Parramatta River Catchment Group

Submission by the Parramatta River Catchment Group to the:

Independent Biodiversity Legislation Review Panel

5th September, 2014

Background

The Parramatta River Catchment

The Parramatta River is one of the major waterways in Sydney, and is the main tributary of Sydney Harbour. The River extends from Blacktown Creek in the west to the confluence of the Lane Cover River in the east with a catchment of approximately 26,590 hectares.

The catchment is highly urbanized and all bushland has some level, usually very high, of disturbance. Despite this, a number of migratory, threatened and rare species persist within the catchment and some species remain common. A few native species have benefitted from disturbance and potentially require active management.

The Parramatta River catchment is a unique area with a high biodiversity value. The catchment's natural resources include bushland, rivers & creeks, wetlands, estuaries and cultural heritage. A total of 85 threatened species are found in the Cumberland sub-region, of which the Parramatta River catchment lies within, including:

- 12 Ecologically Endangered Communities
- 32 fauna species
- 31 flora species

Major wetlands include Bicentennial Park Wetlands (nationally significant, JAMBA CAMBA) and Newington Wetlands (nationally significant, JAMBA CAMBA). There is also a wide diversity of aquatic species as well as regionally significant plants and animals throughout the catchment.

The Parramatta River catchment has one of the highest rates of human population growth in Australia. With the ongoing pressures of urban consolidation, these vitally important areas of native habitat require a strategic, catchment-wide management approach to ensure their ongoing survival. Identifying and establishing key linkages between these remnant sites provides a critical stepping stone for dispersing fauna moving between core areas of habitat

such as the numerous national parks and nature reserves both north and south of the catchment.

It is important that Biodiversity Legislation and the processes supporting this are appropriate and relevant to this urban context.

The Parramatta River Catchment Group

The PRCG is a regional, non-statutory organisation of local councils, state agencies and community representatives whose aim is to work together to improve the health of the Parramatta River catchment. The PRCG was set up in 2008 through a Memorandum of Understanding process. Current financial members of the PRCG are Ashfield Council, Auburn City Council, Bankstown City Council, Blacktown City Councils, Burwood Council, City of Canada Bay, City of Ryde, Holroyd City Council, Hunters Hill Council, Leichhardt Council, Parramatta City Council, Strathfield Council, Greater Sydney Local Land Services and Sydney Water.

Native Habitat Recovery in the Parramatta River Catchment

With funding support from the NSW Environmental Trust, the PRCG have recently commissioned a study that collated fauna species records across the Parramatta River Catchment to determine species richness and distribution. The study underpins a broader project, which aims to expand, restore and manage the extent of native habitats in the fragmented landscapes of the Parramatta River catchment. Using this knowledge, high priority sites and potential corridors have been identified and targeted for on-ground restoration and expansion, linking these communities across the landscape. The project will provide a strategic view of where to invest future resources for biodiversity preservation and enhancement across the catchment and will ultimately benefit all residents and visitors to the Parramatta River catchment, by improving the health and vitality of the local environment in which they live and work.

When addressing habitat restoration, much of the focus is placed on vegetation. However, vegetation communities co-exist with the fauna that inhabit and symbiotically sustain them. There is an increasing number of studies within the scientific literature to suggest that approaching restoration from the perspective of fauna diversity and abundance is equally important and a potentially more responsive and strategic method of managing biodiversity.

Comments and recommendations to the Independent Biodiversity Legislation and Review Panel

As the Native Vegetation Act does not apply to the PRCG Councils, it has not been specifically considered in our response. Our responses to this review, therefore, focus on the Threatened Species Conservation Act. Appendix A outlines some specific examples provided by PRCG councils. While the PRCG is happy for this submission to be treated as a public document, it requests that Appendix A be treated as confidential given some of the specific details included therein.

Key issues and recommendations

The following issues relate to part 5a of the Environmental Planning and Assessment Act 1979, consistent with S94 of the Threatened Species Act.

1. **A more cost-efficient process is needed whereby Council has meaningful input into the initial 7 part test conducted and does not have to incur additional costs to conduct their own assessments.**

Context: The majority of assessments funded by developers using the 7 part test Assessment of Significance come back as “no likely significant adverse effect”. There are specific examples where Councils have then challenged that outcome and this second Assessment of Significance has then demonstrated “a significant adverse effect”. However, to do this requires a large investment of resources on behalf of Council to then conduct a second Assessment of Significance at their own expense. In fact, in Parramatta City Council area, they have had no situation where a developer-funded assessment has come back stating “likely significant adverse effects”. However, in order to challenge a one of these assessments, they had to conduct a second Assessment of Significance at their own expense at the particular site, and this second assessment clearly demonstrated “significant adverse effects” to the Blue Gum High Forest endangered species or ecological community present.

2. **Legislation needs to specifically address the impacts of small scale clearing in urban catchments. Individual and small clumps of trees should also be specifically assessed for their value in Threatened Species Conservation, as they can provide significant connections for threatened fauna between small, fragmented habitat patches, as well as provide a source for seed propagation and spread.**

Context: The Assessment of Significance does not consider size when looking at Ecological Communities and Threatened Species. Scale needs to be considered for two reasons: 1) the combined effect of small scale losses in threatened species can quickly accumulate into larger scale, long term impacts in the region as urban population growth and development escalate. This can adversely affect ecosystem processes and deplete seed bank resources; 2) Ecological Communities and Threatened Species are currently considered only by definition, rather than size. When considered only by definition, it is considered that removing Threatened Species habitat at a particular site has minimal adverse effect on that Threatened Species so long as there is another site close by where that species can exist, regardless of the size of the nearby site. Substantial research has shown that habitat size and associated habitat corridors are critical factors in a species ability to persist and thrive. In fact, it has been demonstrated that individual trees can play a significant role in connecting habitats and enabling species populations to persist in a fragmented landscape (see Issue 3 below). Any mapping conducted to inform legislation also needs to then be conducted at a sufficiently refined scale to have any tangible value within an urban context.

3. **Councils should be empowered with adequately resourced enforcement officers to conduct site assessments to ensure the specific requirements outlined in the Review of Environmental Factors are adhered to.**

Context: Once the review of environmental factors gets approved with specific requirements, there is often no one resourced to then assess whether the applicant has then adhered to these requirements. Currently Councils cannot impose penalties under the Act,

as the Office of Environment and Heritage (OEH) has sole responsibility for enforcing the TSC Act. The current enforcement conducted by OEH is considered inadequate as, due to resourcing constraints, OEH staff generally only assess very large scale development areas. When asked to assess specific sites, the general response from OEH has been that they are unable to assist and Council will need to consider it through their own Planning Laws. Council Planning Laws are currently insufficient as they do not specifically consider threatened species conservation, thus resulting in reduced penalties. Improved resourcing of Councils would be needed for amendments to be made to these Planning Laws. As stated in Issue 2 above, the cumulative adverse impacts caused by ignoring smaller sites are huge. In addition, it needs to be realised that, in many urban Councils, there are no staff members with authority to enforce noxious weeds or pest animal control, which has further implications for Council's ability to manage impacts on native vegetation and threatened species.

4. **10/50 Vegetation Clearing Code overrides the Threatened Species Conservation Act, and therefore should be specifically considered within this review. The code should be immediately reviewed for Metro Sydney or suspended for Metro Sydney pending a 2 year review.**

Context: The NSW Rural Fire Service has provided an online assessment tool for people to conduct a self-assessment of whether the 10/50 Code will allow them to clear vegetation on their property. Council staff have observed that, since the Code was introduced, many landholders have taken this as a justification for removing trees, regardless of whether they are in an eligible area or not. This is becoming a very real and serious problem.

5. **Legislation should set a target of 'no net loss' for ecological communities and threatened species.**

Context: This review could consider ways to further support offsetting mechanisms (e.g. Biobanking) to ensure that removal of any vegetation is offset by similar vegetation in the nearby area. Currently, tree preservation orders in Council are the only legislative mechanism for protecting trees. There needs to be a rigorous study into the value that trees play in the environment and the economic, social and environmental costs of their removal in different situations. This should inform how much developers should pay to offset their activities as well as the locations of these offsets.

Specific responses to the Themes outlined in the Issues Paper

Theme 1: Objects and principles for biodiversity conservation

Q1. Should there be an aspirational goal for biodiversity conservation?

Yes. An aspirational goal for biodiversity conservation is required to set the overall intent of the legislation. This would guide subordinate legislation and policies, provide guidance on actions taken under the act related to biodiversity conservation and assist in the interpretation of the legislation by the court. PRCG staff have observed situations within Land & Environment Court transcripts where the judge has looked at the objectives of the relevant legislation as part of a first principles approach to interpretation of the clauses within the legislation. The goal should address all biodiversity, as it currently does, and not be limited in the first instance to threatened biodiversity. Also, the principles of ESD should be applied to all objectives as is the case under the NPWS Act. However, the definition of ESD

requires review as the current interpretation and definitions give too much weight to the economic component at the expense of ecological and sustainability elements.

Q4. Could the objects of the current laws be simplified and integrated? If so, how?

Yes. The objectives should be simplified to include an overarching aspirational goal for biodiversity conservation that aligns with International policies that Australia is signatory to, as well as Commonwealth policies and legislation. Following this, objectives that are specific to threatened biodiversity protection should be listed. These should pick up on the current TSC Act objectives related to conservation, recovery, habitat management, threat abatement, impact assessment and co-operative management and, after this, objectives that address all native vegetation, fauna and fauna habitat.

Theme 2: Conservation action

General comment: The current BioBanking approach provides a market-based quantitative assessment system that provides a mechanism for conservation actions on private and public land. While not perfect, it gets away from ad hoc applications related to impact assessments and biodiversity offsets.

Theme 3: Conservation in land use planning

Q1. How effective are current arrangements at ensuring biodiversity values are identified early and properly considered in strategic planning systems? How can they be improved?

BioCertification has been applied to the North-west Growth Centres, and is generally supported as a mechanism to identify and address biodiversity early. Problems encountered include the lack of ground truthing of desk top studies and the lack of variety in vegetation and habitat types that are protected within non-certified areas. The majority of areas that will be protected are flood-prone riparian systems that are unavailable for development. Contrary to this, large patches of high-quality Cumberland Plain Woodland containing very high densities of threatened flora species have been certified, thereby resulting in clearing for development. The western Sydney employment area also had some strategic assessments and, while the background studies provided guidance on threatened biodiversity protection, the assessments did not take a quantitative approach and the subsequent planning policies do not support the protection of biodiversity to achieve an improve or maintain outcome.

As outlined in the Background, the PRCG has conducted a fauna richness study and identified high priority sites and habitat corridors for conservation. Similarly, some specific councils have prepared Biodiversity Strategies and/or developed their own habitat corridors map. However, these Strategies do not have any enforcement component beyond the current planning and threatened species legislation, so individual development applications must be assessed on a case by case basis.

Q2. How effective are current arrangements for delivering strategic outcomes for biodiversity and enhancing ecosystem services? How can they be improved?

The E2 conservation zonings within the Growth Centres requires the preparation of Vegetation Management Plans (VMP) to guide the rehabilitation and revegetation of these zones. These areas also contain the majority of the existing native vegetation that is to be

protected as required under the Biodiversity Certification. The requirement to prepare a VMP is contained within the Environmental Planning and Assessment Act, and includes a clause that requires the on-going management of the E2 zones. Currently the majority of these areas will be retained in private ownership, and this has implications for the ongoing protection and specifically maintenance of these zones. The land owners/developers are preparing VMPs as part of development applications, and they generally include a 2 to 5 year maintenance period that have traditionally been prepared for Controlled Activities under the Water Management Act 2000. However, within the Growth Centres the sites are to be managed for conservation, and it is unclear whether or not ongoing management beyond the timeframes of the VMP can be enforced. The issue of public versus private ownership of these E2 areas is also critical to the outcomes, and this should be considered as part of any strategic planning system.

3. How should the effectiveness of strategic planning approaches be monitored and evaluated?

In some situations, current monitoring and evaluation is being conducted at a scale too broad to be able to adequately assess the strategic planning approach on the ground. The monitoring of individual sites across a range of zonings should be undertaken. In addition, a coordinated, centralised system for data collection and reporting would be useful.

Theme 4: Conservation in development approval processes
General comments:

When land is zoned for land uses where there is known ecological value vegetation on site, it is difficult at the DA stage to stop the developer pursuing the highest yield permitted use/s given that they will have usually purchased a site at a high price because of those permitted uses. The pressure is then brought to bear on Council to deliver an approval or appeal or the applicant appeals to the LEC. More needs to be done at a strategic level to ensure that areas of high ecological value have a zoning that limits the end use to a more sustainable solution that can work to with the retention of the ecological community. Whilst Council clearly cannot zone all sites as parks or acquire all sites with high biodiversity values, more needs to be done to reduce the expectations of owners/ applicants by limiting the permitted land uses.

Alternatively, there could be incentives in the provisions to encourage applicants to save significant vegetation on their site by building multi-level buildings that take up less land and, thereby, retain more vegetation. This should enable land use zonings to be better tailored to the ecological value of the vegetation on site.

Another suggestion has been to consider using the Biocertification method more broadly, whereby applicants are levied a fee or contribution to pay for the site they have cleared and that these funds then go towards purchasing or maintaining sites with high ecological value as offsets. This levy could also then contribute incentives to the landowner to retain the vegetation. The current BioBanking scheme could potentially facilitate an approach but it is not currently widely used.

Please note that an Appendix A, which forms part of this submission, has been attached separately.