



# NSW Biodiversity Law Reform

What it Means and How to Have Your Say

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## About EDO NSW

- Not-for-profit, non-government community legal centre specialising in public interest environmental law
- Helping people across NSW – Offices in Sydney & Lismore
  - Legal Advice and Casework
  - Policy & Law Reform
  - Community Legal Education & Outreach
  - Aboriginal, Scientific & International programs
- Free Environmental Law Line
- Legal Guides & Factsheets
- Weekly e-bulletin
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# Workshop overview: Land clearing & Biodiversity Bills

- What is proposed?
- How can I have my say?



## Information, not advice

- The information in this workshop is a guide only.
- It's no substitute for legal advice on current laws.
- If you need legal advice about your particular issue, please call our Environmental Law Line.
- We can then give you free initial advice and referral.

## What is proposed?

- New legal regime for biodiversity conservation and native vegetation management for NSW
- Replace existing laws
- Major backward step - removes many of NSW's long-held environmental protections
- NSW Government is calling for public to make submissions until **28 June 2016**

# What is proposed?

## *Biodiversity Conservation Bill*

This will replace the:

- Threatened Species Conservation Act
- Nature Conservation Trust Act
- parts of National Parks & Wildlife Act
- parts of Environmental Planning & Assessment Act (Planning Act)

Plus

- Biodiversity Assessment Method (BAM) – A ‘single tool’ to assess impacts
- Priority Investment Strategy and Private Con. Funding package
- Continued ‘Saving our Species’ approach to threatened species
- Risk-based licensing for wildlife interactions (licences & codes)

# What is proposed?

## *Local Land Services Amendment Bill*

This will replace the:

- Native Vegetation Act 2003
- Native Vegetation Regulation 2013
- Environmental Outcomes Assessment Methodology (maintain or improve outcomes)

Plus

- Land use map – identifies excluded, regulated & unregulated land
- Self-assessable land clearing Codes – new and expanded
- Allowable activities – replace Routine Ag. Mgmt Activities (RAMAs)

## Structure – Six themes

1. Native vegetation – rationale for repeal?
2. Offsets & ESD
3. Private land conservation & the money
4. Environmental (E) Zones & Urban areas
5. Saving our species?
6. Equity





# 1. Native vegetation – rationale for repeal?

- What has the current Native Vegetation Act achieved?
- What is proposed?
- Implications for biodiversity?



# Change to native vegetation management

- Native Vegetation Act 2003
  - bans broadscale clearing unless it maintains or improves environmental outcomes.
  
- New laws:
  - No ban on broadscale clearing
  - No mandatory soil, water and salinity assessment
  - No ‘maintain-or-improve’ standard to ensure environmental outcomes – either at the site scale or at the landscape scale
  - No indication who will undertake compliance and enforcement responsibilities.

# Native Vegetation Regulatory Map



-  Category 1
-  Category 2
-  Excluded land

# Land Categories – Exempt, regulated, excluded

## Category 1 (exempt land)

Clearing of native vegetation can occur without approval under the new land management framework

## Category 2 (regulated land)

Clearing of native vegetation can occur in accordance with an allowable activity or code under the LLS Act. Proposed clearing that cannot occur in accordance with an allowable activity or code requires approval under the LLS Act.

## Excluded land

The native vegetation regulatory framework does not apply, and clearing is regulated under the *Environmental Planning and Assessment Act 1979* and the new Biodiversity Conservation Act framework, as well as some other legislation such as national parks and forestry legislation.



## 2. Offsets & ecologically sustainable development (ESD)

“The reforms will facilitate ecologically sustainable development”

NSW Government



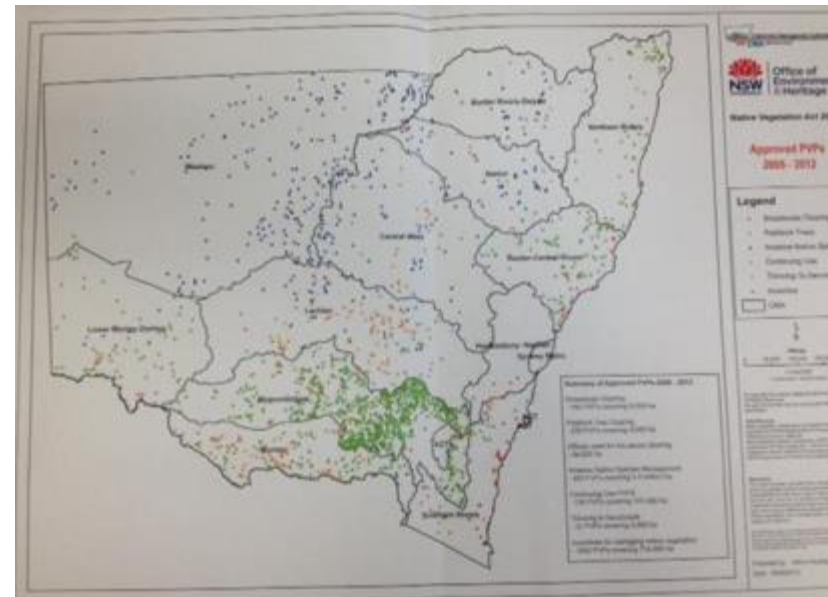
Image: Warkworth Coal Mine by John Krey

# ESD Principles: integrating environmental, social, economic...

- **The precautionary principle** —
  - if there are threats of serious or irreversible environmental damage,
  - lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- **Inter-generational equity** — that the present generation should ensure that:
  - the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.
- **Conservation of biological diversity and ecological integrity** —
  - ...should be a fundamental consideration.
- **Improved valuation, pricing and incentive mechanisms** — that environmental factors should be included in the valuation of assets and services, such as:
  - (i) **polluter pays**—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
  - (ii) **the users of goods and services should pay prices based on the full life cycle of costs** of providing goods and services, including use of natural resources and assets and the ultimate disposal of any waste,
  - (iii) **environmental goals, having been established, should be pursued in the most cost effective way**, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

### 3. Private land conservation and the money

- Three proposed categories:
  - Biodiversity Stewardship Agreement
  - Biodiversity Conservation Agreement
  - Wildlife Refuge Agreement
- Existing agreements carry on (or transfer)



# Three tiers of future private land conservation agreements

## Existing Agreement Types

- BioBanking Agreements
- Conservation Agreements
- Nature Conservation Trust Agreements
- Registered Property Agreements
- Incentive Property Vegetation Plans
- Conservation Property Vegetation Plans
- Wildlife Refuges

## New Agreement Types

- Biodiversity Stewardship Agreements (Tier 1)
- Conservation Agreements (Tier 2)
- Wildlife Refuge Agreement (Tier 3)

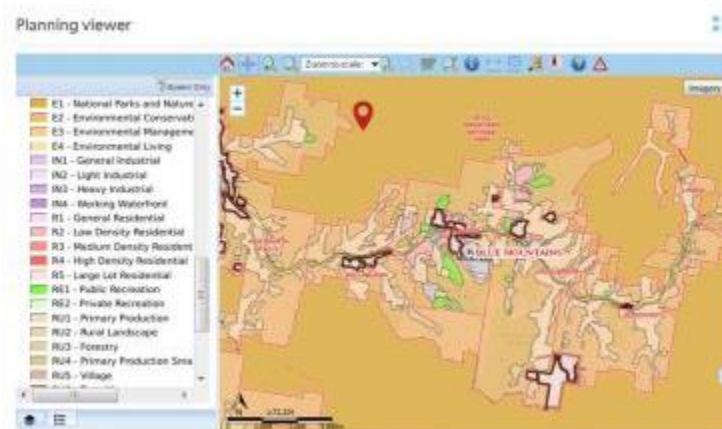
Source: NSW Government

[www.landmanagement.nsw.gov.au](http://www.landmanagement.nsw.gov.au) > Private Land Con. > Submission guide



## 4. E-Zones and Urban land clearing

- Excluded from LLS Act / NV Map (Grey)
- Planning Act will apply
- Clearing approval depends on LEP land use permissions
  - New SEPP / DCP permits (to replace Tree Protection Orders) or
  - Development Application (if consent required)
  - BAM applies if clearing exceeds threshold
  - Govt seeks feedback on ‘who is decision maker’, BAM clearing thresholds.
- Government Planning & E-zone Reviews?



## 5. Saving our species?

- Threatened species provisions vs clearing provisions
- Serious and irreversible impacts?
- Urban biodiversity



Image: Birdlife Australia Chris Tzaros

# Protecting sensitive values

- Serious and irreversible impacts
  - TBD
- Areas of Outstanding Biodiversity Value
  - Replaces 'Critical Habitat' (see BC Bill Part 3)
  - Environment Minister can declare after consultation
- Sensitive (Threshold) Values Map...
  - TBC. BAM assessment proposed.
- Sensitive rural areas
  - mapped Category-2 (regulated) unless excluded anyway (grey)
  - e.g. offset sites, World Heritage, Ramsar wetlands, 'core' Koala Habitat
  - protections vary

## 6. Equity?

- Farmers versus miners/urban developers
- Stewards versus offset providers
- Special treatment for major projects
- Intergenerational equity?

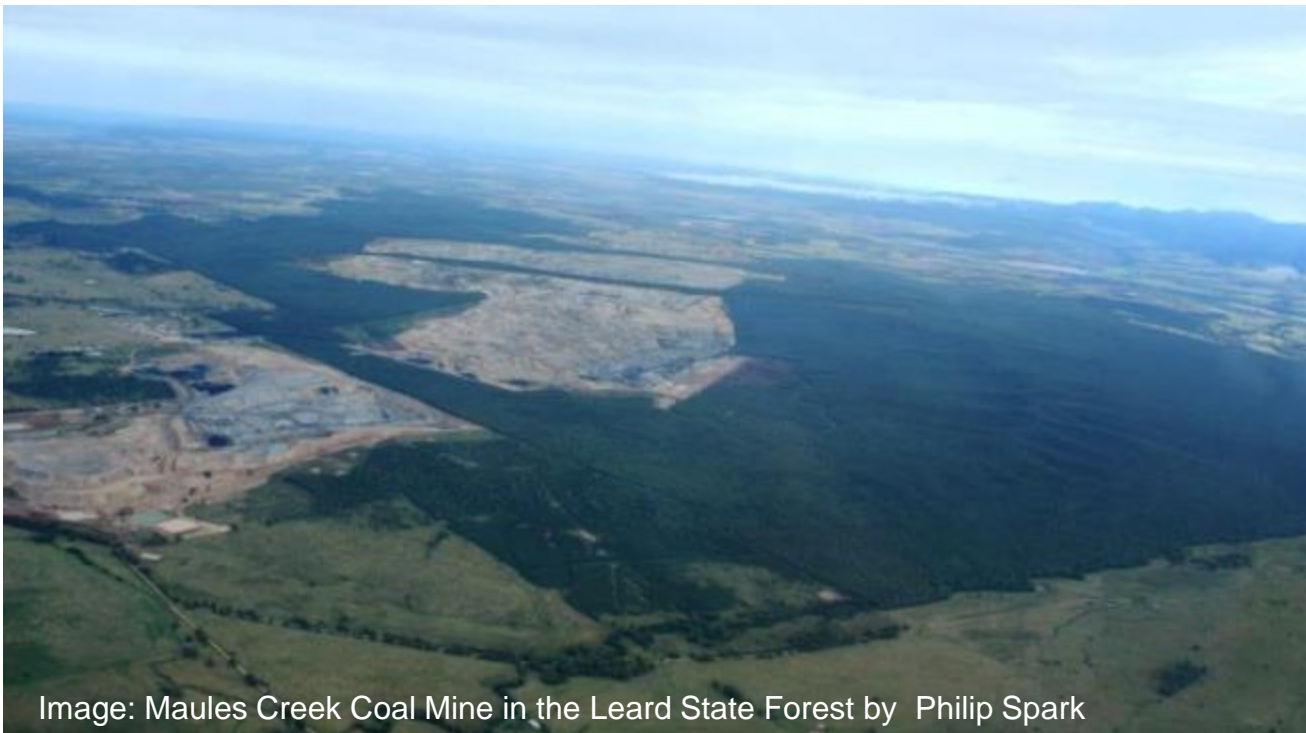


Image: Maules Creek Coal Mine in the Leard State Forest by Philip Spark

# Missed opportunity?

10 things that biodiversity law reform should do:

- Be designed to prevent extinction
- Equity - Apply a “maintain or improve” standard to *all* development
- Address key threats such as land clearing and climate change
- Establish a NSW Environment Commission – independent advice & reporting
- Mandate the use of leading practice scientific assessment tools
- Invest in private land conservation (gets a tick for this one)
- Clearly require comprehensive data, monitoring, reporting on condition & trends (environmental accounts)
- Limit indirect offsetting
- Commit to compliance and enforcement
- Properly resource regional NRM bodies to:
  - work with landholders
  - have expertise to do assessments and
  - make NRM plans that relate to clear targets.

**HOW CAN I HAVE MY  
SAY?**

**EDDO**

# How can I have my say on the reforms?

- Written submissions invited until 5pm **Tue 28 June 2016**
- More info at:

[www.landmanagement.nsw.gov.au/](http://www.landmanagement.nsw.gov.au/)

[www.edonsw.org.au/biodiversity\\_legislation\\_review](http://www.edonsw.org.au/biodiversity_legislation_review)



## Questions to ask yourself

- Do you agree with the proposed new Bills and supporting documents? Why/why not?
- Do you have enough information to make an informed submission or should the government provide more? What do you want to see? Maps?
- Do the proposed documents cover everything they should?
- Are there any gaps between the current system and what is proposed?



## Questions to ask yourself

- Are the assumptions the proposed documents rely on accurate?
- Are the objects of the Act likely to achieve ecologically sustainable development (ESD)? Are they consistent with or in conflict with each other?
- Are there other materials that should be included?
- Are there materials that are included that shouldn't be?
- Are the proposed enforcement mechanisms adequate?
- Does the wording of the Bills offer certainty?

## Are there existing documents that might help me with my submission?

- Previous reports on the area – community studies, surveys, ecological reports, registers, etc.
- Case studies e.g. Qld land clearing laws
- Independent Panel Review Report
- Any additional issues identify yourself

## Quick submission tips

- Introduce yourself or your group. What is your background and experience?
- Explain why are you interested and how it affects you.
- Give recommendations – tell Government what you want them to do
- Personalise the submission – even if it's a 'pro forma'.
- It's such a big reform – select what matters most.

## Free initial legal advice, website, fact sheets and updates

- Free Environmental Law Line Monday-Friday  
— 1800 626 239
- Fact sheets and other resources  
<http://www.edonsw.org.au>
- Free weekly eBulletin – updates on environmental law, policy and decisions



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  - Promote changes to environmental laws; and
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