

Comments on Independent Biodiversity Legislation Review Panel

Issues Paper August 2014

General

A major and significant omission in the overall strategy for biodiversity conservation is that there is no provision in the strategic framework for actions for the conservation of those species, across all biological groups, which are dependent on particular succession stages following disturbances from fire, storms or other similar events. Provisions for these disturbance species needs to be incorporated into the management of the National Parks and Nature Reserve systems and also into the development of habitat corridors that are developed to link other areas of habitat. This essential aspect of biodiversity conservation is not addressed in the Issues Paper.

Theme 1: Objects and principles for biodiversity conservation

1. Yes, there needs to be an aspirational goal for biodiversity conservation. This goal would include the balancing of the human requirements to use the natural resources and yet the need to ensure that there are sufficient resources for future generations.
2. The existing legislative objects are still valid. Whether or not the existing objects align with international or national frameworks and agreements must be assessed on a case by case basis. It may well be that an international agreement could be detrimental to biodiversity at the state or national level.
3. The current objects within the *Threatened Species Conservation Act 1995*, *Nature Conservation Trust Act 2001*, and *National Parks and Wildlife Act 1974* are being fulfilled. In the *Native Vegetation Act 2003* Object (d) [Appendix 2] there is no definition of the phrase "...high conservation value". An objective definition of this phrase is required to make this object workable in the legal framework.

The objects in the *Native Vegetation Act 2003* have been severely compromised by the recently introduced Codes of Practice for land clearing. These Codes should be halted until there has been adequate consultation and thorough analyses of the impacts of these Codes have been evaluated.

4. The objects of the current laws are adequate and can not be simplified. The *Native Vegetation Act 2003* already contains provision for the protection of species but the Act does actively promote restoration and enhancement of habitats. For these reasons the *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995* have very different fundamental objectives and can not be linked into a single legislative Act. Also, the compliance processes relating to these Acts needs to be separate as they are at present.

The objects of the *Nature Conservation Trust Act 2001*, as listed in Appendix 2, could be included in the objects of the *National Parks and Wildlife Act 1974* because they align with the practical land management functions of the *National Parks and Wildlife Act 1974* as shown in the administration of National Parks.

Theme 2: Conservation action

1. The current system of Incentive Property Vegetation Plans is working well. However, more landowners would become involved in conservation projects on their land if there was greater public reward and fewer restrictions on requirements in perpetuity.
2. Refer to item 1, above.
3. Perhaps the most effective and successful organisations in facilitating and managing conservation on private land are the Landcare Network and Greening Australia. These organisations are successful because the local landowners are the persons making the decisions and have control of the conservation projects. Generally, those organisations in which the local landowners are disenfranchised from the management decisions are ineffectual with regard to long-term conservation measures.

Business or similar commercial organisations that enter into legal contracts with the landowners are generally ineffective because the landowner has no control over future environmental conditions, e.g. weather, particularly drought conditions. Also, for the same reasons conservation outcomes cannot be assured to meet contractual specifications.

4. Government agencies are the best equipped to provide state-wide and landscape scale information on priorities for conservation. At these scales the general priorities would be for vegetation communities and equally for Threatened Species that have specific habitat requirements. As a general principle the funding focus should be towards preservation of vegetation because ultimately, all animal life depends on the plant communities for their survival.
5. Projects funded by the NSW Environmental Trust incorporate a "Monitoring and Evaluation Plan". This is a very good template for assessing and evaluating conservation projects. An improvement would be the provision of additional funding so that projects can be monitored beyond the three years of a normal project.
6. All trade-offs must be assessed at the landscape and regional scale. The critical factor relating to trade-offs is that the habitat connectivity can be maintained, albeit through other avenues than the area for which the trade-off has been specified.
7. Generally the system is forward looking but it is also driven by dealing with legacy impacts.
8. The current practices are moulded by the legislative framework. This is certainly evident in the funding programs available to private landowners.

Theme 3: Conservation in land use planning

1. Biodiversity Certification is the best available conservation strategy in strategic planning. Biodiversity Certification can ensure that connectivity is maintained at the landscape scale and that there are no small residual parcels of habitat land that can be isolated and surrounded by urban development. These isolated land areas are useless for conservation purposes and are a nuisance for councils to manage. At present Biodiversity Certification Orders are only in force for ten years. This period is too short because many urban development projects take more than ten years to fully develop and this lag period allows revision of master plans with potential erosion of the Order's conservation values. A more satisfactory time period would be for a Biodiversity Certification Order to remain in force for 25 years.
2. A significant improvement for the delivery of strategic outcomes for biodiversity conservation would be for all Local Government Areas to have LGA wide assessment

and mapping completed for vegetation communities, species habitats, and potential connectivity corridors across the LGA.

There is a major need for developers and the public in general to understand the importance of biodiversity conservation as an essential component of maintaining human communities. The Communities in Landscapes project has been a good example of generating community understanding of this important aspect of conservation.

3. At the Local Government level the changes in personnel and particularly with councillors are a source of instability in strategic planning. The reasons for particular plans being adopted become lost with changes in personnel and the written documentation too readily is discarded with the passage of time. Effective monitoring and evaluation of strategic planning for conservation requires maintenance of strategic planning decisions for at least 40 years. It is this body of information that would allow effective evaluation of planning decisions.

Theme 4: Conservation in development approval processes

1. The current framework for assessment processes was working satisfactorily, particularly with regard to Section 5A of the EP&A Act 1979. However, the recent introduction Codes of Practice, especially for clearing of vegetation, has created many contradictions and conflicts with previous planning decisions. An immediate cessation of these Codes of Practice is required so that these conflicts can be resolved.
2. Every development application has inherently differing types of impacts and related severity of impacts. As a consequence it is an inefficient approach to attempt to establish a single methodology for all developments. Each development needs to be considered separately on its merits.
3. There is a need for a range of assessment methodologies to accommodate the diversity in development projects. However, it must be well publicised as to which methodology should be used in what circumstances. A significant failing of all methodologies is with respect to habitats of Threatened Species. For most Threatened Species we do not have adequate information on habitat requirements and consequently the continued use of assessment methodologies could be detrimental to some species in ways that we do not understand and cannot detect until the failure is all too obvious.
4. The regulatory system provides satisfactory protection of Threatened Species. A weakness of the current system is that there is no objective process by which species can be delisted as additional information on abundance and distribution becomes available.
5. From my experience I think that New South Wales and Australia in general is very much at the lead of conservation processes with regard to development. Some elements of the system in the United Kingdom could be adapted to the Australian situation, particularly the process of preserving habitats along hedgerows the incentive payments to landowners.
6. The term "lost development" is value loaded and depends on the values of individuals. The provision of Biodiversity Certification has largely resolved conflicts related to this topic. An increased public awareness of the landscape and regional scale conservation values will help to defuse conflicts related to the perception of "lost development".
7. The loss of corridor connectivity can not be adequately addressed through providing offsets, primarily because any offset is in a new location and this may or may not be suitable with regard to vegetation age and structure.

8. Improved and more appropriate location of offsets can be achieved with LGA wide information on vegetation communities and habitats. This information will allow assessments for offset requirements up to decades in advance.
9. Self-regulatory codes of practice fail because the responsibility for the decisions is thrown upon individual landowners who generally do not have the knowledge or skills on which to make the appropriate decisions. Accreditation schemes are difficult to regulate or measure compliance and would therefore become inefficient. They are potentially also vulnerable to corrupt practices.

Theme 5: Wildlife management

1. Generally there is good management of these listed threats. Improvements can be achieved by increased staff members to inspect and police compliance in the field.
2. Generally the *NPW Act* has had a positive change in the welfare of animals.
3. Marine mammals are effectively protected especially with protection of land based colonies.
4. Generally the licensing arrangements are working satisfactorily. With regard to the operation of Animal Care and Ethics Committees, it seems to be unnecessary for a researcher to renew their Research Authority each year with a payment of \$100.00. It is adequate to provide an annual report and renewal of the Research Protocol each three years. It would also help those on the ACEC Committees if they had clearer objective criteria to guide their assessment of research applications.
5. There is currently appropriate regulation only for the sustainable use and trade in kangaroo species and native animals used in research projects and licensed breeding facilities. There is inadequate regulation for the trade of native animals for other purposes across all fauna groups, including butterflies.

Theme 6: Information provisions

1. Information on the different kinds of value the public place on biodiversity can be generated using any of several kinds of established techniques for gathering these data. The critical aspect of this methodology is to ensure that the questions are framed in a non-suggestive manner and they encapsulate the spectrum of opinions. As well as state-wide information there is a need to gather regional information in alignment with Local Land Services Areas.
2. On public estate lands there should be more routine sampling of biodiversity, perhaps every three to five years and the results evaluated to generate information on the long-term trends. Forests NSW have already established monitoring sites to collect long-term biodiversity trends.
3. Under the current system the data on Threatened Species and biodiversity is readily available and generally credible. However, users of the NSW Wildlife Atlas should be aware of the caveat concerning errors and omissions. In situations where these possible errors have been questioned, further survey and related research has resolved the conflict. The custodians of these data bases and species profiles need to be updating the information on a regular basis and the date provided with the last addition was included.
4. The Threatened Species listing process is essential for guiding conservation action. The present system is working well.

5. Threatened Species listing should not be decoupled from guiding decisions on conservation action. The two aspects are inter-linked with the listing process incorporating information on current status of the species and thus the information flows on to conservation actions and regulatory processes.
6. Both national and state lists of Threatened Species are needed for adequate conservation of a species at the level of the species. The relevance of having lists at both levels becomes apparent when one considers migratory and nomadic species and also species whose natural distribution is predominantly in one state but at the margins the distribution extends slightly in to other states. It is the margins of a species' distribution that the species has the most critical interactions between the environmental factors and genotype which ultimately determines the evolution of the species to ever changing environments. Consequently it is important to the species for the states to conserve the species even though it only occurs in a small part of the state.
7. The listing of Critical Habitat for a species is a useful tool for biodiversity conservation because it provides for identification of areas that provide habitat patches that have a significant function in forming "stepping stones" through the overall species' distribution. The inclusion of critical habitat should be on a needs case for the species of interest.
8. Areas of private conservation should be collected provided there is adherence to all necessary privacy considerations required by the landowner. Generally this information is collected by Councils because the information is required for inclusion on 149 certificates when the property is sold. With due consideration to privacy there is no reason to prevent the information also being collated at the state level.

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