



FRIENDS OF  
KU-RING-GAI  
ENVIRONMENT INC.

27 June 2016

Biodiversity Reforms - Have Your Say

PO Box A290

Sydney South

NSW 1232

<https://www.landmanagement.nsw.gov.au/have-your-say/>

### **FOKE Submission on proposed changes to NSW biodiversity and conservation laws**

Friends of Ku-ring-gai Environment (FOKE) calls on the NSW Government to withdraw its Draft *Biodiversity Conservation Bill 2016* and Draft *Local Land Services Amendment Bill 2016*.

Instead FOKE calls on the NSW Government to work with NSW's peak conservation groups to strengthen the provisions of the Native Vegetation Act 2003 and the Threatened Species Conservation Act 1995. There is an urgent need to strengthen habitat protection because so many of our wildlife are threatened with extinction. Stronger biodiversity laws are needed and must be scientifically based on the principles of ecologically sustainable development that include the precautionary principle and inter-generational equity. It is imperative as we face the crisis of climate change that the NSW Government demonstrate leadership by protecting NSW's environment. It needs to seriously invest in restoring and protecting NSW's environment to halt escalating biodiversity extinction. It is vital that any legislation enshrines the concept of habitat protection. Without it wildlife cannot exist.

However, FOKE does not accept the case for abolishing the Native Vegetation Act 2003. Native wildlife at risk if NSW Native Vegetation Act is repealed. This legislation has effectively stopped widespread land clearing and ensured habitat protection so vital for biodiversity protection. If the Native Vegetation Act 2003 is repealed it will permit broad scale clearing. This will mean extinction for many species.

FOKE is a community group, established in 1994, with membership drawn from across Ku-ring-gai that promotes the natural, built and cultural heritage of Ku-ring-gai. FOKE asserts that Ku-ring-gai is an environmentally sensitive area of Sydney that is characterised by rare threatened and endangered remnant Blue Gum High Forest (BGHF), and surrounded by Lane Cove, Garigal and Ku-ring-gai Chase National Parks. Ku-ring-gai has in its care three endangered ecological communities the BGHF, Sydney Turpentine Ironbark Forest (STIF) and Duffy's Forest.

FOKE has made numerous submissions to local, state and Federal Government for the protection of Ku-ring-gai's nationally significant environment. Biodiversity is important to FOKE. As part of the 2016 National Trust Heritage Festival FOKE ran several walks and talks focusing on biodiversity protection and concluded with a forum called *Biodiversity Matters. Ku-ring-gai Matters*'.

FOKE is deeply concerned that the proposed Bills fail to protect NSW's wildlife and vegetation at a time when NSW is facing a record number of species extinctions<sup>1</sup>. According to the NSW Government Office of Environment and Heritage (OEH): 59% of mammals, 34% of amphibians, 30% of birds, 18% of reptiles and 14% of plants indigenous to NSW are threatened with extinction; 968 individual species of native animals and plants are threatened with extinction, with 72 of these species presumed extinct. FOKE argues that any new environment legislation must have stronger environmental protections that promote the recovery and resilience for threatened species, populations and ecological communities by protecting *in situ* habitat.

FOKE is particularly concerned that the legislation will negatively impact on the biodiversity of NSW, including Ku-ring-gai where critical habitats of remnant Blue Gum Forest has been extinguished through rezonings for medium density. One of the most serious environment issues facing Ku-ring-gai's biodiversity is this land clearing for medium density that has caused loss of deep soil and seed bank and habitat fragmentation. Land clearing and fragmentation are severe threatening processes to the survival of the threatened ecological communities and native species. Nor is there any cumulative assessment of environmental damage and loss through land clearing for medium density housing, agriculture or mining.

FOKE is concerned that the proposed biodiversity legislative changes for urban areas, including land management maps, have yet to be released indicating that the consultation process is flawed and lacks transparency.

FOKE is deeply concerned:

- That the *Native Vegetation Regulatory Map* and the proposed '*Clearing in urban areas SEPP*' will lead to increased habitat loss and tree clearing in both urban and rural environments. Critically endangered Blue Gum High Forest is now less than 1% of its original area and any legislation must ensure that any development must '*maintain or improve biodiversity values*'. It is no longer acceptable for any consent authority to approve a decision that will have negative and irreversible impacts NSW's biodiversity – including Ku-ring-gai's. The State Government planning policies currently concentrate high density development along the North Shore rail line corridor and environmentally sensitive ridgeline of Ku-ring-gai where the remnant BGHF and STIF remains, which has impacted these communities significantly. Protection for threatened ecological communities must be strengthened not weakened if they are to survive into the future.
- That important safeguards such as '*red flags*' for environmentally sensitive areas need to be retained and strengthened in any new legislation. FOKE believes there is an urgent case for Ku-ring-gai to be categorised as a 'red flag' area as it is one of Sydney's most environmentally sensitive areas that includes three threatened ecological communities. However, if this legislation abolishes 'red flag' areas Ku-ring-gai loses this opportunity and will continue to have inappropriate land clearing development that destroys critical habitat and biodiversity.

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<sup>1</sup> Environment Protection Authority 2015. NSW State of the Environment Report 2015. Environment Protection Authority, Sydney, Australia.

- FOKE is concerned about how the proposed bills relate to existing planning laws and in particular how changes in land-use zoning may exacerbate land clearing in urban areas. FOKE has been concerned for some time that the Threatened Species Conservation Act 1995 has been subservient to planning laws and thus undermining biodiversity protection for urban areas – including Ku-ring-gai.
- That the Bills seek to expand the use of ‘*self-assessable*’ codes, allowing landholders to clear trees with little oversight regardless of knowledge limitations. FOKE has no confidence in ‘self-assessable codes’ as evidenced by the failure of the self-assessment provision in the 10/50 Tree Clearing Code. Since the introduction of this self-assessable code hundreds of mature habitat trees have been cut down – some of which protected under the NSW Threatened Species Act.
- FOKE is deeply concerned that local council’s Tree Preservation Codes are to be replaced with a Development Control Plan (DCP) and how urban trees will be protected into the future. We understand that some mapping has been undertaken but it has not been ground truthed. Maps that are not accurate or do not reflect the truth on the ground could lead to further undesirable outcomes to our environment and biodiversity.
- That the Bills fail to address the threats posed to biodiversity from climate change. Nor does it address the threats posed to human health from land clearing and tree removal. The protection of Ku-ring-gai’s urban forests and remnant bushland provide Sydney with essential climate services. Ku-ring-gai’s canopy trees and remnant forests reduces temperature and enhances Sydney’s air quality. It is noted that Sydney recorded its hottest day ever on 18 January 2013 peaking at 45.8°C. NSW must have the highest protection for native vegetation – including Blue Gum High Forest, Sydney Turpentine Ironbark Forest, Duffy’s Forest and Hawkesbury sandstone bushland on both public and private land.
- That public participation in assessment decisions and legal standing for appealing decisions may be reduced. For over 20 years FOKE has played an important role in advocating for Ku-ring-gai’s environment. This should not be reduced.
- That the biodiversity offsetting system have comprehensively failed to protect NSW’s biodiversity and FOKE calls for a withdrawal of this failed policy that allows developers, miners and agribusinesses to destroy wildlife habitat in exchange for cash or dissimilar types of habitat. Ku-ring-gai’s biodiversity is rare and unique and cannot be protected by offset policies. FOKE is also concerned that offsets are increasingly being misused to justify native vegetation destruction through ‘preserving’ existing conservation areas or by allowing landholders to clear irreplaceable biodiversity in exchange for paying money into a fund.
- That the Bills will repeal the Native Vegetation Act and open the gates to broad scale land clearing that will increase greenhouse gas emissions and drive climate change. This is too dangerous an option for civilization to consider. Increased temperatures will intensify wildfires in Ku-ring-gai that will put wildlife and humans at risk. Land clearing in NSW will mean that Australian could risk meeting its commitment to the Paris Agreement on reducing carbon emissions.

- That biodiversity gains rely on Government funding rather than environmental protections in law.
- That infrastructure designated state significant developments may be exempt from offsetting their impacts. Again this would have negative impacts on NSW's environment – including Ku-ring-gai's environment.
- That biodiversity stewardship sites (offsets sites) are not protected in perpetuity and are able to be revoked or varied without public consultation or owners consent. Currently FOKE is deeply concerned with the biodiversity offset site in Sheldon Forest, Turramurra, where a critically important section of this endangered forest has been reclassified as Recreational zoning contrary to the appropriate protection required for a biodiversity offset site.
- The Bill allows impacts in an area under a biodiversity stewardship agreement and prohibits the consent authority from requiring additional offset credits.
- FOKE believes there should be clear, objective criteria for determining whether there are serious and irreversible impacts on biodiversity values. FOKE is deeply concerned that the legislation does not protect Ku-ring-gai's biodiversity – particularly its three threatened ecological communities.
- That biodiversity conservation is a complex issue requiring monitoring and evaluation. FOKE is concerned that the proposed legislation fails to detail or mandate appropriate monitoring. FOKE has asserted for some time that consideration needs to be taken for the cumulative impact of development on biodiversity protection. Currently there is no cumulative assessment of environmental damage and loss through overdevelopment and significant mature tree removal or any plans to address the loss of Ku-ring-gai's threatened ecological communities in recovery plans e.g. critically endangered Blue Gum High Forest ecological community. The planning system fails to acknowledge and assess the cumulative impacts of developments over time. Each development decision is made in isolation. This systematically undermines biodiversity protection that has had cumulative impacts.

The Bills represent a backwards step for biodiversity conservation in NSW and will exacerbate climate change. The fact that all of NSW peak environmental organisations and The EDO have grave concerns about the proposed legislation causes FOKE to have severe reservations about the new legislation. FOKE urges the NSW Government to withdraw these bills. We believe they are flawed, contradictory, poorly written and significantly weaken the protections of biodiversity for NSW, including Ku-ring-gai.

FOKE calls on the NSW Government to work with the Nature Conservation Council, The Total Environment Centre, The EDO, The Wentworth Group and other peak environmental organisations of NSW to improve and strengthen protection of the environment across NSW - including Ku-ring-gai.

Yours sincerely

Kathy Cowley  
President

- cc Jonathan O'Dea MP Member for Davidson
- cc Alister Henskens SC MP Member for Ku-ring-gai
- cc The Hon Paul Fletcher MP Member for Bradfield
- cc Mayor and Councillors Ku-ring-gai Council
- cc The Editor North Shore Times
- cc The Editor Hornsby Advocate
- cc Ku-ring-gai Community Groups