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Biodiversity Reforms - Have Your Say
Via web: www.landmanagement.nsw.gov.au/have-your-say/

Tweed Shire Council Submission - Proposed Land Management and Biodiversity Legislation Reforms

Tweed Shire Council welcomes the opportunity to review and provide comments on the proposed Biodiversity Conservation Bill 2016, Local Land Services Amendment Bill 2016 and relevant supporting material.

The proposed legislation has significant implications for biodiversity and local government in New South Wales. Following a detailed review of the documentation, we do not believe the proposed changes contribute positively to biodiversity conservation. It is also considered that the reliance on impacts from development to fund land management, together with a flawed offsets system will result in further loss of biodiversity in NSW, especially in areas of high development pressure such as the Tweed Coast. This places the Bill in conflict with its defined purpose and objects.

The following key concerns are raised:

Consultation

1. The Bills have been released with limited consultation by presenting draft bills without the normal green and white paper process. The consultation and support offered during public exhibition has not been sufficient for Council (or the community), to understand the full range of potential implications. This situation has been exacerbated by a lack of crucial detail such as the Native Vegetation Regulatory Map, associated State Environmental Planning Policy (SEPP) and other detail to be included in the Regulations. Considering the potential impact on the local government sector (see below) there is an urgent need for a proper forum involving local councils, LGNSW and state agencies to discuss the implications and negotiate more acceptable solutions before the legislation is gazetted.

Council's role in land use planning

2. The Bill and the Biodiversity Assessment Method (BAM) should be amended to include a clause (or clauses) that specifies the BAM as a minimum standard and clearly identifies the right of the consent authority (under Section 79C of the EP&A Act) to apply local policy particularly with regard to avoiding and minimising biodiversity impacts. In its current form the proposed legislation only

requires the proponent to consider these impacts but is silent on the ability of the consent authority to refuse or condition a development application.

3. Removal of endangered populations where the species is already listed as threatened (even at a lower threat level) is strongly opposed. This affects the Tweed Brunswick Coast Koala Endangered Population which was only gazetted in April 2016. The existing Endangered Population listing underpins Tweed Council's Tweed Coast Koala Plan of Management making it very difficult for proponents to avoid its provisions by arguing that koalas are well conserved elsewhere in the State. Moreover, the listing as an Endangered Population means that preferred koala habitat on the Tweed Brunswick coast will qualify for environmental protection zoning under the recently endorsed Northern Councils E zone Review Final Recommendations Report (October 2015) and associated s117 direction of March 2016. Under the E zone review, the simple listing of the koala as a Vulnerable species will not be sufficient on its own to qualify for environmental zoning. A similar situation arises with the long nosed potoroo Endangered Population at Cobaki. Savings provisions need to be implemented to ensure that planning processes that rely on these listings are preserved.
4. The BAM takes no account of council zoning or zone objectives. Thus a development proposal in an environmental protection zone is treated in exactly the same way as on urban zoned land. The assessment methodology appears to be a one-size-fits-all process that pays little attention to the desire of local communities, through their Councils, to protect important areas. Extensive areas of the far north coast are subject to high development pressure, particularly along the coast. Local communities rely on their councils to ensure acceptable environmental outcomes. The net result of the proposed legislation in these areas will be disproportionately high rates of biodiversity loss. This does not represent ecologically sustainable development.
5. The proposal for private entities to apply for biodiversity certification is not supported. Local government invest considerable resources in strategic planning and are best placed to facilitate relevant information and stakeholder consultation for land use decision making at this scale. Local government must have a minimum of a concurrence role in biodiversity certification. It is highly likely that perverse planning outcomes will occur if council does not have a role in determining what areas are appropriate for bio-certification.
6. The proposed 'urban tree' SEPP has significant potential implications for strategic planning, environmental zones, existing planning instruments and policies and biodiversity conservation. Consideration of some aspects of the overall proposed reforms in the absence of others such as this SEPP seriously impacts on the ability for stakeholders to understand and comment on the proposed reforms.
7. Subject to Councils being able to implement local planning policies (see point 2 above), the 'sensitive values' map proposed as a trigger for application of the BAM must be developed in conjunction with local government to ensure all relevant data and values are included.
8. The *biodiversity values* identified in the Bill at s1.5 are overly simplistic, development focussed and not representative of the suite of values required to

achieve the purpose of the Act. For example, consideration of habitat suitability values should not be limited to threatened species. Recent studies demonstrate declines in many widespread and iconic species (some parrots, bush birds, kookaburras etc.). Common species and their habitats need to be included in any offsetting considerations.

9. While many of the impact assessment standards contained in the BAM are welcome and will ensure that impacts are assessed in the same way, the same cannot be said for the outcomes of the BAM which will lead to a very uneven distribution of biodiversity loss across the landscape. Unless the planning issues noted above are properly addressed, it is highly likely that areas subject to high development pressure, particularly along the coastal strip, will be rapidly depleted of biodiversity values.
10. The proposed area based thresholds for the Biodiversity Assessment Method (BAM) are not supported. The proposed approach needs to be able to respond to localised pressure on biodiversity.
11. The BAM does not account for threatened species use of urban habitat values. Numerous threatened species rely on otherwise non-significant values such as street trees, incidental water sources and open space in the urban matrix. These values need to be able to be incorporated in the consideration of potential impacts of a development proposal.
12. Council has experienced considerable variation in the outcomes arising from the application of the existing BioBanking Scheme. There has been no indication to date that the proposed BAM addresses this issue. This exacerbates the implications for local government who will now be required to assess Biodiversity Assessment Reports.
13. The draft criteria for 'serious and irreversible impacts' needs to acknowledge the right of local government to insist that certain impacts are avoided. This is particularly important in areas of high development pressure where cumulative impacts will eventually result in landscape scale depletion of biodiversity values. To suggest that only some "critically endangered" vegetation communities are off limits for clearing is inconsistent with existing practice in Tweed Shire which insists on a much higher standard for habitat retention.

Offsetting

14. The "avoid, minimise, offset" hierarchy is supported however the BAM provides very little guidance to the proponent or the consent authority on what should be avoided or minimised and instead provides details for offsetting, which should be the last option. Measures need to be included in the legislation to allow the consent authority (eg. council) to determine locally acceptable criteria for avoiding and minimising biodiversity impacts.
15. The ability to compensate for the complete loss of habitat (clearing) by providing marginal improvements in the management of existing habitat leads to a net loss of habitat and should not be permitted. Offsets for habitat removal should require replanting on cleared land with multipliers to account for time, risk and distance factors.

16. Under the BAM the requirement for offsetting only applies to threatened species or their habitat. If offsetting is permitted at all it should apply to all biodiversity impacts. There is clear scientific evidence that many common and iconic species are disappearing from parts of the landscape including areas subject to development pressure.
17. The ability of individual landholders to carry out or even coordinate land management actions arising from offsetting arrangements is questionable. Very few landholders have sufficient ecological knowledge especially when dealing with threatened species or their habitats. Also landholders should not oversee high risk actions such as the use of fire for ecological purposes.
18. Offsetting for "similar" entities and at locations remote from the impact is not supported. The retirement of biodiversity credits should favour like-for like on-site offsets and incur penalty credits as distance from the impact site is increased.
19. Councils need the option to insist that any required offsetting occur onsite where considered appropriate and feasible by the consent authority. Measures need to be put in place to allow this to occur.
20. The Bill should be amended to identify that local government can increase offset obligations in the same manner that it suggests councils can reduce offset obligations.
21. The proposed offset variation rules are not supported. If a genuine like-for-like offset cannot be achieved, the proposed loss should not be permitted, unless genuine exceptional circumstances apply.
22. The proposal to allow for monetary payment to meet offset obligations is not supported as the achievement of the offset is not guaranteed. Loss of biodiversity without a guaranteed offset is not reasonable or appropriate.
23. The proposed inclusion of indirect offsets is not supported. There is no evidence to suggest that they can contribute to a genuine offset outcome.

Cost Shifting

24. The proposed reforms represent a significant shift in cost to local government. This is acknowledged in the Independent Biodiversity Legislation Review Panel report but not in any of the legislation reform public exhibition materials.
25. The Biodiversity Assessment Methodology (BAM) is very complex and will require specialist staff with ecological expertise to carry out the necessary assessments. The BAM also requires specialist staff to be trained and accredited. Under the existing BioBanking scheme such assessments are currently undertaken by OEH. Under the proposed legislation the scheme will be greatly expanded and most of the resource implications and implementation will fall to council.

26. There will also be additional resource implications for Councils arising from reviewing their existing policies, educating the community and the development industry on the changes, resolving conflicts, including court actions likely to arise from ambiguities in the new legislation, and ensuring compliance.
27. The government needs to put measures in place to train council staff and otherwise compensate local government for additional administrative resourcing arising from any new legislation.

Simplifying land management / Native Vegetation Regulatory Map

28. Areas of high conservation value including Endangered Ecological Communities should be excluded from both Category 1 and Category 2 land to define areas where clearing is not allowed. This was recommended by the Biodiversity Review Panel.
29. The simplistic approach to defining regrowth as vegetation established since 1990 is not appropriate in all regions of the state. This is inconsistent with Recommendation 42 of the Biodiversity Review Panel which sought to take a bioregional approach to the proposed reforms. For example on the Far North Coast, regrowth littoral and lowland rainforest grown since 1990 will typically conform to the Scientific Committee Final Determinations for these communities, both of which are nationally recognised as Critically Endangered. It is not considered acceptable to allow clearing of such areas without formal consent.
30. The allowable activity maximum authorised clearing for rural infrastructure areas are a significant increase on current RAMAs and not appropriate for the Far North Coast.
31. Without substantial additional resources Local Land Services will not be sufficiently resourced (staffing or expertise) to implement the proposed changes.
32. Council often requires offsets, outside of the BioBanking scheme, as part of a development approval. There needs to be a process to ensure that any affected areas are classed as “excluded” under the Native Vegetation Regulatory Map.
33. The proposal to remap “set asides” established on Category 1 land as Category 2 is not supported. This land should be excluded land to be consistent with the intent for in perpetuity protection and management.
34. Self-regulation of vegetation clearing by code or allowable activity in Category 2 lands is not supported. There are a number of reasons for this. Firstly, such areas may contain areas of high conservation value which was recommended for inclusion in a separate non-clearing category by the Independent Biodiversity Review Panel. Secondly, without a major audit of past funding, this potentially allows clearing of lands containing native vegetation established with the assistance of public funds. Thirdly, in areas such as the NSW north Coast, code-based clearing for private native forestry has proven to be ineffective in managing key biodiversity assets such as threatened species and koala habitat. Fourthly, in many areas on the far north coast where land prices are high and farm incomes are low clearing most often occurs to pre-empt development outcomes rather than for genuine farming enterprises. Given landholders

typically lack sufficient expertise to assess ecological values and regulatory compliance is likely to remain largely reactive, there can be little confidence in self-regulation.

35. Threatened and non-threatened fauna species are not adequately considered through the proposed application of the Native Vegetation Regulatory Map and associated self-regulated clearing. Numerous fauna species increasingly rely on paddock trees and other small remnant areas of vegetation for food resources, nesting locations, tree hollows and to move throughout the landscape. Many threatened plants occur as individual specimens and may not be subject to any assessment prior to their removal. The proposed reforms endanger these values with significant negative implications for biodiversity conservation.
36. The proposed framework does not accommodate any consideration of the role of paddock trees and other small remnants as habitat for fauna (threatened or otherwise) or seed sources for future natural vegetation establishment. This is inconsistent with the defined purpose and objects of the Bill and the recommendations of the independent panel.

Native plants and animals

37. As noted earlier, the removal of endangered populations where the species is already listed as threatened (even at a lower threat level) is strongly opposed.
38. A risk based approach to licensing native plant and animal interactions is generally supported but there has not been sufficient detail exhibited to make meaningful comment.
39. It is noted that reducing licensing investment requires a comparable investment in compliance for a code based system to be effective. There is to date no indication that this approach will be applied.
40. The proposed exemption from offences relating to harm to animals is not supported. This is not supported by evidence that there will be a resulting productivity benefit, nor considered based on risk assessment, nor accompanied by any consideration of the conservation implications at a bioregional or state scale. Any lethal management practices should only be allowed subject to full consideration of alternative management options and be required to be undertaken under licence and have mandatory reporting requirements.

Private land conservation

41. The acknowledgement of the significance of private land conservation in the independent panel report and some elements of the Bill are strongly supported. Tweed Shire Council has specific expertise and a long, successful track record in working with private landholders. This includes ongoing delivery of biodiversity grants, Land for Wildlife, river health grants and Backyard Habitat for Wildlife programs. The proposal to increase investment in securing voluntary conservation agreements is supported as it will secure a logical and effective pathway to engage landholders in private land conservation.

42. Tweed Shire Council's existing programs have identified a specific need for, and detailed understanding of, the training and capacity development requirements of landholders. This is an essential element of a successful private land conservation program and is highly recommended for inclusion in the proposed investment strategy.
43. It is also noted that the capacity of landholders to successfully manage and implement ecological restoration projects can be limited and experience evident from previous programs such as those employed by previous Catchment Management Authorities can result in uncertain conservation and value for money outcomes.
44. Landholders with conservation agreements who choose not to enter into biodiversity stewardship agreements should not be penalised by way of reduced access to financial support to maintain and improve biodiversity values.
45. All land managers that enter into biodiversity stewardship agreements should be specifically enabled to choose what offset credits are retired against their properties. The proposed offset rules within the BAM that enable variations with perverse biodiversity outcomes should not penalise landholders should they choose to ensure that only genuine like for like offsets are applied to their property.
46. The Biodiversity Conservation Investment Strategy should apply a bioregional framework to identifying values and opportunities for prioritisation of investment. Application of a state wide, one-size-fits-all approach will not provide valuable investment outcomes.

Yours faithfully



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Troy Green
GENERAL MANAGER

