On 5 May 2016 the draft NSW Biodiversity Act was released for public comment: it constitutes a serious threat to all wildlife.

Over the next eight weeks, conservation groups will provide submission guides and workshops about the draft Biodiversity Act. Some of the critical issues for you to be aware of follow …

Summary: The draft Act would change the nature of NSW biodiversity protections:

* From our current ***regulatory*** system where the impact of development proposals is assessed (where unacceptable impacts are refused and/or challenged in court);

* To an ***offset*** based system where developments are approved so long as funds are paid to protect and restore biodiversity elsewhere (with no effective refusal or challenge in court)

The draft Act would remove virtually all legal avenues for the public to effectively oppose developments which harm endangered wildlife. Illegal direct action would become the only effective avenue for community to oppose unacceptable impacts on our natural heritage.

Reduced scale: The draft Act has lower objectives than the current acts. It's stated objectives are to maintain (not restore) biodiversity and to 'facilitate' sustainable development'.

The scale for biodiversity conservation is broadened from local to *bioregional & state* only. So while existing declarations for endangered populations remain it would be difficult to list any in the future.

The draft Act provides for *continued habitat loss* with the scale and rate of loss managed through offsetting. Developments will no longer need to consider indirect impacts such as climate impact, pollution, introduction of pests or other indirect impacts on endangered biodiversity (6.3). Instead a payment will be made to secure a future offset for direct (clearing) impacts only.

Ending legal appeals (Ministerial power): The draft Act removes almost all grounds for appealing developments in court, and gives almost unlimited discretionary power to the Minister for Environment.

There will no longer be avenues for appeal when environmental assessments ignore endangered species, and no avenues for appeal against the merits of proposals. Conversely the draft Act provides numerous appeal rights for those doing the wrong thing: for illegal clearing, failure to meet conservation offset actions (8.23) or if you are refused a licence to harm a protected species (2.16).

The Minister for the Environment can determined developments as they see fit and in the unlikely event the Minister refuses a proposal the developer can submit it to the Premier to resolve (quoting the act) '*as the premier thinks fit*' (5.17)

Corruption risk: The ICAC has strongly criticised the proposal for broad Ministerial powers noted above. The new Act goes further and allows for those regulating development offsets to *personally invest in the same offsets they approve* (6.6). This provides extremely high risks of mismanagement and corruption.

Public information about offsets: The OEH can choose to restrict any information they choose from the public register of offsets (s 9.10) making public oversight of the scheme impossible. OEH already restrict data on BioBanking making it impossible to see where funds for development offsets go.

There would no longer be a requirement to publicly list submissions lodged against a development (9.3 pt2) and developers could choose to 'summarize' ecological assessments for public consultation *as they see fit*, rather than publicly exhibit the full assessment (9.2 part 4)

Offsets not like-for-like: the draft Act repeatedly claims that offsets will be made for the same species or community which is lost by clearing. In reality the Act details allows offsets to be for a different species or vegetation communities so long as they are considered more threatened.

Misusing bequests & covenants: Some landowners have made the ultimate gift and covenanted their bushland property to conserve it forever after they are gone. Many landowners have done this explicitly to ensure their property is not used to justify or offset development elsewhere.

The draft Act will allow their properties to be converted from the covenant (after death or sale) and be used to offset development (technically: the existing covenants automatically become a Conservation Agreement Tier 2 and can be upgraded to a Biodiversity Stewardship Agreement Tier 1).

This is an appalling breach of trust with the gift these landowners have made. Land gifted to the Nature Conservation Trust with restrictions would also have these restrictions removed (10.8 to 10.9)

Some covenants have also been forcibly created under compliance (i.e. as offsets for illegal clearing) - these could now be cashed in by their owners, rewarding illegal activity and justifying even more land-clearing.

Offsets not to be protected in perpetuity: Offset sites are not in perpetuity but can be cleared by simply 'offsetting the offset'. Mining rights and mining prospecting override offset sites and their landowners (5.18) and the landowner is not entitled to compensation for the lost biodiversity payments (5.18 pt 8). Offset sites can be developed with consent from the Minister for Environment (s5.10 & 5.16 b) for example or for *'a purpose of special significance to the state*' (5.16 c)

No need to have offsets available: Development can proceed by payment into a Biodiversity Conservation Fund even if offsets are not available. Shortages of offsets are likely to be frequent - a current example is the Badgerys Creek Airport development which refuses to pay landowners enough to secure offsets for endangered *Marsdenia viridiflora*, so will instead fund other actions to 'assist' the species. For example offsets could be research and 'education' (3 b) rather than conservation of habitat.

For the brave you can read all the documents at www.landmanagement.nsw.gov.au

Please consider this new threat to our environment and get in touch with out wonderful NGOs as they develop submission guidelines on these matters.

Feel free to distribute this summary