

## BIODIVERSITY LEGISLATION REVIEW

Email: 

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Dear Biodiversity Review Panel

I would like to comment briefly on some aspects of the Issues Paper.

I acknowledge that the review is an opportunity to facilitate the conservation of biological diversity and support ESD principles. Reducing red tape is also included, but should not weaken existing legislation.

I believe that the existing legislation should be improved and strengthened.

### **THEME 1: Objects and principles for biodiversity conservation**

Biodiversity goals need to be incorporated into environmental legislation. The objects and principles need to align with international and national frameworks, agreements, laws, obligations.

National and NSW Biodiversity Strategies have been written, but the objects and principles for conservation do not have statutory weight.

Currently, biodiversity goals appear to be absent and biodiversity is given little or no protection under existing environmental law unless it contains threatened species / ecological community.

While the protection of threatened habitat deserves priority, biodiversity will continue to decline unless its environmental values are acknowledged and it is given greater statutory protection.

### **THEME 2: Conservation action**

I note that the Nature Conservation Trust Act objects relate to 'urban and rural land in private occupation'. However, in practice, I understand that conservation efforts under this scheme are primarily focussed on rural land due to the comparatively high land value in urban areas. The funding provided to the NCT is very limited, possibly in the order of only \$2m. This seed funding becomes a like revolving fund that is reinvested in property. Similar measures could be applied to urban land, even with limited funds. However, the scheme would be more effective if additional funding was provided initially.

In relative terms, the amount of funding allocated to protecting biodiversity is very small. The benefits of biodiversity for sustainability, environment and health need to be valued more highly. A funding scheme would assist in protecting biodiversity.

### **THEME 3: Conservation in land use planning**

The appropriate zoning of land is an effective means of protecting biodiversity. Other measures to protect biodiversity are to limit the scope of development or transfer development rights to areas that are not environmentally sensitive.

Biodiversity values should be followed up with appropriate zoning to protect those values. Strategic options to protect biodiversity should be considered at all stages of the planning process.

To protect biodiversity in high bush fire prone areas, inappropriate land uses and development should be avoided in the strategic planning phase. This avoids excessive clearing of bushland for asset protection purposes.

Mitigation measures and conditions of consent do not compensate for significant biodiversity loss and are often inadequate and ineffective in achieving compensatory outcomes.

A poor weighting is given to cumulative and indirect impacts, even though these have been put forward as arguments to prevent the loss of biodiversity, particularly in strategic locations.

An example is the clearance of two hectares of dense, indigenous vegetation at the headwaters of a pristine catchment and creek in a National Park. The removal of bushland from this site, previously identified for inclusion in the Park, has ongoing and multiple, adverse environmental impacts.

Pro-active measures to protect the site and rezone much of it for environmental protection would have provided a compromise solution, avoiding vegetation removal from the whole site.

In spite of various documents emphasising the importance of protecting the bushland, the biodiversity values were not given statutory weight in the development approval process.

An endangered ecological community identified subsequently could not be applied retrospectively to alter or rescind the development approval.

#### **THEME 4: Conservation in development approval processes**

The development approval process is skewed in favour of development and the associated loss of biodiversity is regarded as collateral damage. The environmental values associated with biodiversity need to be recognised in legislation.

The Threatened Species Conservation Act 1995 has an important role in protecting threatened species, populations and communities. However, assessment reports are often undertaken by private consultants on behalf of proponents. Almost invariably, assessment reports conclude that a proposal will have 'no significant impact'.

The TSCA does not adequately acknowledge biodiversity. Unless a site has threatened species etc. biodiversity values can be ignored in the development approval process. Biodiversity has multiple environmental values for catchment protection, wildlife habitat, core habitat etc. that should be acknowledged in the legislation.

Several years ago, a bushland site with an unusually high species diversity and a niche location in terms of micro-climate and catchment protection values – was all but destroyed for development. Although this development could have been relocated, the biodiversity values were irreplaceable.

The hydrological function of vegetation communities, such as wet heath, also warrants special consideration. These ecological communities are particularly important for the protection of catchments and creeks. Fortunately, hanging swamps are now listed as an endangered ecological community and should be afforded better protection.

Biodiversity offsets do not provided reliable protection for biodiversity. With clearance of vegetation on a development site, the resultant outcome is an overall loss of biodiversity.

Biodiversity offsets are intended to be a last resort, to be considered 'once all option to avoid and mitigate biodiversity loss have been exhausted'. This includes the investigation of alternative sites, where appropriate. However, this action is not always followed through and a loss of biodiversity occurs even when it could have been avoided.

*In response to Question 4:* In my view, the regulatory system does not adequately protect listed threatened species, populations and ecological communities. However, there is utility in specifically protecting these entities through the regulatory system, in addition to other strategic measures.

*In response to Question 7:* Impacts that cannot be offset include removal of wildlife corridors, endangered ecological communities, and biodiversity values that are site specific. In my view, these impacts, both local and regional, are not adequately addressed in approval systems.

#### **THEME 5: Wildlife management**

Wildlife management includes the protection of biodiversity in core habitat and wildlife corridors.

#### **THEME 6: Information provisions**

The Independent Scientific Committee is the most appropriate body to determine the listing of threatened species and communities under the TSCA. This role requires an independent, scientific status.

ESD principles, such as the precautionary principle, should be applied where insufficient information is available about biodiversity values.

*In relation to Question 5:* In my view, threatened species listing should not be decoupled from decisions on conservation actions (including recovery planning) and regulatory processes.

Some years ago I participated in a working party for a recovery plan for an EEC. Although the final draft for the Recovery Plan was prepared, for some reason no further action was taken. Since then a significant area of the EEC has been cleared. This unfortunate loss of biodiversity might have been prevented if the draft recovery plan had been adopted and translated into strategic action.

Yours sincerely

Ann Sharp