



28 June 2016

Biodiversity Reforms - Have Your Say

Online submission at: <https://www.landmanagement.nsw.gov.au/have-your-say/>

Dear Sir or Madam,

Re: Proposed Biodiversity Reforms

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of local Councils in the area south of Sydney harbour. SSROC provides a forum for the exchange of ideas between our member Councils, and an interface between governments, other Councils and key bodies on issues of common interest. We facilitate collaboration between councils on joint ventures, procurement, and projects including advocacy. Together, our member Councils cover a population of over 1.6 million, or one third of the population of Sydney, and an area of 680 square kilometres.

SSROC acknowledges the case for reform that was made in the report of the Independent Biodiversity Legislation Review Panel, *A review of biodiversity legislation in NSW*, 18 December 2014. The aim of that review was “to recommend a simpler, streamlined and more effective legislation which improves the conservation of biodiversity and supports sustainable development thereby reducing the compliance and administrative burdens.” However, the draft legislation does not achieve the stated aim of the review, since it puts facilitating development and cutting red tape ahead of biodiversity conservation and sustainable development.

The Principles of Ecologically Sustainable Development

SSROC is committed to the principles of ecologically sustainable development (ESD), and has been for many years. While the NSW Government asserts that “the reforms will facilitate ecologically sustainable development” (www.landmanagement.nsw.gov.au accessed: 28/6/16). SSROC is very concerned that the principles would in fact be undermined by the proposed changes. The precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity, and valuation, pricing and incentive mechanisms are all fundamental to ESD. None of these fundamental principles is given adequate or appropriate consideration in the reforms.

The principle of improved valuation, pricing and incentive mechanisms might reasonably be expected to apply to any system of offsetting where a value can be assigned to the biodiversity of an area. Yet the proposed reforms do not necessarily require the polluter to pay (for example, mine rehabilitation can be considered to be an offset for a separate development), and do not guarantee like-for-like offsets. Indeed, ascribing a monetary value to biodiversity implies that there is some sort of unit of biodiversity, which is substitutable: this is not true.

We therefore strongly urge the NSW Government to review its proposals and to develop an alternative approach that retains existing protections, enhances biodiversity, and is aligned with the principles of ESD.

Delivering Ecosystem Services

While it is understood that development is necessary to accommodate growth in Sydney, it is essential to achieve a balanced growth that will permit the environment on which our health and wellbeing depend, to continue to deliver critical ecosystem services. This is especially relevant to a very urbanised area. The Native Vegetation Act 2003 and the Threatened Species Conservation Act 1995 have effectively stabilised land-clearing in recent years, reducing the rate of loss of

habitat and native animals. SSROC urges the NSW Government to reconsider the repeal of these laws, particularly since the removal of these checks on land-clearing will mean that:

- no species or habitat is protected from development, irrespective of how endangered they might be, and
- the requirement to “maintain or improve” will cease to apply.

The offset system that is proposed is deeply flawed. There is no requirement for like-for-like offsetting, and so no assured system of protection for particular ecologies. Mine rehabilitation could be deemed to be an offset, when mining is a process that damages the environment and should logically require offsetting itself. The idea that an actual offset can be substituted by a financial payment is concerning, since it simply converts the loss to money, and not to an appropriate offset. This would mean further net loss. Even with the Biodiversity Conservation Trust subsequently being enabled to use these funds for future offsets, given the lack of like-for-like requirements, the system clearly lacks the controls necessary to achieve an effective off-setting system. The offset system should be reviewed to ensure that it will enhance biodiversity.

Prevention of excessive land-clearing

It appears that the proposal will, in repealing the Native Vegetation Act 2003, also eliminate the Environmental Outcomes Assessment Methodology (EOAM) from Local Land Services (LLS) decision-making in relation to land clearance. The EOAM specifies when broad-scale clearing can be regarded as improving or maintaining environmental outcomes for water quality, salinity, biodiversity, soils and invasive native scrub. Under the proposed legislation, there would be no such checks. The provisions proposed would seriously weaken these protections, by replacing them with self-assessable codes. SSROC urges the NSW Government to retain the EOAM as integral to the decision-making process: it is a good, meaningful tool which is effective as does not need to be replaced. To cease its application would risk the return of broad-scale clearing with the associated negative effects on biodiversity.

SSROC also notes that Australia’s carbon emissions reduction is closely tied to the control of land-clearing. Increasing land-clearing would increase our carbon emissions, and contribute to climate change. Given that anthropogenic climate change is a key threatening process identified in the Biodiversity Conservation Bill, the Bill is inherently contradictory. SSROC urges the NSW Government to strengthen significantly the aspects of the reforms that would be likely to result in increased land-clearing.

Land categorisation and mapping

Under the proposed Biodiversity Assessment Methodology, land is categorised into excluded, exempt or regulated. The system would use vegetation maps that have not yet been made available. It is not possible for any comment to be made on the accuracy or appropriateness of the designations contained in those maps. SSROC recommends that the changes should not be introduced until the mapping has been published and reviewed, and account has been taken of feedback.

Given the components whereby the categorisation of land is derived, the whole of the area covered by the LGAs of the SSROC member Councils would be excluded. Given the very developed urban characteristics of southern Sydney, SSROC would seek to conserve the green space that remains. It is critical to the wellbeing of our community that people have access to open space such as parks and gardens, but also that we conserve and protect such remnant bush as does remain, and that we restore degraded areas. The proposed reforms offer no such protections.

Implementation of the reforms

SSROC understands that a new State Environmental Planning Policy (SEPP) will be developed in future that will cover the urban area. Without seeing the SEPP and the protections that it might offer for our region, it is not possible to comment on its likely effectiveness. However, it is very clear that the reforms presented so far will offer nothing for the protection of open space, reserves,

bushland remnants or other green space. We note that the SEPP is intended to replace Council Tree Preservation Orders: SSROC is not aware of any justification for this change, and is of the view that the Council Tree Preservation Orders effectively protect urban street trees. SSROC would seek to retain the existing system, especially in view of an increased need for tree canopy as a climate change adaptation mechanism.

Similarly, the details of the codes and regulations are not available, and so it is impossible to comment at that level. SSROC therefore recommends that these critical related elements of the reforms be released for review before any changes are made.

Under the reform proposals it appears that the Minister responsible will be the Minister for Primary Industries and not the Minister for the Environment. There would be clear conflicts of interest for the Minister for Primary Industries in decision-making where industry priorities conflict with environmental priorities. SSROC contends that this allocation of responsibilities is not appropriate.

Serious and irreversible impacts

It is essential that we avoid any risks of species extinction. The reforms use the term “serious and irreversible impacts” but the phrase is not defined, leaving it open to interpretation. Even if such impacts are identified, there remains discretion as to the implications for the proposed development. SSROC recommends that, at the least, development that threatens extinction of a species should not be permitted.

Conclusion

With reference to the aims of the review:

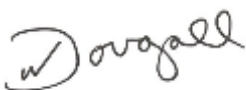
- A “simpler, streamlined and more effective legislation” would not be achieved through this proposed reform. It is complex, allows for many exemptions, is so far only partly set out, and removes the effective parts of the existing system. The replacement controls are much less stringent, lack supporting evidence, reduce accountability and are lacking in transparency.
- New legislation that “improves the conservation of biodiversity and supports sustainable development” would not be delivered through this proposed reform. It lacks any “maintain or improve” requirement, offers limited like-for-like offset, includes payments instead of direct offsets, permits discretion in relation to serious and irreversible impacts, risks the reintroduction of broad-scale land-clearing and increasing carbon emissions. In some way it conflicts with every basic principle of ESD.
- The aim of “thereby reducing the compliance and administrative burdens.” would not be met by this proposed reform. Its complexity, lack of controls, and inadequate monitoring and evaluation provision would greatly complicate the administrative burden.

Thank you for the opportunity to offer this feedback. SSROC does not support the proposed reforms as currently designed. We urge the NSW Government to reconsider this reform, building on the principles of ESD.

Please note that SSROC has communicated with the Sydney Coastal Councils Group in relation to this matter, and that we fully support the issues raised in their submission.

Due to the timing of this submission it has not been possible for it to be reviewed and endorsed by the SSROC Delegates. Should any issues arise as a result, I will contact you. For any enquiries regarding this submission, please contact me or Helen Sloan, Program Manager SSROC on 02 8396 3800

Yours sincerely,



Namoi Dougall
General Manager
Southern Sydney Regional Organisation of Councils