



25 February 2025

Biodiversity Act Consultation Team

Email: biodiversityact@sa.gov.au

Comments and Recommendations Regarding the Biodiversity Bill

Dear Colleague,

Thank you for your efforts in preparing and consulting on the Biodiversity Bill. The City of Port Lincoln holds the surrounding nature and natural environment in high regard, and it remains a matter of critical importance to the community. However, it is equally essential that the City area remains conducive to development, especially for housing, services, and employment purposes.

The affordable provision of housing within the City of Port Lincoln is a primary concern for both the Council and the community. It appears that the Biodiversity Bill may conflict with these priorities, particularly as it seeks to extend the current restrictions under the Native Vegetation Act in areas that have been appropriately zoned for residential development. Both the current Native Vegetation Act and the proposed Biodiversity Bill, in their present form, impose disproportionate administrative costs and SEB taxes, which threaten the viability of residential development in the City.

1. Native Vegetation Taxes are a Restriction on Housing Development in the City

The Bill asserts that the availability of housing or infrastructure development in South Australia will not be restricted. However, this assertion is inaccurate, as restrictions already exist under the current Act. We are concerned that these restrictions will be further compounded by the proposed Bill.

At present, Council officers and developers in Port Lincoln are encountering refusals and costly SEB contributions for residential developments in areas properly zoned for housing (Suburban Neighbourhood Zone). It is noted that although the number of refusals may be low, the additional layer of administrative burden and cost acts as a deterrent prior to the lodgement of development applications. There is a general view among regional developers is that one does not purchase land with native vegetation for development as it is simply too hard.

The *City of Port Lincoln Housing and Development Forum 2024*, made it evident that the understanding of the community and developers, the Native Vegetation Overlay is the biggest restriction affecting the viability of investment in new housing development within the City of Port Lincoln Council boundaries.

Therefore, we recommend that lower SEB rates or exemptions be considered in areas zoned for Residential or Employment purposes, where infrastructure is already available, and the only obstacle is the native vegetation. Similarly, we request that rural and regional cities, especially areas appropriately zoned for residential and employment purposes, be exempt from the Native Vegetation Act and the proposed Biodiversity Bill, akin to the provisions allowed for metropolitan Adelaide.

2. Concerns for the Proposed Expansion of Powers over Plants > 20 years old

We understand that the Bill seeks to improve protections for planted native plants by introducing new protections after they reach 20 years old, such that they will be subject to the same native plant clearance consent processes and exemptions as existing native plants.

This is **objectionable** on grounds that it would impose substantial costs and liabilities on Local Governments' operational management of parks, reserves, and road verges, or create a disincentive to planting native vegetation in the future, because of the projected restrictions and costs in managing that planted vegetation in the long-term future.

The Bill, and accompanying information, appear **to lack sufficient details** on how the 20-year-old planting controls would be enforced? Aerial imagery? How will Planners be expected to determine this for development applications for example, for new dwellings on a vacant allotment that was replanted some time ago?

The Bill refers to the excluding of 'domestic gardens' but what exactly does that mean? Especially when looking at a rural living type property in Port Lincoln, located in the Suburban Neighbourhood Zone, that had trees planted by a previous landowner and date of planting unknown. This will also impact many parcels of public land currently owned by Council where plantings may have occurred some years ago.

If plants planted 20 years or more are to be protected (excludes domestic gardens), this will impact new land division areas, public land, and development in non-domestic garden situations. This will apply in commercial land development areas in Port Lincoln. Further clarification about implementation of the above for planning assessments is required.

Clear and simple exemptions should be in place for rural and rural living areas, enabling the harvesting of planted native timber for fence posts, firewood, and ancillary structures on the land. Similarly, as with the long-standing exemptions applied interstate, exemption should be provided for the harvesting of planted woodlots.

3. Specific Provisions are Required to Prioritise Bushfire Prevention Operations

The current Biodiversity Bill lacks clear provisions to enable and prioritise the management of bushfire hazards, particularly within 10km of any urban area or regional city or settlement.

Bushfire protection for rural settlements and regional centres, primarily by broadacre fire management of native vegetation that poses a bushfire hazards in the vicinity of those urban centres, should be made a clear priority, ensuring those essential public safety operations are kept beyond political and ideological biases and pressure, and are exempt from unreasonable administrative obstructions.

4. Local Government Representation on the Biodiversity Council

The draft Bill does not currently provide for specific Local Government representation on the Biodiversity Council, unlike the existing structures under the Native Vegetation Board and Coast Protection Board. Local Government plays a critical role in environmental management at the community level, balancing conservation efforts with urban development and infrastructure needs.

Given this, Local Government should be explicitly represented on the Biodiversity Council to ensure decision-making reflects the unique challenges and responsibilities councils face in biodiversity management and bushfire prevention operations.

5. Cost Shifting and Role of Authorised Officers

The draft Act risks shifting enforcement responsibilities to Local Government by allowing Local Government Officers to become authorised officers under the Act. However, councils already operate with limited resources and do not have the financial or personnel capacity to take on additional regulatory and enforcement responsibilities without adequate funding from the State Government.

To prevent further financial strain on councils, Local Government recommends that:

- There be no mandatory requirement for Local Government Officers to act as authorised officers.
- The State Government provides full financial and training support for councils that opt-in to enforcement roles.

6. Inconsistent Clearance Provisions for Local Government

The draft Act provides exemptions for clearance activities related to critical infrastructure and road construction for the Commissioner of Highways, yet no similar exemptions are afforded to Local Government.

Local Government plays a key role in delivering the State Government's Housing Roadmap, including the provision of key service infrastructure and road construction to support housing growth. The lack of clearance exemptions for Local Government creates unnecessary administrative and financial burdens on councils, which rely on community funding.

To address this inconsistency, Council requests that equivalent exemptions be extended to Local Government for critical **infrastructure and road construction**.

7. Duplication of Responsibilities with the Coast Protection Act

The Draft Biodiversity Act supersedes the Native Vegetation Act, yet the Coast Protection Act remains unchanged. The Coast Protection Board's responsibilities include erosion control, pollution mitigation, coastline restoration, and management of coastal ecosystems, many of which overlap with the objectives of the proposed Biodiversity Act.

This appears to create a duplication of responsibilities, leading to potential confusion and inefficiencies. Local Government seeks clarity on the relationship between the Biodiversity Act and the Coast Protection Act, particularly in relation to referral clearances and decision-making responsibilities.

8. Provisions for Biosecurity-Related Clearances

The draft Act does not clearly outline exemptions for biosecurity-related clearance activities. Effective biosecurity management requires timely clearance of invasive species, control of pest plants and animals, and responses to biosecurity threats. The absence of explicit provisions for biosecurity clearances raises concerns about potential legal and administrative barriers to essential land management activities.

Council requests clear guidelines on biosecurity-related clearance exemptions within the Biodiversity Act to ensure councils can undertake necessary biosecurity work without undue regulatory delays.

9. Technical and Procedural Issues

Please find further details of Technical and Procedural Issues in the attached Appendix

Thank you for allowing Council to comment on this Biodiversity Bill. Should you require any additional information or clarification of the matters discussed in this letter of reply, please contact [REDACTED] General Manager of Environment and Infrastructure.

Yours sincerely

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APPENDIX 1: Technical and Procedural Issues:

External Agency Referrals:

- The new Bill designates the NPCAC as the agency for referring development applications involving clearance of native plants. The concern is whether NPCAC members' selection criteria will change and if the referral process allows for formal requests for additional information. This issue is already an area of concern in previous referral cases, where applicants weren't given the chance to amend their proposals after initial rejection.
- The introduction of four **separate councils under the Act** raises concerns about **how it will integrate with the existing PlanSA referral system**. During stakeholder webinars, it was indicated that in some cases, **separate applications would be required for vegetation clearance**. This creates uncertainty regarding:
 - How **applicants will be informed** of these additional requirements.
 - The **impact on regional areas**, where **clearance impact studies may require specialist expertise from outside the region**, leading to significant cost implications for development.
- Council requests **clarification on the referral process**, including how it will be communicated to applicants and how cost burdens will be addressed for regional areas.

Overlays:

- There are questions about how the new Biodiversity Overlay will affect the existing Native Vegetation Overlay. The City of Port Lincoln wants clarity on whether all areas currently under the Native Vegetation Overlay will be automatically replaced by the new overlay or if there's an opportunity to review the areas under the new legislation.
- There are also concerns about whether the new Regulated Clearance Area will entirely replace the existing Native Vegetation Overlay. Additionally, the Bill may impact other overlays and require additional referral triggers, which needs clarification.

Mandatory Information – Schedule 8 of the PDI Regs:

- The new Bill may require additional documentation or information to substantiate that native plants are more than 20 years old. This might include reports from arborists or other experts to support referrals to the NPCAC. Clarification on the exact nature of the required documentation and the level of detail needed is necessary.

Appeals for Clearance Requests:

- One of the most pressing questions is whether the new Bill will provide an opportunity for appeal if decisions made by the NPCAC are disputed. As it stands, applicants may not have a clear avenue for appeal in the clearance decision-making process, and this may need to be addressed in the final Bill.