



Lane Cove Bushland & Conservation Society Inc

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Land Management and biodiversity Conservation Reforms,
Office of Environment and Heritage,
PO Box A290,
Sydney South 1232.

Biodiversity Legislation Regulations and Codes.

The Lane Cove Bushland and Conservation Society (LCB&CS) has been in existence for over 46 years and has been at the forefront of environmental advocacy, local, state and federal, for the whole of that time.

Thank you for the opportunity to comment on this legislation. We can only do this in a limited manner due to the incomplete information available, which means that many areas of concern cannot be comprehended enough to make a meaningful contribution.

Summary

The LCB&CS recommends that the commencement of the regulations be delayed until all documents are completed and together with all related mapping is made available for public comment. This to include all detailed mapping of environmentally sensitive land, rural categories 1 and 2 mapping and core koala habitat mapping.

The Vegetation SEPP must include robust protection for trees either by the inclusion of the wording of clauses 5.9 and 5.9AA, or retaining these clauses in the Standard Instrument LEP. Any reduction of these standards will lead to further degradation of our urban environment.

The Objects and Options.

The Executive Summary outlined in the Draft Biodiversity Conservation Regulations 2017 (The Regulations) states. "*The stated purpose of the BCA is to maintain a healthy, productive and resilient environment for the greater well-being of the community, now and into the future, consistent with the principles of Ecological Sustainable Development. (ESD)*"

However ESD is not the overarching principle of most of the regulations. There is no inclusion of

- The precautionary Principle
- Intergenerational equity
- Conservation of biological diversity and ecological integrity.

In many instances the exact opposite is written into the Regulations.

There is also no mention of Climate Change and the effect that this will have on the environment.

RECOMMENDATION – *rewrite the Regulations to include the principles of ESD and include consideration of climate change as the primary principles of the documents.*

The Regulatory Input Statement (RIS)

This is based completely on a Cost Benefit Analysis (CBA) but at this stage there is little information available regarding the base case. The environment cannot be valued on a purely monetary basis as there are many other elements that are not able to be measured or even assessed until they have been tested in practice. All assessments must consider the cumulative effects of all actions.

RECOMMENDATION – *the RIS must be based on scientific information and not purely from a monetary base and must consider the cumulative effects of the risk.*

Biodiversity Offsets

This section of the Regulations is the most damaging to the environment and will spell disaster for much of the cherished bushland and wildlife habitat in the State. The whole concept is contrary to the principle of ESD as it is written, giving proponents far greater leeway to clear land than there is to protect the environment.

RECOMMENDATION.

- *Offsets must have as a basis the “maintain and improve” principle.*
- *Offsets must be genuine “like for like” for both plant communities and fauna habitat.*
- *Offsets must be restricted to the same bio sub-region and not some distant part of the State.*
- *Offsets must contain a red-flag ability to define ecosystems and species which cannot be cleared in any situation.*
- *Offsetting should not be subject to discounts at the discretion of the consent authority.*
- *Cash for clearing must not be allowed in built up urban areas. Only like for like offset should be allowed in these areas.*
- *Proponents must be required to take more than “reasonable steps” to find like for like.*

The inclusion of Areas of Outstanding Biodiversity Values and the ability to exclude areas of sensitive environmental values from clearing is welcomed. However the full definition of what constitutes these values is not complete, nor has the mapping required to locate them been completed and published.

RECOMMENDATION – *AOBVs must be excluded from all code based clearing. Third parties must be given the ability to nominate AOBVs subject to scientific confirmation. The mapping and definitions must be completed and exhibited for public comment before the commencement of the legislation.*

Biodiversity Conservation Fund.

The use of this fund is unclear as the Biodiversity Conservation Investment Strategy (BCIS) has not been released for community comment. It must be used entirely for the procurement of like for like offsets, and not used for such things as education/research or mine rehabilitation – the latter should be the responsibility of the miner and could take decades to start and even longer to bear any environmental outcomes.

RECOMMENDATION – *the Regulations should be delayed until such time as the BCIS has been completed and the community has had feedback into its use. Any extra funding provided to the Fund should not come from the Climate Change Fund.*

Offset Credits

The detailed strategy and calculator valuing offset credits has not been exhibited for comment so that the community is unaware of the full impact these will have on any credits available.

Questions arising from this lack of information are

- How are credits assessed/valued?
- Who does this valuation?
- Is the value based on comprehensive scientific analysis?
- How are credits registered and who maintains the register?
- Are they held in perpetuity or for a defined time?
- Can they be partially used or is it necessary to use them all at the one time?

Vegetation SEPP

The final details of the VSEPP have not been completed so that any comments on the document can only be of a general nature at this stage.

The Objectives of the SEPP raise several questions regarding the intent of the SEPP

Does “*provide a consistent approach*” mean “one size fits all’ irrespective of the location, topography, geology and bio-regional differences throughout the State?

If this is the case then we are opposed to this objective and recommend that flexibility be incorporated to allow consideration of local environments.

The inclusion of the SEPP as part of a DCP reduces the robustness of the legislation as compared to the existing situation where this type of control is governed by a legal LEP.

RECOMMENDATION – *do not repeal clauses 5.9 and 5.9AA from the Standard Instrument LEP unless the same wording is included in the VSEPP to maintain the existing legal status of an LEP. These clauses provide a much greater legal position than that through codes such as DCPs.*

We commend the inclusion of E2, E3, and E4 zonings state wide. However if the SEPP does not come under an LEP clause how well can it be monitored on private land adjoining any of the E zones. At the moment SEPP 19 covers this aspect of clearing on private land but there is no indication of how the new VSEPP will integrate with SEPP 19.

RECOMMENDATION – *integrate VSEPP and SEPP 19 and exhibit the information for comment.*

Another anomaly with repealing clauses 5.9 and 5.9AA is the strength of Tree Protection Orders (TPO) which now have the legal backing of an LEP. These TPOs are necessary in urban areas in particular in maintaining the tree canopy cover and its influence on the liveability and reducing heat islands as well as increasing the value of properties in the locality.

The **Explanation of Intent** of the VSEPP asks a number of questions of respondents which cannot be answered without full knowledge of the content of the SEPP, and even then it would be difficult for the majority of lay people to answer these questions.

The **Exemptions** from the SEPP listed raise one major question as well as several others.

At what stage do Councils determine the risk to human life and property? Many landowners consider the adjoining vegetation as a fire risk which may not be supported by the Council or the RFS. What is to stop these people from clearing the land before it is assessed as vulnerable one way or the other and then claim an exemption.

The LCB&CS opposes the exemption for clearing for risk to human life and property

We oppose the inclusion of state forests or land reserved for the sale of timber.

We oppose areas of noxious weeds – these areas can be suitably regenerated into viable bushland.

RECOMMENDATION – *all clearing of vegetation adjacent to private land should require consent from the consent authority for the area to be cleared.. This is generally the local Council in urban areas, but it may include other statutory authorities such as the NP&WS.*

RECOMMENDATION– *the VSEPP should integrate with the new RFS requirements to ensure that there are no conflicts between the two codes.*

Conclusion

The Biodiversity Conservation Regulations and the Vegetation SEPP in their present state are incomplete and do not reflect ESD in its full requirements. These should be incorporated in the documents and the final Regulations, Maps, definitions and the VSEPP must be exhibited for public feedback before they come into force. This means a delay in their gazettal but it is far wiser to get them correct the first time than to find loopholes and abuses of the BCA in the future.

Doug Stuart, for the Committee,
Lane Cove Bushland and Conservation Society Inc
CC The Hon Anthony Roberts, The Hon Gabrielle Upton