current activities and the* ***effective identification, conservation and management of Australia's biological diversity****. The Strategy's primary focus is Australia's indigenous biological diversity. Implementation of the Strategy will require actions affecting virtually all of Australia's land and sea, most of which will continue to be subject to a multiplicity of uses, either in parallel or in sequence".*

Not only does the Biodiversity Conservation Regulation 2017, completely fail to achieve those lofty aims, but it opens up large areas of Australia's unique biodiversity to the interpretation of voluntary self assessment codes which is generally accepted, even by our Local Land Services, will result in an acceleration in the rate of land clearing across the board.

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The Regulation (Biodiversity Conservation Regulation 2017)

General comment

The CEC strongly believes it is unreasonable to invite public comment on the above regulations without providing the public with all details, particularly the mapping showing where those regulations will apply. The mapping of the various land categories to which the new land clearing regulations will apply, is the centrepiece of these legislative changes, and therefore fundamental in providing information for informed comment.

OVERRIDING RECOMMENDATION 1

Much of the supporting regulation and mapping has still not been compiled and therefore unavailable for public scrutiny and appraisal. As a result we ask the Minister to postpone the August 2017 commencement date for the new regulations, until such time as all necessary information is made publicly available, and that public has been allowed sufficient time to make properly informed comment.

Other matters arising

1. The Bill's equity code allows broad scale tree clearing, up to 625ha in any three year period, leading to a cumulative level of habitat loss that is unacceptable, and will prove disastrous for biodiversity which had continued to fall even under the former Native Veg Act.

RECCOMENDATION 1

Self assessment codes for land clearing should only apply to small-scale routine activities such as clearing for fence lines, as was recommended by the Governments original Review Panel.

2. **Offsetting.** The CEC is fundamentally opposed to off-setting on a like for like basis. The reason being that like for like off-setting always results in a net loss of biodiversity, something identified in the Biobanking Review undertaken when that legislation was first proposed.

RECCOMENDATION 2

Like for like off-setting be abolished, and off-setting be restricted to revegetation of cleared or degraded land to recreate similar habitat to that which will be lost, and only be allowed in cases where no threatened species, communities or populations, or their habitat, is to be removed for the development.

3. The CEC has serious reservations about the way the Regulation proposes to determine what constitutes ***"serious or irreversible impacts on biodiversity values"***. It provides no definitions, and relies, as in the past, on the 'opinion' of an ecologist chosen and paid by the developer. Report after report has identified the failings of this system under the regulatory system. As well, the Regulation allows off-setting to allow these irreversible impacts to go ahead even for developments that are not considered to be critical infrastructure.

RECCOMENDATION 3

That no development other than critical infrastructure be allowed to cause *"serious or irreversible impacts on biodiversity values",* and even critical infrastructure should be required to avoid such impacts if at all possible. Where irreversible impacts cannot be avoided, off-setting as described in recommendation 3 above, should be required.

4. The CEC believes the discretion granted to the regulatory agency, Local Land Services, to determine that a watercourse is not a stream if it does not have a defined channel with beds and banks, leaves the way open to an unacceptable risk of misinterpretation.

   Many of the state's major wetlands are in fact part of river systems, yet have no definable 'banks'. In our own area of the Clarence Valley, the Coldstream River frequently dissolves into wetlands that are nationally recognised as significant. Under the Regulation many streams, including major waterways, could be classified in a way that removes all protection

   Unacceptable levels of muddy water enters our rivers following rain. This can be prevented or dramatically reduced by preventing soil disturbance. The protection of all drainage lines, whether it be rivers or ephemeral swales, is crucial to maintain down-stream water quality.

RECCOMENDATION 4

That the definition of a creek depending on the existence of a bank and stream bed be removed, and replaced with wording that protects native vegetation growing along all drainage lines.

We also recommend that clearing should not be allowed on steep or highly erodible land, including all land with slopes greater than 18 degrees.

5. While fully supporting the concept of "sensitive biodiversity standards", the CEC notes that the majority of the listed categories **are subject to mapping that, once again, has yet to be undertaken, and some that have been completed, such as the Koala habitat mapping, is widely acknowledged as inadequate**.

RECOMMENDATION 5

Again we request that the implementation of the Regulations be deferred until all relevant mapping has been placed on exhibition for informed comment, something that cannot be made in the absence of such mapping. As well, we believe the list of sensitive area categories should be expanded to include other high conservation values, including endangered grassland communities, and all matters listed under the federal EPBC Act.

6. The Biodiversity Conservation Investment Strategy is yet another component of the new regulation which has yet to be completed. This leaves us unable to make informed comment on how the Biodiversity Conservation Fund, to implement conservation agreements with landowners, will be implemented. Concerns have been raised that the funding could well be diverted from the existing budgeted Climate Change Fund.

RECOMMENDATION 6:

Once again we ask that the Regulation not be implemented until all supporting legislation is laid out. We also assert our opposition to any transfer of funding from existing budgeted programs.

7. The CEC has great concern over the failure of the Regulation to place any controls over the clearing of land that is sensitive to salinity, erodibility (to both wind and water), or even consider loss of stored carbon.

RECOMMENDATION 7:

That the mapping of "sensitive biodiversity land" include areas where any soil disturbance may result in unacceptable impacts, such as highly erodible soils, areas prone to salinity, and acid sulphate soils. As well, with carbon emissions reduction being a priority around the world, we believe forested land should also be assessed for their stored carbon and carbon storage capabilities before clearing is allowed. In our opinion any resultant impacts on landowners should be allowed to be offset, either through stewardship payments, or access to Biobank credits or carbon trading.

8. Of particular concern to the CEC is the Regulation's apparent failure to exclude crown land, particularly travelling stock routes (TSR) from land clearing. TSRs are well known as crucial links for migrating wildlife, and recognised as such in various climate change strategies that have been released over the years identifying these corridors as a life-line for flora and fauna in a rapidly warming world.

As well, these crown lands have been spared many of the excesses that have been suffered by other crown lands such as state forests, and agricultural land, and as such often retain high levels of biodiversity.

RECOMMENDATION 8.

That no clearing of native vegetation be allowed on crown land. All crown land should be assessed for ecological values and managed accordingly. TSRs in particular should be retained and enhanced to improve habitat connectivity across the landscape.

9. Under the heading: *"**Assessment of application for licence (section 2.17)",*** we are told: *"The Environment Agency Head **may** take the following matters into consideration in determining an application for a biodiversity conservation licence: (a) any likely impact of the activity to be authorised by the licence on: (i) any protected animals or protected plants, and (ii) any animals or plants that are of a threatened species, and (iii) any animals or plants that are part of a threatened ecological community, and (iv) the habitat of any such animals or plants".*

We note by the above use of the word "may", which we have underlined, that there is no actual requirement for the agency's head to consider any of the above matters. We believe this is completely unacceptable. Even if the agency head does decide to take those matters into consideration, all that is required is a search of the NSW wildlife atlas. As the vast majority of rural land has never been subjected to a flora and fauna survey, the likelihood of any threatened species, populations or communities turning up on the atlas, are very low to zero.

If an individual householder wants to build a 3m wide carport, he or she is required to lodge a development application, and if trees are to be removed, most likely a flora and fauna assessment as well. Why therefore, should another landowner be allowed to clear many hectares of forest without any flora assessment or without even asking for approval?

RECOMMENDATION 9

That any land-clearing application, other then forest that has grown on land that had been cleared in 1990, should require a DA to be lodged, in the same way as it applies to any smaller landowner.

We thank the Minister for this opportunity to comment, and hope that the constructive comments we have made in an attempt to improve the survival chances for some of our iconic native plants and animals will prove to be helpful.

Yours sincerely

John Edwards (Honorary Secretary)