

Sir,

The attached submission is presented on behalf of the members of the Soldiers Point Community Group Inc., which is based in Ports Stephens, NSW.

Any questions regarding this submission should be directed to the undersigned.

Thank you

Colin Howard

President

Soldiers Point Community Group Inc.

Introduction & Summary:

The Environmental Sub Committee of Soldiers Point Community Group Inc. (SPCG) welcomes the opportunity to have input into the current Biodiversity Legislation Review being undertaken at the direction of the Minister for the Environment. We would hope that the Minister is genuinely acting for the environment and biodiversity in undertaking this review. We do have some concerns in this regard, when reading the introductory paragraph in the documentation provided by the government.

“the NSW Government’s objective to establish a simpler, streamlined and more effective legislation that will:

- ❑ *facilitate the conservation of biological diversity*
- ❑ *support sustainable development*
- ❑ *Reduce red tape.”*

We hope that terms like *simpler* and *streamlined* do not disguise an intention to strip away the communities’ current rights to have their voices heard during the development assessment process. We note that 2 out of the 3 stated aims would appear to be pro-development and have little to do with biodiversity.

At this point in our submission we would like to clearly state that we are not against reasonable and sustainable development that contains a benefit for the community as a whole neither do we wish to be unnecessarily antagonistic toward the Government and its stated aims with this review.

Currently ICAC is dealing with members of this government who have corrupted themselves in their dealings with developers, there is little trust in the community with some aspects of this Governments processes. We would urge the Minister in conducting this review of legislation not to favour the ‘big end of town’ but to be true to the title of his office and look after our state’s environment and the biodiversity within.

We will now raise specific issues that legislation covering biodiversity in our state needs to address. These issues have become apparent to our group recently as we have worked to preserve habitat and critically endangered species in our local area.

We have a critically endangered species living and breeding in our local area, the Beach Stone-Curlew *Esacus neglectus*. Even though it has a high conservation status designation, little seems to be done for it by relevant state authorities. This introduces one issue the review must consider, that of cross agency responsibility. The bird lives in the boundaries of a Marine Park, yet because it’s above the water Marine Parks aren’t responsible. It is viewed as being ‘off- park’ by National Parks because none of its usual habitat is within a National Park. It forages on beaches controlled by Port Stephens Council, but their staff can only do so much in stopping disturbance by domestic animals in particular. This is not an attack on any of the staff of these organisations; they are simply operating within the boundaries of legislation and their individual budget constraints. The result - no one seems to be responsible for protecting the southern-most breeding pair of these birds on the east coast of Australia.

The above issue leads to another point; that of effective enforcement of environmental legislation. We would ask that any review of biodiversity legislation be accompanied by appropriate enforcement provisions and that a genuine budget is provided to force compliance with those provisions. There must be adequate staff to investigate and act on breaches of our State's environmental laws and effective penalties must be applied, not just simply be written in the statutes book. Enforcement should be applied without favour or prejudice wherever needed.

Finally this review of legislation should ensure that the system of environmental offsets should be genuine and effective, not merely lip service to get a proposal over the line. In and adjoining to our local government area there are developments currently under consideration where:

- ❑ offsets are offered over 200 kms from where the habitat loss is occurring.
- ❑ there is a possibility that the land in question has already been used as an offset.
- ❑ where the offsets being offered are unsuitable for their purpose.

Such token gestures should not be accepted, and legislation should ensure that offsets are appropriate and that any improvements needed to such offsets are fully funded by the proponent, not passed on to the wider community.

We would close by reminding the Minister that our environment was here long before anyone of us and certainly before the current State Government came to power. Please, in reviewing the legislation, ensure the protection of our already degraded bushland and waterways. Develop fair and reasonable legislation changes and do not put the interests of the business community above our environment and the wider community.

Submission Details

This submission relates to a review of the Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and related legislation.

It follows format of the released issues paper in an attempt to assist the panel in evaluating critical elements of bio-diversity management, legislation, process and quality control, while providing a Q&A template (marked in Yellow in this submission) in which to respond.

This submission aims to address key issues in the report with particular reference to the experience obtained by our organisation over the last few years with respect to the habitat of a particular, critically endangered, bird species. It relies on first hand observation of the legislative imperatives, and shortfalls experienced over the last three years, in the area of Soldiers Point, NSW.

Theme 1: Objects and principles for biodiversity conservation;

The scope of the review covers the Native Vegetation Act 2003, the Threatened Species Conservation Act 1995 and the Nature Conservation Trust Act 2001, plus parts of the National Parks and Wildlife Act 1974 (see Appendix 1).

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

There should be a strong aspirational goal, e.g. Governments must have an intrinsic responsibility for the environment and species within to ensure long term survival of endangered wildlife.

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

Existing legislative objectives fail to provide clear guidelines to responsible authorities to manage and provide a duty of care to endangered species. Compliance by such authorities is mired in cross-department accountability. Many times it's the other department's responsibility to "DO SOMETHING" and then nothing gets done.

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

To a great extent.

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

The current legislation needs to be integrated to ensure someone is responsible.

Theme 2: Conservation action

Over the past decade there has been a gradual shift by governments to remove these requirements and establish programs that set clear priorities and allow greater flexibility in management approaches.

This approach should be promoted to ensure that owners of land not only see the ultraistic values inherent in native species protection but are incentivised financially to do so. The transfer of Crown land to Native Title is one area of concern. Time and again, in this area, we have seen the transfer of public (Crown) land to native title only to see that land title subsequently challenged in Court by the new owners (normally a local aboriginal community), so that the land in question can be used for commercial purposes. In so doing the State Government (as managers of the Crown Land) abdicate their responsibility to the people on NSW.

Is the current system effective in encouraging landowners to generate public benefits from their land and rewarding them as environmental stewards? Or are current mechanisms too focused on requiring private landowners to protect ecosystem services and biodiversity at their own cost?

There appears to be no incentives to support these stewards. In one case (Boat Harbour), land purchased next door to a residential zone and privately owned and set-aside as an area for native vegetation conservation was challenged by the local aboriginal land Council. They were granted native title over that land and then they subsequently changed that title to allow residential development.

The original owner, living next door, had no say or control over this process.

Legislative controls must be strengthened across the relevant acts to ensure that any land or location established as being of significance to endangered species is protected from future title changes or developments that may impact those habitat areas. Exclusion zones are one way of doing this, but this must apply at a single Government entity level. Too many times Government departments have blinkers on –if it's not directly in their patch they don't engage, leaving it to "SOMEONE ELSE" to fix problems of bio-diversity mis-management. NSW Departments that fall into this category include: Roads & Maritime Services; NPWS; Marine Parks; EPA Etc.

Theme 4: Conservation in development approval processes

This theme is concerned with the ways that biodiversity is considered in the regulation of development that is assessed on a site-by-site basis).

In practice, instruments that require a formal approval (for example, development consent, property vegetation plan) require consideration of an activity's impacts on biodiversity and other environmental values as part of the decision to approve the project. Approvals are often provided on the condition that impacts are mitigated in certain ways. These conditions may include requirements to avoid, minimise and offset impacts on biodiversity.

The ability of consent authorities to make valid assessments of the potential impact of developments is inconsistent. Applicants often engage so called independent contractors who provide reports, in most

cases without true scientific data, in support of the applicant who are paying for the report. This is understandable but not acceptable. Some form of independent authority must be established which proves, at cost to a proponent, independent advice on species impacts.

In one recent case in our area a, so called, independent specialist was paid to produce a report in support of a local development application. This application could have a significant impact on the biodiversity and habitat of a critically endangered bird species, but without scientific analysis, it was concluded that “no species impact study was necessary”.

Notwithstanding the Director General's requirements for this type designated development, years of effort were expended by many parties in fighting this abnormal approach.

The **Threatened Species Conservation Act 1995 legislation** must be further strengthened which makes it clear, concise and mandatory that a species impact statement from an independent source must be a precursor to any development proposal where there is ANY chance of impacting the habitat of listed endangered species. This supports the concept of more objective methodologies which are, **“underpinned by scientific data, to guide the assessment of impacts and how any offsets are to be determined.”**

Mapping the location of listed endangered and critically endangered bird species with NSW would provide some surety and benefit developers in establishing those areas of significance which could affect their future strategic plans. This is particularly relevant to shore birds within an estuarine environment where localised site-based developments often take place.

Does the regulatory system adequately protect listed threatened species, populations and ecological communities? Is there utility in specifically protecting these entities through the regulatory system?

The key word in this question is “adequately”. In our experience the regulatory system makes it clear what is needed to protect listed threatened species, but fails to mandate compliance requirements. The concept of the precautionary principle is well known, yet time and again this principle is ignored completely.

Regulating, even mandating certain activities as a consent condition, “bolts the door after the horse (or in this case the birds) have flown”. The capacity to ensure enforceable, consent conditions, which might mitigate the biodiversity impact of a development, is often left to 3rd parties. The legislation is State based yet the consent authority (and more importantly the compliance accountability) is vested in many cases in a local Council. Time and again we have seen the causality of this. Compliance with consent conditions flows “downhill” to a Council where there is no capacity, either financially or personnel wise, to manage that accountability.

The NSW State based regulatory system should include the capacity at a State level to ensure that consent conditions associated with biodiversity management are held at a State level of accountability and each Department must budget for that compliance activity so that they can fulfill their obligation.

Theme 6: Information provisions

NSW and Tasmania also provide for the statutory identification and declaration of critical habitat (i.e. habitat that is critical to the survival of a listed threatened species). There are four declarations of critical habitat in NSW, three of which occur solely on reserved land.

This raises the issue, once a species is identified in NSW as critically endangered, who defines that their habitat is critical?

If the species is not critically endangered elsewhere, do we ignore the need for habitat protection in NSW? We take the position that as the legislation in question (being reviewed) is for all of NSW, then habitat protection should also apply to all the State.

Take for example the Beach Stone Curlew. This is listed as critically endangered in NSW, yet there appears no capacity to have their identified habitat protected. Notwithstanding the protection afforded these wading birds in the legislation there is no declaration of their habitat in our area of Soldiers Point NSW.



We accept that if their habitat was destroyed or compromised they could fly away to Queensland where they are not endangered, but is that really what we are trying to achieve within this review? - Flick-pass the problem of management of the NSW biodiversity asset base to somewhere else in Australia – we hope not!

We believe every habit of every critically endangered species needs the protection of our NSW laws and the capacity of the State Government to manage those protections of those habitats.

End of submission