1 March 2024

Attn: Biodiversity Coordination Unit

Department for Environment and Water

GPO BOX 1047, Adelaide SA 5001

biodiversityact@sa.gov.au

To whom it may concern

Re: Trees For Life submission: Developing a Biodiversity Act for South Australia, Discussion Paper

Thank you for the opportunity to provide comment on the development of a Biodiversity Act for South Australia. Trees For Life is a community-based South Australian environmental NGO (charity) that works with supporters and partners to conserve and restore our State's landscapes so nature can flourish. For this reason, we have a strong interest in the development of an effective Biodiversity Act for this State that protects and enhances our natural environment. We have over 5000 supporters and support around 2000 active volunteers.

In some parts of our fragmented environment less than 10% of the original vegetation remains. The consequences of extensive clearing are evident with some 26 plant, 23 mammal and 2 bird species now extinct in our state alone. It is urgent we create lasting change for South Australia's environment and we see the SA Biodiversity Act as a critical piece of legislation to arrest the decline of our native habitat and protect our States' biodiversity.

As an overarching comment, Trees For Life values South Australia's natural heritage for its intrinsic worth and is also committed to biodiversity conservation for the wide range of benefits it provides to South Australia. We support the State Government's commitment to develop a new Biodiversity Act for SA to improve its protection and management and in principle we support the majority of the directions outlined in the Discussion Paper. However, we believe the reforms outlined have not gone far enough to secure nature and biodiversity, now and into the future as its stated goal. This is a rare opportunity to create generational change and the measures outlined, though they are an improvement and contemporise some aspects of our state legislation, are not ambitious enough to halt the crisis we face.

I'd welcome the opportunity to speak to these comments further on [redacted]

Yours sincerely



Vicki-Jo Russell AM

Acting CEO, Trees For Life

Recommendations:

Biodiversity underpins a strong economy (page 3)

Trees For Life (TFL) members value South Australia's biodiversity for its own sake and for the myriad of personal, social, economic and ecosystem services it provides. Two state-wide government surveys over the past decade have demonstrated that over 90% of South Australians believe looking after nature is of critical importance, and that for many, their connection to nature is integral to their reasons for choosing to live and work here.

The context setting section on page 3 fails to recognise most of these values and did not make a strong case for conserving biodiversity. Instead it focused on emerging opportunities with renewable energy and associated mining activities, which are currently being rolled out at the cost of local biodiversity. As I understand the reasoning put forward, we are at risk of losing the competitive advantage with renewable energy and will therefore fail to attract development and energy export sales if our biodiversity management is deemed unsatisfactory. Therefore, we need an Act that shows we meet these expectations.

I believe there was a significant opportunity lost in this document to generate support from industry and business by engaging them in the fundamental and widespread benefits of biodiversity to our economic base and the State's future. This failing speaks to the need to develop a strong, clear and compelling State narrative about the role of biodiversity in sustaining current and future life and livelihoods and to actively engage others in this story. We strongly encourage the government to lead on such conversations over the remaining period of the Act's development.

It is also a concerning juxtaposition that the protection measures to ensure we meet international, national and state expectations to preserve biodiversity in the pursuit of renewable energy generation, mining and further development alluded to in this section, are largely absent from the Discussion Paper.

We need a Biodiversity Act that delivers on an ambition matching the urgency, importance, scale, and depth of the crisis facing South Australian nature and this was lacking in this consultation draft. We sincerely encourage the State Government to be more ambitious with the Act's scope and influence including affording primacy for nature to protect at risk species, populations and ecosystems.

It was very challenging to judge how effective the proposed Act would be in strengthening the State's nature and natural resources law framework without reference to these interactions. We urge the government to ensure that the introduction of a Biodiversity Act adds value and does not weaken or otherwise undermine the strength of existing South Australian environmental legislation.

TFL also supports legislating standards for all public consultations undertaken under the Act, including the proactive encouragement of First Nations people involvement and consultation.

A new Biodiversity Act (page 4)

TFL support the goals, opportunities and benefits of a new Biodiversity Act outlined in this section which provides context and a touchstone for assessing the topics presented.

Topic 1 – Biodiversity and South Australia's First Nations people

TFL supports the ideas proposed in this section. Providing a platform to recognise cultural protocols and conventions is appropriate, will foster better practice and deliver widespread benefits. It will be important the Act identifies how First Nation's involvement and consultation will be enabled and facilitates appropriate recognition of cultural IP in government contracts etc.

Topic 2 – Avoiding impacts

TFL supports the application of the mitigation hierarchy. This is not a new concept; however, it is unclear how the Act will formalise its use in statute. It is also critical that the hierarchy is either preceded or includes a level stronger than 'avoid' akin to 'unacceptable impacts'. At risk species, populations and ecosystems are not replaceable or dispensable and must be provided greater protection than existing measures or the trajectory is clear – they will disappear. The time for accommodating every development as a means of providing 'balance' has to end.

The effectiveness of offsets to 'replace' losses or encourage avoidance is not supported by evidence. However, should the new Act recognise them in the hierarchy it is critical they be used only when it is truly in the broader community's interest and when all other mitigation measures are not feasible. Offsets must also deliver a clear net gain for biodiversity, and require the availability of a like-for-like environmental offset. Post approval condition setting is not acceptable.

Topic 3 – Transparent decision making

TFL supports requirements to demonstrate evidence in decision-making and compliance with the mitigation hierarchy and ensure this information is available to the public. We also support strong mechanisms for public consultation and third-party appeals. We also support built in mechanisms to review effective delivery of the Act.

We do not support framing the Act against the principles of ecologically sustainable development (ESD) and suggest instead an Object that focuses on sustaining and enhancing healthy ecosystems. ESD is no longer best practice and establishes a compromised position for nature from the outset. Instead, a Biodiversity Act should be underpinned by strong ecological principles and seek to level up the playing field for nature with strong regard in decision making across government and industry.

We support suggestions to review and apply lessons learned from the Independent Review of the Landscape South Australia Act (2019), with particular regard to the findings on the ESD-styled objects of that and the previous NRM Act.

Topic 4 – Threats to biodiversity

TFL supports a framework for the identification of threats to biodiversity within the proposed Act. The effectiveness of tools such as Threat Abatement Plans (TAP) is not clear, particularly when

inadequately resourced. To qualify for a TAP, threats have to be widespread and deeply impactful such as widespread invasive species, so mitigating is often expensive, fraught and too late to be feasible. What is more effective is to prevent new incursions, eradicate where feasible or restrict the further spread and/or impact of newly established threats and we'd welcome this more proactive approach in the Act.

Topic 5 – Assessing the risk of extinction

TFL supports the establishment of a process for identifying, listing and managing at risk species in South Australia and the creation of a scientific committee or the like to facilitate this process and ensure input from professional and amateur experts including a provision for community listing nominations.

TFL has raised previously our concerns with adopting the national Common Assessment Method (CAM) for listing as it does not recognise the rare (rare and near threatened equivalents) category and it does not allow States to rate a species differently from the national listing, even when it may be more at risk in that State. Creating a listing process under the SA Biodiversity Act overall should also lead to greater protection for species in South Australia and the Discussion Paper does not provide directions for this beyond the possibility of a planning instrument.

Topic 6 – Biodiversity planning and reporting

TFL supports legislating the requirement for a state-wide biodiversity strategy that is regularly reviewed, monitored, and reported upon. This instrument should be strategic, have SMART actions focused on achieving outcomes, encourage delivery partners and identify mechanism/s for partial funding to leverage other investment.

Topic 7 - The benefits of information

TFL supports legislating a framework for the collation, storage, sharing and public accessibility of biodiversity information, data, and knowledge, where it is in the public interest to do so, and where there are appropriate cultural protocols with First Nations people in place.

Topic 8 - Achieving 30 by 30

TFL supports expanding schemes to further support the establishment and management of conservation areas on private and other land and to provide additional financial and technical assistance to landholders with covenants in place. We demonstrated this support through our involvement in the previous Heritage Agreement Grant program run in partnerships with Nature Foundation SA, Nature Conservation Society of SA and DEW. We also support the exploration of a range of models for protected areas on private land and community management of protected land, where set up appropriately to succeed. We are keen to see good practice recognised and rewarded.

It is unclear how such provisions would interface with mechanisms set up within the Native Vegetation Act, National Parks and Wildlife Act and SA Landscape Act. The net result should be

more effective options for protecting, managing and investing land for conservation purposes. The SA Biodiversity Act should reaffirm the role, status and safeguards for SA's protected area network.

TFL also supports the establishment of Enhanced Protection Conservation Covenants and welcomes the opportunity to explore the role of a resourced independent statutory conservation trust as ideas outlined in the Australian Land Conservation Alliance's submission to the SA Biodiversity Act.

Topic 9 – Biodiversity – a shared responsibility

TFL supports the premise of a common biodiversity duty of care and for such a premise to be supported by education, incentives and compliance.

It is extremely difficult to see how such a provision would be applied in the absence of a strong set of acceptable behaviours and responsibilities and significant penalties. It is also unclear how this duty of care would interface with similar responsibilities as outlined in the SA Landscape Act.

Topic 10 – Consequences of doing the wrong thing

TFL supports increasing costs associated with all mechanisms to drive compliance and a consistent application of the mitigation hierarchy.