NSW Region
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Independent Biodiversity Legislation Review Panel
59 Goulburn St
Sydney NSW 2000

5 September 2014

Submission to Independent Biodiversity Legislation Review Panel

This submission is provided on behalf of the Australian Plants Society – NSW Region.

The Australian Plants Society is an active community organisation which supports and promotes the preservation and conservation of Australian native plants. The NSW branch is a long-established, active community group with members committed to conserving Australian native plants. The writer of this submission is the Conservation Officer for Sutherland Group and NSW Region, and is also a professional ecological consultant in NSW, with expertise in assessing and reporting on ecological significance of vegetation. In addition, the writer has extensive experience in the bushland regeneration industry and is involved in training delivery for TAFE NSW (Conservation and Land Management, and Horticulture).

From a review of the Issues Paper (dated August 2014), our group has addressed the following issues:

Theme 1: Objects and principles for biodiversity conservation:

1. Should there be an aspirational goal for biodiversity conservation

The nature and complexity of our unique biodiversity (in terms of classification, characteristics and function) creates difficulty in determining uniform goals for biodiversity conservation, as different species and ecosystems have different habitats and requirements. Yet, our group believe that the current objects and principles of the legislation have the correct intention.

However, it is becoming increasingly clear, that it is the extent of anthropogenic development, that poses the biggest threat to biodiversity conservation. In the Sydney region at least, the 'elephant in the room' is completely ignored, that is, can we continue to achieve population growth in the form of ecological sustainable development, with adequate preservation and rehabilitation of endangered ecological communities, threatened species and habitat? As development proceeds on a site-by-site basis, ecological communities and threatened species are subject to the 'death by a thousand cuts' process. Obviously, there needs to be a threshold where the matter of conservation significance (species, population or ecological community) simply cannot withstand any further impacts. Possibly, this issue of accounting for cumulative impacts could be better assessed with more robust data reporting from all ecological assessors, on an annual basis, with appropriate data submission of the outcome of development approvals (eg: impacts to 1 ha of Cumberland Plain Woodland, or 30 individuals of *Acacia pubescens*). Such data could then be used to determine whether critical thresholds could be designated, stipulating that no further impact can occur.

2. Given available evidence about the value and state of the environment, are the existing legislation objects still valid?

Our group believes that the existing legislation objects are still valid, as NSW has achieved some excellent outcomes for biodiversity conservation. These achievements are reflected in our National Parks and Wildlife estate systems and crown land reserves, our current state of knowledge regarding biodiversity in NSW, in addition to the numerous organisations involved in biodiversity conservation management.

The biggest challenge with ensuring that the objects remain valid is by:

- continued and robust education and promotion of the legislation in schools, tertiary institutions, conservation organisations and community groups;
- Formal recognition of listed biological entities, ie ecological communities, populations species and their habitats that can withstand no further impacts;
- A more uniform and consistent approach to biodiversity offsets.

3. To what extent are the current objects being met?

From an ecological consultancy perspective, the writer has gained experience from a range of outcomes pertaining to development applications and Land and Environment Court proceedings where the current objects (eg: *conserve biological diversity and promote ecological sustainable development*) are only sometimes met. Certainly, there have been some positive outcomes out of the LEC Court where conservation of protected biodiversity matters have been upheld with one recent example being *Arkibuilt Pty Ltd v Ku-ring-gai Council (2014))*. Yet, there is a perception amongst environmental groups and practitioners, based on the outcomes of development approvals, that a somewhat 'horses for courses' approach is taken. This is reflected in the planned Senate Enquiry into environmental offsets. The primary setters of example for conserving biodiversity over the long term, should ideally be those involved in State Significant Development projects.

I believe that the current development assessment and approval process for where significant biodiversity matters are involved is moderately adequate and can at times be quite robust, and should not be seen as purely 'red tape'. Certainly, from my experience, most local Councils appear to be quite thorough in their requirements when assessing and approving impacts to biodiversity. Yet, as previously stated, the 'death by a thousand cuts' still applies, resulting in a threshold eventually being reached where the ecological community, or species, is now unviable in the long term.

Suggested modifications to the assessment and approval system are given (addressed later in this submission under Theme 4).

Threats to biodiversity are now accounted for by a number of mechanisms, including threat abatement plans, key threatening processes and recovery plans. Yet, it is likely that inadequate on-ground work and research is being done to address the aims and objectives of such plans. The Save Our Species initiative may work to address this, a program which our group plans to be involves. In needs to be considered with such a project that it will be detrimental and de-motivating for participants to undertake a worthwhile conservation project on a particular threatened species, and then learn that the same species has been approved to be impacted elsewhere by development.

Our group believes the objectives of the four Acts listed in Appendix 2 of the Issues Paper are complimentary, understandable and even admirable. But a huge task remains in the long-term implementation of on-ground works to ensure the objectives are met.

4. Could the objects of the current laws be simplified and integrated? If so, how?

Our group believes the objects of the current laws are robust enough, yet, as is always the case, laws need to be policed and implemented. There are currently substantial constraints for a wide range of agencies at present (eg: developers, national parks, local councils and conservation groups), in providing adequate resourcing for long term implementation of some of the objects (ie: in the TSC Act 1995 - *eliminating or managing certain processes that threaten the survival of evolutionary development*…, or *encourage the conservation of threatene*d species, *populations and ecological communities by the adoption of measures*

involving co-operative management). The constraints are usually financial, temporal and usually combined with a lack of required expertise and experience.

Theme 2: Conservation action

4. How should the government determine priorities for its investment in biodiversity conservation while enabling and encouraging others (e.g. community groups) to contribute to their own biodiversity conservation priorities.

As a community group focused on the conservation and study of Australian plants in the wild, we would encourage more communication and meetings with the government, in order to determine how we might better engage in biodiversity conservation projects. We are currently seeking to be involved in the Save Our Species Project, as a voluntary partner. However, we would always be willing to hear from the government, how we may actively participate in efforts to conserve threatened flora biodiversity. Many of our members are involved in activities such as local council bushcare and conservation works in national parks, and also have an extensive knowledge of native flora including cultivation, propagation and habitat. Each regional group of APS could also be made aware of the biodiversity conservation priorities that are being targeted in their local area. This could be achieved through the setup of a government-managed online forum on threatened biodiversity projects. We encourage the panel to recommend ways in which more robust and open exchange of information and expertise regarding threatened species and ecological community restoration management outcomes could be achieved.

5. How can the effectiveness of conservation programs be monitored and evaluated.

Our group is of the opinion that monitoring and evaluation is an aspect that is largely missing from many conservation programs that are undertaken, despite the best intentions (documented by Lindenmayer and Gibbons (2012)).

Volunteers undertaking conservation programs should ideally have access to free or cheap introductory courses provided by government (either in-house or through an ecological professional) where training in a uniform standard of monitoring and evaluation is provided. This would also enhance the experience and expertise that volunteers gain from their work, and allow for adaptive management as projects progress.

An accepted standard or standards of biodiversity monitoring and evaluation could be decided on and promoted as the best methodology, be it the BioBanking methodology or those methods outlined by Lindenmayer and Gibbons (2012). This submission encourages the panel to recommend a uniform standard or standards for monitoring and evaluation which would provide benchmarks for all conservation groups to aspire to. Currently, there is no available NSW OEH webpage that discusses or provides guidance for biodiversity monitoring.

Theme 4: Conservation in development approval processes

1. To what extent has the current framework created inconsistent assessment processes, environmental standards, offset practices and duplicative rules? What can be done to harmonise processes.

Our group sees several problems with current assessment processes:

a. Biodiversity offsets

A record of inconsistent assessment processes can be observed concerning vegetation offsets when reviewing past development approvals such as Part 3A project approvals . Most offsets have been decided on the Principles of Offsetting rather than the Biobanking

methodology which has been struggling to get up and running since 2010. From research of such approvals, it is difficult to gauge how biodiversity offsets are determined with hectare ratios from 2:1 up to 45:1 stipulated between 2010 and 2013 (http://majorprojects.planning.nsw.gov.au)
The BioBanking methodology is also perceived as having problems, such as very high offsetting ratios required, lack of adequate biobanking sites, and restrictions due to red flag areas. It is understood that the BioBanking methodology recently underwent review, and it remains to be seen whether this will promote its uptake by developers. This submission encourages the panel to determine and recommend a consistent offsetting methodology for all developments across NSW, making the system more just. For very small developments, offsetting funds could be pooled together and transferred in a lump sum towards a suitable BioBanking offset, as previously recommended by other ecological consultants at the Ecological Consultants Association of NSW 2013 conference on offsetting.

b. The Assessment of Significance

The Assessment of Significance (7-part test) is one of the largest problematic assessment tasks of the development application. The 7-part test is often a subjective process, usually lacking objective science with previous court judgments relied on as the best guide. The 7-part test has a good chance of being approved when most of the vegetation community or species to be impacted, is to be retained onsite, and will often fail when this is not the case. The 7-part test is mostly subjective opinion of the consultant, and usually lacks any sound justification for conclusions reached. A revised system could see the consultant carry out all of the research and background work as currently done (site specific survey as well as adjoining lands if required (eg Council reserves), review of vegetation mapping, previous surveys etc.) in addition to any other information required by the consent authority. The consent authority could then determine whether the impact is significant or otherwise, consistent with current practice. The consultant could then carry out a Species Impact Statement, if required, minus the revised assessment of significance, which again would be determined by the consent authority. This would keep the process more objective, and place the emphasis on gathering as much data, rather than hand picking some of the available data, to support a subjective decision. Furthermore, many consultants attempt to argue that proposed offsets result in the impacts being non-significant, which is not consistent with the Assessment of Significance guidelines.

2. Can we have a single integrated approach to the approval of all forms of development, including agricultural development, that is proportionate to the risks involved? If yes, should one methodology (or a harmonised methodology) be used to assess all impacts? Does a need remain for some differences in assessment approaches?

Due to the complexity and variability of biological entities across a wide range of environments with different histories, a single integrated approach to approval may prove difficult. However, it is still believed that a single methodology should be determined and recommended for all approvals. Currently, the range of methodologies used for aspects such as site survey are too varied and can result in vastly different results when reviews (second opinions) are undertaken. Assessment methodologies need to be adequately documented and based on quantitative data, and should aim to capture a complete temporal picture of the status of biodiversity on the site. The recommendation and adoption of specific assessment protocols, would provide a more uniform framework for the development process.

3. What are the advantages and disadvantages of different the different biodiversity assessment methodologies? Are the rules transparent and consistent? Is the way data is used to underpin decisions transparent? Do the assessment methodologies appropriately accommodate social and economic values?

Although the overall BioBanking system has its problems, it is believed by our group that the use of the BioBanking/Biometric methodology is a robust means to assess biodiversity values on any given site. This methodology or a similar methodology could be better recommended for most development approvals of a minimum size, regardless of vegetation condition or biodiversity attributes. The only disadvantage of this is the time required to collect good data. Other prescribed methodologies such as those outlined in the *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities* (DEC - Working Draft - November 2004) also have their merits but are not recommended strongly enough to those undertaking assessment. The inclusion of flora and fauna assessment requirements under local government development control plans (such as Lake Macquarie Council) is an excellent step forward. However, these assessment requirements could be uniformly stipulated by the NSW government. Therefore, at present, rules are not transparent and consistent.
Data collected are not always used transparently to underpin decisions. In many cases of biodiversity reporting, species lists are not provided or are not set out in a location-sampled format. Maps of site sampling are also not often produced. In-depth comparisons with final determinations are also often not undertaken. It is re-iterated that a standard document be recommended, stipulating rather than suggesting, standards that biodiversity assessments should meet. This would reassure consent authorities and remove a lot of guesswork when reviewing biodiversity assessments.

8. How can offsets be more strategically located?

Many development projects encounter difficulties in locating and establishing suitable offset sites. The maintain or improve principles of BioBanking, as well as, the principles for offsetting, whilst having the best intentions, create great restrictions for meeting offsetting requirements. Questions being asked in the industry include “What happens when all of the suitable offset lands are exhausted?” For some endangered ecological communities, such as Cooks River Castlereagh Ironbark Forest, there are very few occurrences remaining which could possibly be converted to a BioBanking site, where they are not conserved already. This is fast becoming the case for Cumberland Plain Woodland.
This condition raises other offset possibilities which, if designed and implemented properly, may also meet the maintain or improve criteria. For instance, proposed impacts could be assessed using the BioBanking methodology, creating a monetary offset value. This value or an adjusted value could be used to undertake biodiversity conservation efforts in like-for-like areas (eg same threatened species habitat) in highly degraded areas of national park estates such as nature reserves or conservation areas. These funds would assist National Parks in controlling major threats to biodiversity such as weeds and other pests, and could be directed towards research, data collection and other habitat restoration techniques. Biodiversity offsetting could possibly be seen as more than a purely hectare for hectare ratio, in the face of unaddressed or uncontrollable loss or degradation of biodiversity on national parks estate.

We thankyou for the opportunity to make this submission

References

Lindenmayer, D. and Gibbons, P. (2012)
Biodiversity Monitoring in Australia. CSIRO Publishing. Canberra (2012).

Yours sincerely

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