NOROC SUBMISSION

NOROC GM NRM Group welcomes the opportunity to review and provide comments on the proposed Biodiversity Conservation Regulation 2017, Local Land Services Amendment Regulation 2017, State Environmental Planning Policy (Vegetation) 2017 and relevant supporting material.

The proposed legislation has significant implications for biodiversity and local government throughout New South Wales. NOROC acknowledges the case for reform of biodiversity legislation set out by the Independent Biodiversity Review Panel Final Report of December 2014 and notes that its purpose 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.*

Following on from our previous submission (28 June 2016) on the parent legislation (*Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016*) we note several improvements have been made to the above legislation arising from the public consultation last year.

Unfortunately, these changes have not adequately addressed our concerns or the concerns of local government generally (see for example submissions of Local Government NSW, Councils of the Hunter, Central Coast, Mid-Coast and Sydney regions, as well as individual submissions from Far North Coast Councils). Consequently, NOROC remain very concerned that the proposed legislation will lead to poorer biodiversity and sustainability outcomes as well as significant additional complexity, administrative burdens and costs for local government.

NOROC maintain the position that the reforms package remains in conflict with its defined purpose and objects due to anticipated biodiversity loss and the significant additional complexity, administrative burdens and costs for local government. This position is based on the persistence of key issues of residual concern including:

- The removal of the ability local councils to ensure offsets are delivered onsite or locally in accordance with community expectations
- Weakening of genuine like-for-like offsets
- Lack of an approval role for councils in biodiversity certification
- Overly complex assessment processes
- Weakening of clearing controls in rural areas
- Increased uncertainty regarding regulatory responsibility for vegetation protection

Overview of Biodiversity Reforms

NOROC is supportive of the following measures:

- The addition of requirements to 'avoid and minimise' biodiversity impacts
- The exclusion of additional urban and E-zones from the native vegetation regulations
- A consistent and repeatable scientific method for assessing biodiversity values
- The 'no net loss' standard for the BAM method and the BAM accreditation scheme
- Additional criteria added to the 'Areas of Outstanding Biodiversity Values'
- Additional wildlife protection codes
- Funded private land conservation
- Introduction of the new category of 'sensitive regulated land'
- Inclusion of some additional compliance safeguards.

NOROC is not supportive of the following actions/measures:

- The inability to change fundamental flaws in the legislation adopted in November 2016 as raised in previous submissions, including the apparent lack of 'red flags' where clearing simply cannot occur
- The short time-frames given (and the refusal to grant an extension of time) to review 30 documents and tools of significant complexity in a period close to the end of the financial year
- The lack of staged and targeted engagement mechanisms by which informed comment could have been achieved
- The consistent lack of detail and mapping to adequately inform the reforms
- Weaker standards proposed for the BAM methodology compared to the current BBAM standards and particularly standards applied for biodiversity certification
- The loss of ESD principles as a fundamental consideration for SSI and SSD
- The high level of flexibility available where offsets are required and the level of discretion of decision makers to reduce required offsets
- The loss of fundamental consideration to conserve and recover threatened entities and the shift to 'commodification' of biodiversity
- The number of decision makers involved in the new reforms and the complexity of the alternate processes
- The loss of the requirement to 'maintain or improve biodiversity values' for rural lands and the shift from rural property vegetation planning to clearing under codes
- The lack of certainty around funding for private land conservation and its apparent subjectivity depending on political will.

General and specific comments relating to the regulations and other supporting material are provided below. It is important to note that due to the large volume of material the comments below should not be considered exhaustive. Additionally, the comments below should not be interpreted as an endorsement of the parent legislation.

Contents

Draft Biodiversity Conservation Regulation 2017

Part 1 Preliminary

Clause 1.2 Commencement

The State Government has stated that the reforms will commence on 25 August 2017, yet rushing the legislation is likely to have perverse environmental outcomes because:

- the BAM tool does not yet contain relevant North Coast Plant Community Types, with OEH just now beginning the process of surveys to standardise PCTs in this area.
- the criteria for Areas of Outstanding Biodiversity Values are incomplete and maps as yet unavailable
- mapping of Category 2 sensitive lands is highly incomplete and requires additional consultation
- Far north coast councils generally have E-zones mapped only as 'Deferred Matter' and are unable to complete the onerous process imposed to clarify and refine these zones prior to the start date
- Local government officers will be required to assess BDAM reports for which they have had no training
- The status of the Native Vegetation Panel and the Biodiversity Conservation Trust are as yet unknown.

Recommendation

1. *That the start date for the Biodiversity Conservation Regulation be postponed until regulatory maps and sensitive values maps are finalised and quality-assured, sufficient qualified staff are recruited and trained, the relevant institutions are fully established and biodiversity conservation strategies and priorities are developed.*

Clause 1.4 Additional Biodiversity Values

The inclusion of additional biodiversity values in clause 1.4, particularly threatened species abundance, vegetation abundance, habitat connectivity and water sustainability is supported.

Recommendation

2. *Additional values including carbon storage, soil quality and erosion control and salinity protection should be added to this section.*

Part 2 Protection of Animals and Plants

Clauses relating to the protection of marine mammals are supported.

Clauses relating to harm to snakes, swamphens, raven, crow, cockatoo or galah are not supported and should be modified to ensure protection of native species.

Part 3 Areas of Outstanding Biodiversity Values

The expansion of the criteria by which an area may be declared an AOBV is supported in relation to refuges, resilience, education and research, however, there is no mechanism by which anyone other than the Minister can include new areas within this category and there are no criteria or process or timeframes provided for listing. This is likely to mean that new listings may not occur, yet new species or communities may satisfy criteria.

Critical Habitat is currently declared for Mitchells Rainforest Snail on Stotts Island in Tweed Shire, yet this declaration is not included in the list.

Recommendation

3. *That a publicly available process is made available for new listings to be considered, such as occurs currently through the scientific committee.*
4. *That the critical habitat for Mitchells Rainforest Snail on Stotts Island be included in this section.*

Part 4 Threatened species and ecological communities listing criteria

Clause 4.1(5) Special additional criteria for listing populations

A population of a species is not eligible to be listed as a threatened species under unless the species to which the population belongs is not separately listed as a threatened species. It is noted that existing endangered populations are retained under Schedule 1 of the BC Act but under clause 4.1 (5), it appears that populations will not be able to be listed in the future even at a higher level than the species itself: This measure is necessary to prevent the local extinction of entire populations of species already regarded as threatened.

Recommendation:

5. *That clause 4.1(5) be amended to continue to allow the listing of a population of a species in cases where the population faces a higher risk of extinction than an existing threatened species within NSW.*

Part 5 Provisions relating to private land conservation agreements

5.1 Criteria for determining if land is eligible for listing as a biodiversity stewardship site

Clause 1a) and b) could prevent a landowner from being able to list their land if the Minister decided there was future mining potential on any land, or even on nearby land. This is considered an unfair test and the reasons the Minister could decide this matter need to be clarified and listed. Crown land set with a purpose of reservation primarily for conservation of biodiversity should not be able to gain credits for undertaking work required by the purpose.

Recommendation

6. *The reasons that the Minister could decide that a parcel of private land is not eligible for a stewardship agreement should be added to sections 1a) and 1b) and should exclude future mining potential not already known and published.*
7. *Crown land with a purpose of reservation primarily related to biodiversity conservation should be added as point f).*

5.2 Reimbursement provisions where mining granted over stewardship site

This clause states that the mining company may reimburse the costs of setting up the stewardship site and any Trust payments, however, it places no obligation on mining companies to replace the biodiversity values lost. This is unfair treatment of mining interests over other interests in land and means the protection of offsets in perpetuity can be too easily overturned, resulting in falling credit prices and permanent biodiversity loss in contravention of the objectives of the Act.

Recommendation

8. *The clause should be amended to ensure mining interest reimburse actual costs expended and the value of the land and be required to source the same number and type of credits generated by the site before any clearing can take place.*

Part 6 Biodiversity Offsets Scheme

The provisions of the regulation relating to offsets retain significant issues of concern resulting in an offset system that is not consistent with the objects of the legislation, nor current best practice or readily available scientific literature. Some of these issues include the high likelihood of significant biodiversity losses in areas of high development pressure due to not restricting the scheme to onsite, local and genuine like-for-like offsets.

Further weakening of the scheme through the proposed variation rules, proposed options for mine site rehabilitation and the ability to make a payment to the Biodiversity Conservation Fund to retire offsets are strongly not supported. It is considered the like-for like criteria too broad and do not appropriately prioritise onsite or local offsets.

At the very least, if a payment is made and accepted, then a significant increase of the credit cost otherwise applicable should be applied as a deterrent to buying a clearing approval and an available suitable like-for-like offset must be shown to be available prior to clearing, otherwise higher-level listings and extinctions can be the only outcome. The very lack of availability of like-for-like credits is likely to mean the loss of biodiversity could represent a serious and irreversible impact.

Mine site rehabilitation is already a legislative requirement and should not generate credits. In the situation where ongoing mine expansion overtakes previously rehabilitated land for which credits have been sold, then the likely situation will arise that actual offsets will never be achieved or preserved.

The actual effect of allowing species-credit-species to be traded throughout NSW and for other species can only result in extinction of local species and populations as their habitat is lost locally. Will the voluntary Wildlife Carer groups be expected to support such animals when no habitat remains in the local area?

Allowable trades, such as improving habitat for Feathertail Gliders on the mid-north coast while removing known koala habitat on the far north coast, or paying money to the Trust Fund and clearing before offsets are found, will have the effect of artificially reducing the market value of credits for rare species and causing the credit market to eventually fail.

Recommendations

9. *That the offsets scheme be restricted to the provisions of strict like-for-like offsets prioritising onsite or local offsets.*
10. *That should section 6.4 (variation rules) be retained that this section be amended to include the requirement for a comprehensive 'reasonable efforts' test prior to allowing variation, that substantial additional credit penalties are applied for the use of this option to act as an effective deterrent to using this process as a first option and that the credits must be shown to be available before habitat is removed.*
11. *Mine site rehabilitation is already a legislative requirement and should be excluded from the ability to generate credits.*
12. *Species-credit-species must be like-for-like only and within the same sub-region.*

Part 7 Biodiversity Assessments and Approvals under the Planning Act

7.1 Biodiversity offsets scheme threshold

> The approach of setting the biodiversity offsets scheme threshold with reference to both the area of clearing and sensitive values is supported.

The non-area-based BOS thresholds referred to in section 7.1 apply to any clearing of native vegetation. This is likely to be problematic because the thresholds trigger the preparation of a biodiversity development assessment report in accordance with the BAM. Such reports are complex, likely to be costly to prepare and may act to prevent the consent authority from insisting that any offsetting (if it is permitted at all under s7.13 of the BC Act) is carried out on site or at a nearby location even for relatively minor impacts (e.g. removal of a single tree).

Recommendation

13. *That the requirement biodiversity development assessment report is compulsory for proposed clearing over the area-based threshold (7.1(1)(a)) but at the discretion of the consent authority for non-area based thresholds (7.1(1)(b) and(c)) subject to an over-riding no net loss principle.*

14. *This would allow councils to condition locally appropriate solutions. In many cases it would also avoid the need for costly assessments for relatively minor impacts.*

7.2 Clearing of area of land that exceeds threshold

Future urban development sites commonly consist of numerous lots totalling a large area (typically 100ha plus). Although there may be a need to clear and offset some native vegetation to ensure practical planning outcomes, these areas are often large enough to provide biodiversity offsets onsite. With BOS thresholds of 0.25ha to 0.5ha (depending on applicable minimum lot size in the LEP) council may not be in a position to ensure biodiversity offsets are provided onsite despite the capacity for this to occur.

In addition, the VSEPP specifies the Biodiversity Offset Scheme (BOS) thresholds. It states that the “spatial thresholds for the area cleared depend on the minimum lot size applicable for the relevant land, as specified in the Local Environmental Plan that applies to the land. If the Local Environmental Plan (LEP) does not specify a minimum lot size for the land, the actual size of the lot on which the clearing is to occur will be the applicable minimum lot size. This may create an anomaly for council LEPs that contain two rural zones RU1 and RU2 of which have a set minimum lot size provision for rural subdivision e.g. 40 ha. The intent of a set minimum lot is to prevent further land fragmentation, as is the situation across NSW including the Northern Rivers area. As pages 10-12 suggest, a 1 ha rural lot subject to a 40 hectare minimum lot size requirement may be totally cleared under the proposed provisions.

Recommendation

15. *It is recommended the clearing thresholds be adjusted to provide for maximum clearing rates based on lot size only, and not on minimum Local Environmental Plan lot size requirements.*

Part 8 Biodiversity Certification of land

Clause 8.1 Avoiding and minimising biodiversity impacts in conferring biodiversity certification

Currently only planning authorities can apply to the Minister to have biodiversity certification conferred over an area of land. Planning authorities must submit a biodiversity certification assessment prepared in accordance with the Biodiversity Certification Assessment Methodology (BCAM). This is now changed so that anyone can apply directly and local government has only to be consulted. This impacts upon strategic planning functions of Council.

This clause indicates that there are no consequences for proponents failing to adequately avoid or mitigate impacts and there is no requirement to offset any residual impacts. Measures to avoid and minimise impacts considered as "other approved conservation measures" under BC Act 8.3(3)(c) should be consistent with any Council development control plan or adopted policy that sets standards for avoiding and minimising biodiversity impacts.

Recommendation

16. *Measures to avoid and minimise impacts considered as "other approved conservation measures" under BC Act 8.3(3)(c) should be consistent with any Council development control plan or adopted policy that sets standards for avoiding and minimising biodiversity impacts. The precautionary principle should be applied as a starting point.*

Section 8.2 Criteria for strategic biocertification

The criteria applied do not consider biodiversity as a first principle. This clause effectively takes the strategic planning function away from local government and gives it to the Minister, with likely outcomes including interruptions and removal of important wildlife corridor connections.

Recommendation

17. *The following criteria should be added:*
    a. *Principles of ESD*
    b. *Any Council development control plan or adopted strategy or policy relevant to the land*
    c. *Any advice provided by the local council*

Part 9 Public consultation and public register

Transparency and accountability are essential to the public trust process. Compliance action can only be effective if all offsets and set-asides are publicly recorded and available.

Recommendation

18. *The register of set asides under the LLS Amendment Act and its Regulation is required to contain information at least equivalent to clause 9.3 and Offset arrangements made by conditions of consent are also recorded to prevent later clearing.*

Part 10 Biodiversity Conservation Trust

The requirement to establish programs to collect, monitor and assess biodiversity information under s. 14.3 of the BC Act and that methods be subject to peer review is supported.

Recommendation

19. *The proposal for Biodiversity Outlook Reports to be published frequently under the Regulation (clause 14.2) is supported, however, a set recurring reporting timeframe should be established.*

Biodiversity Assessment Methodology

Complexity

While the application of a single tool for biodiversity assessment is supported, the draft BAM is incredibly complex and reliant on interactions between numerous formulas and the outcomes of multiple aspects of field assessment. Without substantial experience and/or training in applying the methodology, it is difficult for most persons to provide detailed comment on the ability of the BAM to properly inform the offset process.

It is noted that an Accreditation Scheme has been drafted for application of the BAM. This is supported. Significant Council staff time will be required to undertake and maintain accreditation and assessment of BDARs.

Previous accreditation in BBAM required a week of intensive training; given the BAM has not reduced complexity, that the system has been imposed on Councils and that local government officers need to fully understand the tool in order to make judgements as to the correct application of both survey effort and the tool when assessing development, local government officers should be given free comprehensive training at a local venue in order to avoid significant cost implications.

This function was previously carried out by OEH officers and it is known that applications for Biobank Statements required at least 3 months with the department, while Biobank Agreements were rarely finished in less than six months, yet timeframes for development assessment are 40 days. A seemingly impossible task is set for Councils, with no training yet available.

Recommendation

20. *That the application of the BAM and the assessment tools legislation is delayed until the State Government has provided adequate local training to Local Government at no cost.*

Not scientifically robust

Section 1.1.1.4 notes its intention to achieve a biodiversity assessment method that is as simple as possible, practical and repeatable in its application, and robust in its design and scientific foundations. Both the scientifically robust aspect and the simple aspect are not present in the new tool.

Use of the BAM tool indicates that under the new assessment method the biodiversity offset ratios are proposed to be significantly reduced from both the current BioBanking Assessment Methodology (BBAM) and the lesser criteria applied to major projects (SSI, SSD) under the Framework for Biodiversity Assessment (FBA). This will lead to significant biodiversity decline across NSW. If the previous BBAM was declared ‘scientifically robust’ (and the offsets required were reasonable in terms of offset ratio provisions), then the significantly reduced requirements under the BAM cannot also be ‘scientifically robust’. It appears the significant reduction in offset ratios and the considerable flexibility introduced away from strict like-for-like provisions is an arbitrary decision and the scientific basis for this is lacking.

Besides the reduction in offset requirements and significantly increased flexibility in requiring like-for-like offsets, the offset requirements can also be met entirely by paying money into a Fund with no guaranteed environmental outcomes. The altered biodiversity risk weightings and multipliers are not agreed and not proven to be effective.

Recommendation

21. *That the offset ratios and species multipliers used under the BBAM scheme be reinstated for the current scheme.*

Net Biodiversity Loss result

It is noted that number of aspects of the BAM as currently drafted are likely to result in a net loss of biodiversity, for example:

- Impact on highly degraded native vegetation is not required to be offset. This has potentially significant impact on some aspects of local biodiversity, particularly where the remaining examples of some vegetation types exist only in highly degraded forms.
- The ability to make a payment to the BCT or fund a biodiversity action to meet an offset obligation is likely to result in the loss of local biodiversity. If local and genuine offsets are not able to be found, the impact should not be allowed to occur.
- 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.
- While the BAM includes 'avoid and minimise' matters and indirect impacts (though these do not have to be avoided or offset, contrary to current BBAM), cumulative impacts are entirely bypassed and there is no apparent mechanism to prevent further clearing when the absolute limit is reached for sensitive species or communities.
- The proposed 'no net loss' description in the BAM is not agreed and will not achieve the objectives of the BC Act. The definition is based on a set of subjective decisions that require only management of indirect offsets on the site and use of largely offsite offsets.

It is noted that the "Annual probability of decline in vegetation and habitat condition" is defined as: an estimate of the average probability of decline of each attribute through clearing, stochastic factors or ongoing degrading actions (firewood removal, weed invasion, livestock grazing). The Biodiversity reforms act to significantly increase this annual probability of decline since barriers to clearing, particularly in rural areas, are largely removed. Since this factor acts to significantly increase the credit value of offsets (for areas largely already protected and unlikely to decline greatly under current legislation), the actual results of such offsets being included in the market serves only to reinstate current protection to these sites, hence not an offset at all.

Recommendations

22. *That the payment option be removed from the scheme and the inability to find suitable like-for-like credits operate as a red flag to prevent clearing.*
23. *That the requirement to offset all habitats, not only threatened entities are ensured by the scheme*
24. *That the requirement to avoid, minimise or offset indirect impacts and to consider cumulative impacts be reinstated into the scheme*
25. *That the 'no net loss' test is strengthened to meet current accepted definitions*
26. *That the "annual probability of decline" multiplier be reduced to account for the increased likelihood of decline under the biodiversity reforms.*

North Coast not represented

The example BAM tool provided with exhibition materials is incomplete, and does not include any information relating to the subregions of the far north coast. It is therefore not possible to work through any local scenarios to gain understanding of the implications of the tool in this area.

Recommendation

27. *That the application of the BAM and the assessment tools legislation is delayed until the North Coast PCTs are finalised and input into the calculator.*

Databases

The Atlas of Living Australia database should be included in the list of published databases to be used when preparing a BDAR, BCAR or BSSAR.

Consultation with local government on biodiversity data that they hold is supported, and should be required to be requested by the assessor preparing the BDAR, BCAR or BSSAR.

The Draft BAM refers to information contained in the Threatened Biodiversity Data Collection. It is that this is the same data source as the current Threatened Entity Profile Data Collection, this requires clarification.

Recommendation

28. *That the Atlas of Living Australia be included in the list of published databases to be used when preparing a BDAR, BCAR or BSSAR*
29. *That consultation with local government be a requirement under the scheme*
30. *That the revised BAM clarify the data sources.*

Avoid and minimise

In relation to designing a project to avoid and minimise biodiversity impacts BAM section 8.1.2.1(f) states: - "making provision for the demarcation, ecological restoration, rehabilitation and/or ongoing maintenance of retained native vegetation habitat on the development site". This could be interpreted to mean that "demarcation, ecological restoration, rehabilitation" must be confined to "retained native vegetation". Such an interpretation is not consistent with the accepted meaning of these terms (see point below) and may not include measures such as restoring or rehabilitating a riparian area or other constrained land simply because it was not "native vegetation" at the time.

Definitions

To further improve clarity and standardised interpretation and application, the integration of best practice definitions for ecological restoration, rehabilitation and ecosystem maintenance is suggested.

Recommendations:

31. *That section 8.1.2.1(f) is amended to read: making provision for, and demarcation of, areas to be used for ecological restoration, rehabilitation and/or ecological maintenance on the development site"*
32. *That section 9.3.3.1(k) is amended to read: making provision for ecological restoration, rehabilitation and/or ecological maintenance of areas used for one or more of those purposes on or adjacent to the development site"*
33. *That the following definitions for ecological restoration, rehabilitation and ecological maintenance are included (Source: McDonald, T., Jonson, J., Dixon, K.W., 2016 National standards for the practice of ecological restoration in Australia Restoration Ecology 24 No. S1 pp S4-s32)*
    a. ***Ecological restoration*** *is the process of assisting the recovery of an ecosystem that has been degraded, damaged or destroyed.*
    b. ***Rehabilitation*** *is the process of reinstating degrees of ecosystem functionality on degraded sites where restoration is not the aspiration, to permit ongoing provision of ecosystem goods and services including support of biodiversity*
    c. ***Ecological maintenance****: Ongoing activities intended to counteract processes of ecological degradation to sustain the attributes of an ecosystem. This maintenance phase is distinguished from the restoration phase that precedes it. Higher ongoing maintenance is likely to be required at restored sites where higher levels of threats continue, compared to sites where threats have been controlled.*

Draft Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017

Clause 5 Advertised development

Council is usually the first point of contact for callers concerned about clearing of native vegetation in their LGA's, whether occurring in urban or rural areas. Presently, local government can review permissibility and to some extent regulate clearing and undertake compliance action where that clearing can be shown to fall outside the *Native Vegetation Act 2003* provisions, through reference to exempt and allowable activities under that Act.

Under the new reforms, the considerably expanded list of allowable activities, the lack of accurate maps reflecting biodiversity values or land categories and the complexity of processes and consent authorities under the various pieces of legislation, result in considerable lack of clarity around rural land clearing in particular. OEH compliance officers acting under the LLA Amendment Act provisions are likely to be situated in offices distant from far north Council areas (Coffs Harbour, more than 3 hours drive time from Tweed Heads for example). Thus a timely response to unauthorised clearing will not be available and damage will have been done before investigations even commence.

This clause should be amended to ensure that advertised development includes rural native vegetation clearing proposals under Division 6 of Part 5A of the LLS Amendment Act (broadscale land-clearing beyond the proposed self-assessable clearing Code provisions assessed by the Native Vegetation Panel)

Recommendation

34. *That, in accordance with the Independent Biodiversity Review Panel recommendations, land-clearing for change of use involving broad-scale land clearing (above BOS threshold) be included as advertised development.*

Clause 63 Reasons for granting concurrence

Public scrutiny of reasons for concurrence or refusal is currently available under the clause. This should be continued where actions impact threatened species or communities. Reasons should be publicly exhibited, online and publicly accessible, for this reason and to assist local government in compliance investigations.

Recommendation

35. *That Clause 63 of the Planning Act not be deleted but be amended to require online, open access publication of the reasons and conditions behind the granting or refusing of concurrence associated with development proposals (under the Planning Act, the Biodiversity Conservation Act or the LLS Amendment Act).*

Schedule 1 Clause 1)(1)(f1)

The addition of a mechanism where the reasonable steps taken to obtain the like-for-like biodiversity credits must be demonstrated is supported.

Schedule 2, clause 3 (waiving requirement for EIS)

State Significant Development (SSD) is given many and varied exemptions from consideration of impacts on biodiversity. These matters should be fully examined through the EIS process. It is not appropriate to enable the Secretary of Planning to waive the requirement for an EIS where SSD will affect critical habitat, threatened species or ecological communities. Deleting this clause paves the way for corrupt conduct and is not agreed.

Recommendation

36. *That Clause 3(9)(d) of the Planning Act not be deleted but be amended to refer to updated lists of threatened species and communities and Areas of Outstanding Biodiversity Values.*

Schedule 4, clauses 10 and 10A

The amendments requiring biodiversity certified land, biodiversity stewardship sites and set-aside areas to be included on section 149 planning certificates is supported. It is considered, however, that the language used in relation to set-asides is weak and relies on a public register which may or may not be available in a timely manner. All set-asides should be included on the public register; run with the land, not the owner; and be included on s149 certificates.

Recommendation

37. *That proposed Clause 10A of Schedule 4 the Planning Act be amended to remove the words in brackets as follows (but only if the council has been notified of the existence of the set aside by Local Land Services or it is registered in the public register under that section).*

The Vegetation SEPP may assist to address impacts of incremental clearing (that does not require consent), or where a landowner may try to gradually clear smaller patches that should be assessed together using the BAM. However, the details and level of compliance oversight are yet to be clarified.

The stated objectives are generally supported however the following points are made. The first and second objectives relating to consistency and the conservation of local and regional biodiversity respectively are potentially compromised by the inconsistencies in the regulatory pathway (see below) and the potential for poor biodiversity outcomes in areas of high development pressure.

Draft SEPP instrument required for informed comment

Not providing the actual draft planning policy prevents the development of informed and considered responses. The material provided lacks critical detail and it is recommended that a further opportunity to review the draft policy is provided prior to its finalisation.

NVR Map required to indicate land subject to SEPP

The exhibited material identifies that a Native Vegetation Regulatory Map (NVR Map), made under the LLSA Act, will identify land and determine the nature of the approval pathway required for land clearing where development consent is not required. In fact, it is the 'excluded' land category that will identify it as being subject to the VSEPP and not subject to LLS Act and codes.

The Information contained on the land management web site indicates that the NVR Map will be published in draft form in the first half of 2018 and will be subject to land owner review (but not local government review). Given the time delays associated with delivering the final NVR Map, it is suggested that the implementation of the policy be delayed until such time as all the associated regulatory tools are available and adopted.

Allowing the LLS Act and code provisions to commence prior to identifying land excluded from these instruments has real potential for intended or unintended clearing to be undertaken in areas intended for exclusion.

Recommendations

38. *That the commencement of the biodiversity reform package is delayed until the Vegetation SEPP and Native Vegetation Regulatory Map are in force.*

Additional zones

The zones included in the proposed policy largely mirror the "urban" zones excluded from the soon-to-be-repealed *Native Vegetation Act 2003*, however there are notable exceptions that are now proposed to be regulated under the policy. These include the large lot residential zone (R5), recreation zones (RE1, RE2) and environmental zones (E2, E3, E4). The inclusion of these additional zones under the policy is supported as the issues around clearing are either urban, peri-urban, or environmental in nature, all of which involve complicated planning considerations that councils have traditionally managed. Similar complexities are likely to arise with the RU6 Transition zone and waterways zones (W1, W2) where they are within or adjacent other urban or environment zones.

For a number of far north coast councils, all environmental zones were 'deferred' from their Standard Instrument LEPs pending the outcomes of the Far North Coast E-zone Review. The affected councils (Tweed, Byron, Ballina, Lismore and Kyogle) are now in the process of reviewing their LEPs in accordance with the criteria applied for E2 and E3 zones.

Recommendation:

39. *That RU6 Transition zone and waterways zones (W1, W2) where they are other urban or environment zones are included in the policy.*

40. *That provision is made to include far north coast council Deferred Matter zones under the policy until E-zones can be finalised.*

Inconsistencies between regulatory pathways

A number of inconsistencies are evident with the regulatory pathways of the policy. In the case of a development application (DA) that exceeds the Biodiversity Offset Scheme (BOS) threshold, council has the opportunity to refuse the application or apply the BOS (BC Act 7.13). There appears to be no similar role for council to apply 'avoid and minimise' principles to proposed clearing not associated with a DA that exceeds the BOS threshold. In this case the application goes straight to Native Vegetation Panel (NVP) who appear to be under no obligation to apply the same avoid and minimise standards a council may use to regulate DAs (Note the BAM only requires consideration of a number of factors around "avoid and minimise" but does not set standards). This is likely to promote pre-emptive clearing and lead to perverse biodiversity outcomes.

Councils are the best placed to regulate clearing on urban and environmental lands where clearing is intimately related to development issues. The proposed Native Vegetation Panel (NVP) are likely to be poorly placed to fully understand the complex strategic planning context, environmental values and community standards around protection of native vegetation, or pre-emptive development issues associated with vegetation clearing in this context. For the NVP to take on this role they would need to liaise very closely with council to ensure their decisions are well informed, defensible and consistent with local community expectations.

If it is acceptable for Councils to be the consent authority for DAs involving vegetation there appears to be no clear reason why a different consent authority is needed to regulate the same clearing not currently requiring a DA; an area Councils' currently regulate under Clause 5.9 of their LEPs. The proposal to require approval from the Native Vegetation Panel for certain vegetation clearing is confusing and adds an additional layer of bureaucracy that is not necessary.

Recommendation:

41. *It is recommended that the Native Vegetation SEPP is used to require development consent for native vegetation clearing over the BOS threshold and that local government is the primary consent authority.*

Exemptions

Further clarification is required in relation to clearing exemptions and their interaction and consistency with other relevant legislative instruments. While the intent of the proposal to provide certain exemptions is supported, it is recommended that a caveat be included to ensure that such works are carried out in an environmentally appropriate manner in accordance with any standards contained in Councils DCP. This is particularly important with respect to some noxious and other environmental weeds which can infest very large areas in environmentally sensitive locations (steep slopes, riparian areas, areas close to urban settlements etc.). For example, there have been numerous examples of unregulated clearing of camphor laurel using large machinery on the Far North Coast that have resulted in significant environmental damage including soil erosion, sedimentation, increased weed infestation, harm to threatened species and eutrophication of waterways.

Recommendation:

42. *That in addition to those exemptions mentioned, councils should be free to determine any additional exemptions in their DCP.*
43. *That a caveat be included to ensure that such works are carried out in an environmentally appropriate manner in accordance with any standards contained in Councils DCP*

Complying development excluded from BAM

It is noted that the categories of complying development are continuing to be expanded, in the absence of resolving problems with private certifier compliance and oversight. Examples include a Medium Density Housing Code and proposed complying development associated with Greenfields Development.

The exhibited reforms exclude complying development from the BAM assessment process. Thus complying development (and other policies like the Infrastructure SEPP) could apply to areas on the Sensitive Biodiversity Values Land Map; or to areas that would otherwise trigger the BOS threshold due to cumulative size of clearing. This must be addressed in the Vegetation SEPP or elsewhere.

Recommendation:

44. *That development that would otherwise represent complying development but that involves clearing in areas of Sensitive Biodiversity Values or above the BOS threshold be removed from the complying development category.*

Sensitive Biodiversity Values map

NOROC support the inclusion of a Sensitive Biodiversity Values Land Map, however, concerns are raised regarding the categories of biodiversity values included and the ability and timeliness of adequately mapping these sensitive values, including land comprising important koala habitat identified under SEPP 44.

Values included

Page 14 of the EDS Submission Guide lists land types with high biodiversity value that may be included in the SBV Map. The draft mapping does not reflect the ecologically important habitats for the far north coast and is inconsistent with a range of mapping that has been produced to support various Comprehensive Koala Plans of Management as prescribed under SEPP 44 legislation. It is understood that OEH are working towards a map of important koala habitat and it is considered the legislation should be delayed until this is complete.

The current draft coarse scale mapping tool appears inconsistent with council strategic mapping products including local governments 'High Environmental Value' vegetation mapping, so that significant uncertainty exists regarding the ability of the sensitive biodiversity values map to accurately reflect these sensitive values.

Council mapping should be included

It is unclear as to whether councils will have input into the preparation of the NSW Sensitive Value Map (SV Map), and appear to be excluded from the opportunity to provide feedback on the map, while landowners have clear opportunities to input. This is not agreed.

Timing of mapping and updates

The process for periodic updating of the map is not stated and apparently not available to local governments. Arrangements regarding the timing of completion of the map in relation to commencement of the legislation are not supported and will inevitably lead to pre-emptive clearing where land values are high.

Confirmation is requested that a transparent process, relating to the updating and review of the SV Map as new & improved information becomes available, will be implemented. Such process needs to incorporate the ability to regularly update mapping when new data becomes available. This is critical to ensuring that mapping is contemporary and responsive to significant resource investment in ongoing vegetation mapping and biodiversity assessment across the State.

It is essential that the map is operational and accurate and peer-reviewed before commencement of the new system, to protect vulnerable or sensitive land. The risk that the sensitive values map is incomplete (for example, mapping of areas that are core koala habitat, or that contain critically endangered species) is a further reason not to rush commencement of the new regime.

Complying Development

Exclusion of complying development (an expanding category of development with demonstrated problems with private certifier compliance and oversight) from the BAM assessment process is not agreed as it is likely to lead to the effect that complying development (and other policies like the Infrastructure SEPP) could apply to areas on the Sensitive Biodiversity Values Land Map; or to areas that would otherwise trigger the offsets scheme and BOS threshold due to cumulative size of clearing. This must be addressed in the Vegetation SEPP or elsewhere.

Recommendations

45. *That all legislation that is associated with the Sensitive Value Map be delayed until an accurate and peer-reviewed map is publicly available.*
46. *That formal Council input sought and Council detailed mapping requested in relation to mapped demonstrated biodiversity values.*
47. *A revised and completed map that is based on the wealth of ecological and habitat mapping held by local councils and other relevant government agencies is considered and included into the mapping.*
48. *That additional recognition be given to the CEEC Lowland Rainforest of Subtropical Australia as listed under the EPBC Act, to the highly geographically restricted Byron Bay Dwarf Graminoid Clay Heath.*

Draft guidance and criteria to assist a decision maker to determine a 'serious and irreversible impact'

The guidance is premised on impacts in excess of thresholds for candidate species. No thresholds have yet been developed and the candidate list is qualified as being indicative only. Impacts in excess of thresholds at which species and communities continue to decline toward extinction are not supported.

Serious and irreversible impacts (SAII) by their very nature should be a stop point for all types of development. The limited list of species and communities to which the guidelines will apply already significantly reduces impact considerations in comparison to the current Section 5A of the Planning Act requirements.

The ability of state significant infrastructure (SSI) and state significant development (SSD) to have such impacts is not supported, particularly if an EIS may apparently not be required for such developments. Despite the highly restricted application of the serious and irreversible impacts (due to inclusion of only those species/communities of the highest threat level), SSI, SSD, Part 5 activity and biodiversity certification are only required to take the likely SAII 'into consideration'.

Recommendation:

49. *That SSI and SSD be subject to scrutiny and decision-making with regard to serious and irreversible impacts in the same way that other development is.*

Lack of clarity in process

There are several key self-confounding aspects of the guidance including:

- that the principles for determining serious and irreversible impacts appear highly inconsistent with the candidate list, and
- the notion that there is presently sufficient 'best current ecological knowledge' to identify those species that are 'unlikely to respond to management' in order to meet the relevant principle.

The mechanism remains largely unclear as whilst it purports to enable council as a decision maker to apply the principles, the guidance also stipulates that 'any threatened species, ecological community or habitat component of a threatened species or ecological community not listed in Appendix 2 or Appendix 3 (the candidate lists) is unlikely to meet the relevant SAII principles. However, a decision maker may still consider whether a species or ecological community is likely to meet the relevant SAII principles'

It is unclear as to whether councils will have input into the preparation of the NSW Sensitive Value Map (SV Map). As stated previously, page 14 of the EDS Submission Guide lists land types with high biodiversity value that may be included in the SV Map. It includes land comprising important koala habitat identified under SEPP 44. The draft mapping which is incomplete does not reflect the ecologically important habitats for the far north coast and is inconsistent with a range of mapping that has been produced to support various Comprehensive Koala Plans of Management as prescribed under SEPP 44 legislation.

Confirmation is requested that a transparent process, relating to the updating and review of the SV Map as new & improved information becomes available, will be implemented. Such process needs to incorporate the ability to regularly update mapping when new data becomes available. This is critical to ensuring that mapping is contemporary and responsive to significant resource investment in ongoing vegetation mapping and biodiversity assessment across the State.

Categories for consideration include CEECs, yet Lowland Rainforest listed under the EPBC Act is not included. This is of particular concern with regard to protecting 'Big Scrub' remnant in the local area, where significant public and private investment has occurred over many years to reverse the ongoing decline and clearing.

Recommendation

50. *That all legislation that is associated with the Sensitive Values Map be delayed until an accurate and peer-reviewed map is publicly available.*

51. *That Appendix 3 be updated to include the Critically Endangered Ecological Community listed as Lowland Rainforest of Subtropical Australia under the EPBC Act and the highly geographically restricted EEC Byron Bay Dwarf Graminoid Clay Heath.*

Draft Local Land Services Amendment Regulation

Ecologically Sustainable Development

ESD is recognised in the objectives of the LLS Amendment Act, however, outcomes based on all the allowable clearings will be contrary to the Precautionary Principle and Inter-generational equity at least.

Commencement date

As stated elsewhere, allowing the LLS Amendment Act and codes to commence before the Native Vegetation Regulatory Map is finalised is not agreed as this is likely to lead to pre-emptive clearing.

Regrowth

Using a static year (1990) to define 'regrowth' is not supported for the north coast where growth rates are high. When the *Native Vegetation Act* was introduced in 2003, vegetation regrown since 1990 would have been some 13 years old. This same vegetation is now 27 years old and will become progressively older if the year defining regrowth is left static. In the absence of significant transformer weeds or additional disturbance this vegetation now often represents forest and would almost always meet the PCT criteria for the relevant vegetation type. Where the vegetation has been left undisturbed, the primary landuse of agriculture has been forfeited.

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 in terms of canopy cover, diversity and other factors. Both these communities are nationally recognised as Critically Endangered. It is not considered acceptable to allow clearing of such areas without formal consent.

On the north coast, some of this vegetation has been mapped (using strict criteria applied by state government) as meeting the E2 zone category. Since E zones were deferred for the far north coast and until the work to justify their status is completed and the zones adopted, areas eligible for environmental protection may be considered and mapped as Category 1 land, exempt from any approvals for clearing under the LLS Amendment Act, Regulations or Codes. This one factor could undermine all the work input by local government to date towards E zone finalisation, particularly since the NV regulatory map will not be available until 2018 and during this time draft e zone exhibition may be occurring.

Recommendation:

52. *That the definition of 'regrowth' be amended to be a maximum of 15 years of age from the current year and historical aerial photography provided publicly in an online form.*

Soil erosion and sedimentation

It is noted that a provision that clearing should not cause soil erosion or water impacts has been included (Clause 36) and this is supported; however, no actual rules are provided around this. The removal of the 'maintain or improve' test and the Native Vegetation Act mandatory requirements to consider soil, water and salinity impacts is not agreed. Such spillover effects from land clearance have the ability to discredit NSW farmers and do not accord with the ESD principle of intergenerational equity.

Recommendation:

53. *The soil, water and salinity factors should be retained in the LLS amendments to protect important productive farmland.*

Protection of EECs

Use of code-based clearing for Endangered Ecological Communities; which are greater than 70% cleared on the north coast and at very high risk of extinction; is not agreed. EECs should form part of the 'sensitive regulated land' sub-category.

Recommendation:

54. *Recommendation: That EEC's (or all TEC's) are mapped as Category 2 – Sensitive Regulated Land and excluded from application of the Code.*

Impacts to north coast E zones

The requirement for far north coast councils to include 'extensive agriculture' as permitted without consent in E3 zones means that allowable activities under the LLS Amendment Act are permitted without oversight in these zones, which include most of our riparian areas.

Recommendations:

55. *Inclusion of 'extensive agriculture' without consent should be optional for north coast E3 zones.*

Category 1 land

Much of NSW will be considered Category 1 where clearing of native vegetation can occur without approval or notification. Inclusion of regrowth up to 27 years of age within Category 1 is not agreed. As previously stated the regrowth definition should be altered to refer to vegetation re-grown from a dynamic date equal to 15 years before the current year. Where regrowth has not been maintained for long periods of time, the primary use cannot be regarded as agriculture.

Including land that may have been cleared in an unauthorised manner but for which no compliance action was taken is not supported. Local government and Local Land Services are aware of the difficulty of undertaking successful compliance action in relation to land clearing, for example where evidence may have been burnt or where vegetation mapping is not conclusive or not current. Local government and LLS have not been asked to supply results of compliance investigations undertaken in areas previously subject to the Native Vegetation Act 2003 and this information should be requested. It would be a far better result to require landowners to demonstrate that clearing was lawful where no clear approval can be shown.

Recommendations:

56. *Only regrowth up to 15 years of age should be included within Category 1 of the Native Vegetation Regulatory Map.*

57. *Land that has been cleared in an apparently unauthorised manner should be further investigated and the landowner asked to supply proof of lawful clearing before inclusion within Category 1 of the Native Vegetation Regulatory Map.*

Category 2 land

Much of the rest of NSW will be considered Category 2 i.e. regulated land, whereby land may be cleared under self-assessable codes (or in some cases assessable codes). This raises a fundamental question of how to inform landholders of the values of native vegetation, EECs and threatened species which occur or may occur on their land. On the north coast, mapping of Plant Community Types is still evolving and apparently some way off and threatened species records are mostly reliant on provision of information from landowners or where investigations are undertaken when development is proposed.

Landowner education and extension is particularly important since a lack of knowledge of threatened species presence is a defence for clearing threatened entities. There is a high risk that under the self-assessment approach, native vegetation will include clearing of endangered ecological communities and core koala habitat (SEPP 44).

At minimum, there must be mechanisms for self-assessments to be reviewed and approved by a level of authority in order to ensure that the landowner can demonstrate they have or have not been informed of what biodiversity values occur on their land prior to clearing. This would be consistent with local community standards and expectations for the protection of biodiversity.

Recommendations:

58. *Landowner extension and education as well as provision of current information on biodiversity values at an individual property level should be provided as part of the native vegetation package*

Category 2 Vulnerable regulated land

The reinstatement of the steep protected, sensitive riparian and special category land provisions is supported. It is considered that only assessable clearing should be permitted in these areas.

Recommendations:

59. *Only assessable clearing should be permitted within Category 2 Vulnerable regulated land.*

Category 2 Sensitive Regulated land

The addition of this category is strongly supported, however, placing sensitive values within the regulated land category does not accord with the independent panels recommendations that such land should be excluded from clearing within a third land category. Sensitive values should be expanded to include endangered populations and listed EECs.

Recommendations:

60. *Sensitive Regulated land should be removed from Category 2 and placed into a new Category 3 'Sensitive excluded land'.*
61. *The list of values specified at s108 should be expanded to included endangered populations and associated habitat; and all listed ecological communities*

Set Asides

The provisions for set asides and the ability of set-asides to be well managed to achieve their offset obligations are questioned. Set-aside areas should demonstrate an ecological benefit and should not be permitted in sensitive regulated land as these areas are already afforded exclusion from application of the code. Areas 'set-aside' should be those areas that are vulnerable to clearing under the code or that capture Category 1 land through suitable regulated revegetation efforts.

Recommendations:

62. Set aside areas should not be allowed in Category 2 – Sensitive Regulated Land.

63. Long term protection of 'set-asides' should run with the land and remain in perpetuity even where re-categorisation has not been proposed. Conversely the clearing should remain bound to the landowner only.

Expansion of exempt activities

Substantial expansion of allowable activities when compared to current RAMA's are not supported and the need to expand these categories is not demonstrated on the north coast.

Fungi and Insects

The high ecosystem benefits that fungi and insects provide to the landscape and to farm productivity have not been recognised anywhere within the legislation. These two areas of science are still emerging and many species remain uncatalogued and their benefits unrecognised. Farming would not be possible without the ecosystem benefits provided by the fungi and insect groups, yet the clearing rules will allow removal without consideration.

Recommendations:

64. Impacts to fungi and insects should be included as mandatory considerations prior to clearing.

Sections 111, 112 and 113 – core koala habitat, critically endangered plants and additional Category 2 land

Core koala habitat means areas with a resident population of koalas. These areas should be placed within sensitive regulated land.

Critically endangered plants and their habitat should receive the highest level of protection.

Land subject to Conservation Property Vegetation Plans should be placed in Category 2 sensitive regulated lands, as they have already formed an offset for previous clearing and are understood to be protected on the land title. Any other category would remove the effect of the PVP or development offset and is not supported. Other parts of the Act enable sensitive regulated land to be used as set-asides, effective enabling the same offset to be used to justify two separate amounts of clearing. This is not supported.

Travelling Stock Reserves on the north coast are of variable character but usually contain high biodiversity values which require protection.

Recommendations:

65. *Core koala habitat should be included as Category 2 – Sensitive Regulated Land*
66. *Critically endangered plants and their habitat should be included as Category 2 – Sensitive Regulated Land Conservation PVPs should be protected and the offset area excluded from the LLS Act and code provisions, or at least placed within Category 2 – Sensitive Regulated Land*
67. *Land that is, by a condition of a development consent or approval under the Environmental Planning and Assessment Act 1979, required to be land set aside for nature conservation, for re-vegetation of native vegetation or as a native vegetation offset should qualify as Category 2 – Sensitive Regulated Land*
68. *Old growth forests should be included as Category 2 regulated land*
69. *Rainforests should be included as Category 2 regulated land.*
70. *Travelling Stock reserves should be included as Category 2 regulated land.*

Section 116 – grounds for re-categorisation to Category 1

This section serves to authorise historical unlawful clearing because, after it was regrown, it was then lawfully cleared (presumably under the 'regrowth' provisions). It would appear that the provision thus enables historic unlawful clearing to be overlooked and rewarded where an application for re-categorisation is made. This is not supported and such sites should become Category 2 regulated land.

Recommendation:

71. *Sites where historical unlawful clearing has been recognised should be placed into Category 2 regulated land.*

Section 130 – public register of set-asides

A public register for set-asides areas is supported, however, it should also include code compliant certificiates.

Recommendation:

72. *That the public register should extend to voluntary and mandatory code compliant certificates regardless of whether 'set asides' have been applied.*

Section 131- information for NVP assessment

The requirement to demonstrate efforts to secure like-for-like *offsets is supported, however it is considered that heads of consideration should as to what constitutes 'reasonable steps'.*

Recommendation:

73. *That further information should be provided on the 'reasonable steps' that the applicant has taken to secure like for like biodiversity credits. Matters of consideration should be stipulated.*

Land Management (Native Vegetation) Code

The codes raise serious concern by expanding opportunities for landholders to carry out significant clearing that, under the current legislation, would require a Property Vegetation Plan, with offsets protected on the land title. Certain divisions of the code will likely lead to unintended clearing for development as opposed to facilitating the expansion of legitimate sustainable agriculture in the shire.

There are a number of inconsistencies and inadequacies with the Code that require resolution including:

- The general 'set-aside' provisions are inadequate. There appears to have been no information provided on how ratios were determined based on sound scientific advice influenced by the principles of the BAM.
- There appears to be inconsistencies with respect to 'like-for-like' set-asides for TEC's under Part 6 and 7. The requirement for 'like-for-like' should not be compromised or any discounts obtained for achieving this fundamental biodiversity offset outcome.
- An inexplicable discount has been offered under certain components of the Code that encourages the removal of broader tracts of vegetation to reduce set-aside areas. This provision should be deleted.
- No schedules have been provided. These are considered critical for making meaningful comment on the Code.

Complexity of the clearing rules

With the myriad 'streams' of clearing types that each contain a range of different variables, the proposed rules for clearing for land management in NSW are not considered to be simple. The reforms are considered to be far more complex than those under the current legislation.

Equity and Efficiency codes

Land clearing codes for 'equity' and 'efficiency' are not agreed, have not considered other benefits provided such as soil-holding capacity, nutrient cycling, pest control, shade and windbreak gains and likely to lead to reduced productivity in the longer term.

Cumulative impacts not considered

It is unclear from the information provided how many instances of clearing on a single property could be undertaken under any of the clearing 'streams' or Codes in any given period of time. If the numbers of clearing instances are not appropriately limited, there is potential for significant impacts on biodiversity to occur over time. Incremental self-assessable clearing that can be repeated every year is not supported. Using such methods, large areas of clearing can avoid the need for BAM assessment or offsets.

The clearing rate for paddock tree areas relates to clearing in a 12 month period with no requirement to consider cumulative impacts. Clearing paddock trees is of particular concern as these trees were often required to be retained due to their biodiversity benefits (best source of genetic material) and often represent old growth with high habitat values, providing essential stepping stones in the landscape for native fauna movement. Whilst offsetting is required it is not accepted that offset areas will likely have the same as or superior genetic and biodiversity value as the paddock trees.

Offset ratios

The ratios of set-asides are considered inadequate. There appears to be conflicting requirements with respect to 'like for like' offsetting for Threatened Ecological Communities. In some instances reductions on the percentage of an offset can be applied where clearing a larger area or achieving the protection of an EEC (even if you are removing an EEC) or where the set aside is of strategic landscape importance.

Use of qualified and experienced bush regenerators

The use of professional habitat restoration practitioners has not been prescribed in establishing and managing set-asides. Habitat restoration work particularly in areas of TEC and EEC by unqualified/unskilled landowners is not supported. Local government has significant experience is conditioning offsets arising from development. We state that offsets left unmanaged will most likely fail over time and offsets left unprotected in perpetuity will most likely be subject to further clearing with future development. A recent study in the Port Macquarie-Hastings area has shown that some 70% of offsets for Koala habitat have failed over time due to these reasons.

Recommendations

74. *That the code should not apply in the coastal zone due to the likelihood of application of the code as a pre-emptive measure to facilitate activities/development other than agriculture on land with high land values. At least the codes for Equity and Efficiency should not apply in the coastal zone*

75. *That clearing rates should be cumulative and a stated maximum provided per area over any time period and that records are made of each clearing event until the maximum is reached.*

76. *That standards for the implementation of set-asides are provided and the areas monitored to ensure the required outcome is achieved. Standards should include use of qualifies and experienced restoration personnel where threatened entities are part of the set-aside.*

Conclusion

NOROC NRM Group are pleased that some of the issues raised in previous submissions have been taken into account in this second stage.

However, the serious concerns we hold about the parent legislation, the lack of effective consultation, the lack of accurate mapping and other biodiversity reform instruments, the lack of ready mechanisms for investments in private land conservation and the complexity of the legislation and assessment techniques remain.

The changes are also occurring at a time when the Coastal SEPP is still in draft form and its associated maps are being refined; SEPP 44 is still at an Explanation of Intended Effect stage with important koala mapping unavailable and sources not described; north coast Plant Community Types are still being described and catalogued before input into the credit calculator, required training on applying the BAM is as yet unavailable and the inter-relationships between current, draft and foreshadowed instruments and regulatory has not been explained or is confused.

The apparent rush to get the legislation operational by August 25 this year in the absence of instruments fundamental to applying the legislation can only result in confusion and a likely resumption of broad-scale land clearing and loss of power of local governments to determine the strategic direction for their LGA's.

The government has committed to take on all 46 recommendations arising from the Independent Biodiversity Review Panel, yet recommendations to take a bio-regional approach and to include highly sensitive biodiversity values within a third category that is excluded from clearing have not been implemented.

Our highest concerns arise from the lack of protection afforded to even the highest category of values, being 'Areas of Outstanding Biodiversity Values', which can still have 'serious and irreversible impacts' applied by state significant development and state significant infrastructure; the loss of real protection for environmental zones on the north coast and the devaluing of credits which will occur because of the numerous alternatives available when like-for-like credits are unavailable.