124 sublime point Road,
Leura NSW 2780

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I oppose the proposed changes to the NSW biodiversity and conservation laws

In summary

- I have assessed the proposed changes in the context of maximising biodiversity conservation and minimising the clearing of native vegetation consistent with Australia's commitment to reduce its CO_2 emissions. In that context the proposals are an abject failure.
- In terms of facilitating all forms of development, escalating the clearing of native vegetation and wildlife habitat, and disregarding biodiversity conservation, while concurrently enhancing the likelihood of corrupt practices, then the changes could be construed as resoundingly successful.
- Transferring responsibility for environmental conservation from the Environment Minister to other Ministers with vastly different responsibilities and agendas, ensures that the existing imbalance favouring development over environmental considerations is exacerbated.
- Biodiversity offsetting has negligible scientific merit and provides no basis for destroying exceptional environmental values. Offsetting is repugnantly devious and is designed to ensure that the vast majority of development proposals receive 'conditional approval', irrespective of public opinion and environmental outcomes.
- It is totally unsurprising that the Wentworth Group of Concerned Scientists has written to all MPs stating its view that the laws fail to protect nature; damning submissions have been made by the Royal Zoological Society of NSW and the peak environmental groups.
- Government is achieving its economic and political objectives through the sale of public assets and development-friendly policies. The downside comprises environmental vandalism and a disregard of greenhouse gas emissions. When there is nothing left to sell, construction is incomplete, biodiversity is compromised, and global warming is rampant, the architects of the present polices will have much to answer for; but it will be too late!

1. Introduction

I am a concerned resident and a member of several conservation organisations including the Blue Mountains Conservation Society.

I am closely involved with the Greater Blue Mountains World Heritage Area (GBMWHA) in terms of protecting its many parks and reserves. I was involved with the original submissions in relation to the significance of the geology and its tectonic evolution.

I comment in the capacity of someone who has now lived in the mountains for about 16 years, following a career as a geologist in variously government, metalliferous exploration and mining, consulting in engineering geology and university lecturing and research. I finished my career as an Adjunct Professor of Geology at UTS. The comments are largely critical, because the proposed changes will weaken environmental protection and compromise the standards established by the

2. Why repeal what is working to a reasonable degree?

It is implied by Government that the existing legislation is deficient in terms of lacking clarity and thereby causing confusion, and perhaps being too restrictive and placing undue burdens upon landholders. Based on such poorly substantiated value-judgements, the government aims to repeal the *Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001* and sections of the *National Parks and Wildlife Act 1974.* These fundamental pieces of legislation are to be replaced by the proposed *Biodiversity Conservation Bill (BCB)2016, Local Land Services Amendment Bill (LLSAB) 2016* and, in due course, changes to the E*nvironmental Planning and Assessment Act (EP&A)1979.*

Government is currently seeking input on what aspects of the *EP&A Act* should be amended from the viewpoints of environmental organizations. Submissions will also be made by lobbying organizations representing the agricultural, forestry, mining and CSG industries *inter alia.* Government will then go ahead and produce a draft for formal consultation. **If the outcome follows the pattern established by the *BCB* and *LLSAB*, there will be further weakening of environmental protection in the interests of streamlining all types of development approval.**

BMCS believes that Government has already decided on the changes needed to facilitate its development-friendly agenda and contends that the phases of consultation are largely 'whitewash' designed to convey a semblance of democracy.

BMCS categorically rejects the government's position regarding the deficiencies of the legislation due to be repealed, because the legislation is not perfect, in that the current imbalance already favours development over the environment, it has achieved some successful environmental outcomes. Thus:

- The *NSW State of the Environment Report 2015* has recognized the *Native Vegetation Act* as a key piece of legislation which has the objective of protecting natural bushland and wildlife habitat throughout NSW and also ensures the protection of soils and facilitates sustainable land management.
- The *Native Vegetation Act,* according to the WWF, has resulted in land clearing declining by 40%, with this equating to saving 116,000 native mammals, as well as contributing to the preservation of habitat including numerous plant species.
- The *Native Vegetation Act* has also been responsible for establishing 1000 property vegetation plans which ensure that over 4 million ha of native vegetation on farmland are subject to improved management.
- The *Threatened Species Conservation Act* is fundamental to ensuring the preservation of species. It plays an important role in preventing widespread destruction of bushland for mining and farming purposes, and other forms of development such as airports, and housing and industrial estates. Unfortunately, its application is largely subverted by such iniquitous processes as offsetting, and the planning system disproportionately valuing economic and selected social outcomes above environmental interests.

The Government could be implementing changes to ensure more equitable outcomes in terms of a triple bottom line approach. However, this lacks conviction because:

- There is nothing in the proposed changes to support the claim – indeed, moving to a system which aims to streamline processes and provide certainty (for you know whom?) would seem to be exacerbating the existing imbalance between economic and selected social outcomes versus environmental outcomes.
- The Acts to be repealed are not perfect, but their application has evolved over the past 15-40 years such that a level of competence has developed within the decision-making authorities – much of this experiential learning would be lost with the introduction of a new system. The same type of loss would be experienced by those putting forward an application and various community-based organizations attempting to assess applications from environmental and social viewpoints.
- I believe it is more sensible to make focused clearly-needed modifications rather than throwing out the baby with the bath water! Small adjustments carry far more conviction than sweeping changes, particularly when those changes are developer-friendly and diminish the capacity of community groups to challenge inequitable outcomes.

I conclude that:

the government's argument that the existing legislation is confusing and ineffective is not justified by the environmental outcomes;

deficiencies in the existing system should be dealt with incrementally rather than by attempting to start with a clean slate; and,

the aim of the legislation should be biodiversity conservation, not facilitation of clearing and development in accord with Government's economic imperative.

3. Where is the requirement to 'improve or maintain biodiversity values'?

The 'improve or maintain' requirement is a key feature of the *Native Vegetation Act* and of Biodiversity Certification under the *Threatened Species Conservation Act.* As the Government will remove such legally binding requirements when the acts are repealed, and the new laws are devoid of any clearly defined provision for such requirements, this will unquestionably lower the bar for all land-clearing activities. Poorer environmental outcomes must inevitably eventuate.

The omission of 'improve or maintain biodiversity values' demonstrates a clear and unacceptable intention to weaken environmental outcomes.

4. Where are the 'no-go zones'?

There are many environments and ecosystems which, for reasons such as having exceptional scenic value, being an irreplaceable land system, possessing uniqueness for 'natural' reasons and/or due to human actions (e.g., the widespread destruction of most of a relatively common ecosystem by open-cut mining and clearing for agriculture, and having national and/or state listing as endangered or critically endangered, should be deemed too precious to destroy and be classified as off limits for clearing and development. These should be designated 'no-go zones'[1]

[1] This submission principally focuses on natural environmental issues, but 'no-go zones' should also apply for health and other social reasons, in terms of recognizing absolute buffer zones around clusters of dwellings ('villages/hamlets'). The notion that a

by the appropriate government departments, preferably before any form of development is contemplated, but also by their recognition during the initial stages of assessment.

There should also be 'no-go zones' (perhaps preferably referred to as legislated buffers) around the boundaries of world heritage areas, national parks and other forms of reserve, to avoid peripheral pollution by weeds and sullying the reserves by other aspects of human invasion.

I appreciate that the Biodiversity Assessment Method (BAM) will trigger a *'red flag'* (essentially a 'no-go zone') for *'serious and irreversible impacts on biodiversity values'*, but this raises more problems than it solves. First, there is no definition of '*serious and irreversible'* in any of the proposed bills (*BCB, LLSAB, BAM*); second, even if there were a definition, there is no clarity on how areas would be assessed relative to a definition (e.g., would OEH be the determining authority, or would DPE accept the finding of the company's 'rusted on' consultant?); and third, there is no stipulation that consent should be refused for any piece of state significant development (SSD) or state significant infrastructure (SSI) which would cause *'serious and irreversible impacts'.*

I also accept that provision exists in the *BCB* for the Environment Minister to declare *'Areas of Outstanding Biodiversity Conservation Value'*. Sounds impressive, but it is in no way clear when and how these powers would be used. Currently, the *'critical habitat provisions'* in the *Threatened Species Conservation Act* have rarely been used, this probably reflecting the relative ranking of planning and resource development versus the environment in this and some previous Governments. Were this not the case, such provisions should have been invoked to protect the demonstrably endangered swamps on Newnes Plateau.

BMCS suspects that governmental pecking orders will not change, and that the provision in the BCB is little more than window dressing whilst increasing the imbalance in favour of development.

Conclusion 5: there should be provision for identifying 'no-go' zones, including legislated buffers, which should be automatically excised from any exploration application and development proposal.

Conclusion 6: there should be provision for the Environment Minister, through advice provided by OEH, to act in the interests of preserving land and habitat deemed to have exceptional conservation value – these powers must be clearly prescribed and the nature of the conservation values be encapsulated through definitions.

Conclusion 7: *'red flag'* provisions and the Minister of the Environment's powers under the BAM are inadequately defined and need substantial clarification if they are to be effective in conserving biodiversity.

5. Why has the role of the Minister for the Environment been diminished?

If the gross volume of responsibility is expanding, removing responsibility from one minister inevitably means that another takes it over; it also means that the respective ministers may have very different levels of commitment to the environment versus development.

The Minister for the Environment has responsibility for the *Native Vegetation Act*, including approval of land clearing applications, although the assessment and approval of Property

village can be exposed to open-cut coal mining, virtually up to the back fences, should be litigated against, not left to the uncertainty of campaigns and costly last-resort court actions.

Vegetation Plans is controlled by the Local Land Service (LLS). Now, under the proposed system, the LLS will oversee land clearing activities using the *Local Land Services Act (LLSA)* administered by the Minister for Primary Industries. There seems to be little doubt that this will create a more sympathetic audience for developers.

Biodiversity conservation should primarily be the responsibility of the Minister for the Environment and his/her department – other branches of Government have different responsibilities and they are clearly expressed in the proposed changes!

6. The Biodiversity Assessment Method (BAM) is offsetting in disguise!

BAM will supersede the BioBanking Assessment Methodology, Biodiversity Certification Assessment Methodology, the preparation of Species Impacts Statements and the Framework for Biodiversity Assessment under the NSW Biodiversity Offsets Policy for Major Projects.

The principal aim is to separate land-clearing decisions from biodiversity assessment, such that the former is dealt with under the *Local Land Services Act (LLSA)* and the latter under the *EP&A Act.* This is catering to complaints by small farmers and large agribusinesses, the mining and CSG industries, and developers in general.

It might at first seem that anything should be an improvement on be better than the BioBanking system and the Biodiversity Offsets Policy, but this turns out to be wrong; the BAM is environmentally unsound.

It might similarly seem that the concept of rationalising land clearing and biodiversity assessment under the *Local Land Services Act (LLSA)* and the *EP&A Act* respectively is rational. But as partly indicated in Section 4 (above), the outcomes are disappointing and need much more consideration. The Government needs to place conservation (rather than clearing and development) in the forefront of its thinking.

6.1 Why is BAM unsound?

The BAM will weaken biodiversity offsetting rules for all types of development, because it: (i) contains many of the unacceptable aspects of the current NSW Biodiversity Offsets Policy for Major Projects; and (ii) clearly intends to expand the use of biodiversity offsetting. The aim of comprehensive offsetting is to ensure that the vast majority of development proposals are approved! This can only result in gross environmental vandalism.

Some of the specific deficiencies are:

- There is no clear objective to protect biodiversity or achieve net positive outcomes, despite this concept of maintaining or improving biodiversity being basic to the acts which are to be replaced.
- The proposals acknowledge a ‘red flag’ system but its details are ill-defined and the ‘red flag’ can be disregarded for major projects.
- Offsetting is not limited to ‘like-for-like’ and permits such things as: mine-site rehabilitation (a cosmetic but otherwise totally inadequate system of compensating for destruction); monetary payments where suitable offsets (even in the loosest interpretation) are not available or have not been identified; and ill-defined supplementary measures, termed ‘biodiversity conservation actions’, which are as yet unavailable for public comment. This lack of availability is ridiculous. All the cards should be on the table and face up!

Related concerns in the *BCB* and *LLSAB* are:

- A provision in the *BCB* and *LLSAB* allow decision-makers to discount and in other ways alter biodiversity offset credits. This encourages corruptive practices and other forms of 'special consideration'. It is unacceptable!
- Offset sites are not in themselves protected in perpetuity in the *BCB* to the extent that offset agreements can be altered at the Minister's discretion. This could lead to an offset area being cannibalized by later phases of mine development and adds grist to the impression that this government will allow nothing to stop development.

I conclude that:

the BAM must embrace the objective of maintaining or improving biodiversity, ensure that avoidance and mitigation are fully investigated before considering offsets, and comprehensively recognise that circumstances exist where offsetting should neither be acceptable nor applicable; offsetting must never be a panacea for approval;

offsets must be preserved in perpetuity, and offset-determinations should be absolute and free from selective 'accommodations'; and,

offsets should not include ill-explained supplementary measures ('biodiversity conservation actions') – such flexibility is open to abuse and impossible to evaluate.

6.2 Native Vegetation Regulatory Maps need to be reconsidered.

Three categories of land are recognized: exempt, regulated and excluded.

- Exempt lands [cleared land and regrowth, low conservation value grasslands, and biodiversity certified land (i.e., land previously subject to biodiversity assessment)] can be cleared without approval.
- Regulated lands [land not cleared lawfully since 01/01/1990, land subject to private conservation agreements or conserved with public funds, vulnerable land (e.g., steep land at risk of erosion), unlawfully cleared land, high conservation grasslands, and land with features subject to other regulation (e.g., coastal and Ramsar wetlands)] are all subject to code-based self-assessment and will be administered by the Local Land Service and Minister for Primary Industries.
- Excluded lands [includes all Sydney and Newcastle local government areas, and state-wide lands in E2, E3 and E4 zones, and R5 zones under LEPs] will be regulated by the *EP&A Act* using the Biodiversity Assessment Methodology. A new SEPP and Development Control Plan will apply, but these policies are not currently available. Why aren't they? Why bring out incomplete proposals?
- Apart from the unknown aspects, it is clear that some lands which were more closely regulated can now be cleared without approval, while the amount of self-assessment dramatically increases under 'code-based' clearing. And where more detailed approvals are required under the *EP&A Act,* it will be implemented under the disgraceful process of biodiversity offsetting within the BAM. The whole system is based on effectively reducing constraints on land clearing by: the proposed enactment of clearer-friendly categorization; the sentiments of those charged with administering much of the proposals being more attuned to farmers and developers than to the best environmental outcomes; and by

'cowboy' companies and individuals who wish to stretch the limits of the system being able to test those limits with relatively little risk of adverse consequences.

The proposed changes will unquestionably lead to an escalation of clearing at a time when, from the viewpoint of climate change, it is essential to reduce destruction of native vegetation.

The changes will need to be implemented without will need to be substantially amended because:

- The reliance on offsetting as a means of ensuring the acceptability of a development should be either rejected or its application substantially weakened from convenience and/or financial viewpoints to ensure that it is never the preferred option.
- Under no circumstances should clearing of Endangered Ecological Communities (EECs) or any form of threatened species habitat be permitted under self-assessment codes; nor should it be permitted in excluded lands other than for high-integrity 'like-for-like' offsets, and only then after all possibility of avoidance and mitigation has been exhausted.
- Under no circumstances should it be possible for code-based clearing to convert 'regulated lands' (category 2) into 'exempt lands' (category 1); without this provision, code-based clearing could comprise a chain of destruction.
- Biodiversity conservation should be in the hands of an expanded OEH which has conservation as its objective, rather than in the hands of those committed to development and land clearing.
- The participation of the Minister for the Environment must be enhanced within the overall process, rather than being relegated to near insignificance.

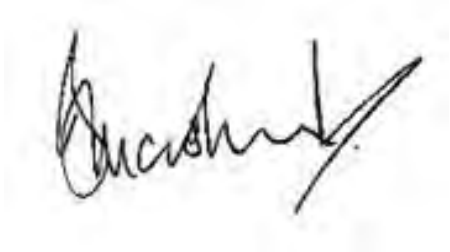
I conclude that:

the 'exempt' and 'regulated' categories of lands should be revisited and their content more carefully detailed in order to minimise environmental abuse through 'misunderstanding';

self-assessment (code-based or whatever) should be avoided. It will not work over time; individuals and organizations will always test the limits of a system and adjust practices accordingly. Such adjustment will naturally test the flexibility of the overseer (LLS) and could spawn corrupt practices to the detriment of biodiversity; and

the role of the BAM for 'excluded' lands is contingent upon policies (a new SEPP and Development Control Plan) which are not available; this is unsatisfactory and does not inspire confidence.

I thank you for the opportunity to present my views.



Dr Brian Marshall