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Biodiversity Coordination Unit
Department for Environment and Water
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To whom it may concern

Administrative Submission on Draft Biodiversity Bill.

The City of Onkaparinga welcomes the opportunity to contribute to the state government's development of a new *Biodiversity Act for South Australia*. Further to our previous submission on the draft Biodiversity Act discussion paper, we acknowledge the complexity of developing and streamlining legislation, and many of the items raised have been addressed in the proposed Bill. We provide additional feedback on what we consider to be missed opportunities, lack of clarity or inconsistencies that require further consideration.

About City of Onkaparinga

The City of Onkaparinga is the largest metropolitan local government by population in South Australia. Our 178,500+ residents represent 10 per cent of the state's population. Located on the southern urban fringe of the Greater Adelaide area, we span urban centres, low and medium density suburbs, rural areas and townships.

Our diverse and varied landscapes include 31km of coastline, beaches and coastal dune areas, riparian waterways, wetlands, arable land, and national and conservation parks. They incorporate important biodiversity sites such as the Onkaparinga River National Park, Sturt Gorge Recreation Park, Aldinga Conservation Park and Washpool, and Adelaide hills face.

Nature and the environment are consistently identified as matters of critical importance to our community. Recent engagement conducted in the development of our newly adopted Community Vision shows that our community believes their natural environment is the 'best thing about living in Onkaparinga' and that environmental issues are key priority areas for council to continue to focus on in the future. A 'valued natural world' is a key result area for our Community Vision with a goal to: *Increase collaboration on new and traditional approaches to protect and regenerate natural areas and biodiversity.*

The City of Onkaparinga continues to advocate for the environment, including through our submissions to the 2018 review of natural resources management arrangements, Planning System Implementation Review (2022), Parliamentary Inquiry into the Urban Forest, Independent Review of the Landscape South Australia Act 2019, and the draft Greater Regional Adelaide Plan and draft Biodiversity Act discussion paper consultations (2024).

We also engage directly with state and federal Members of Parliament on matters such as vegetation management standards, invasive pest plant and animal species, bushfire management resourcing and funding for biodiversity in our state.

Summary of Key Points

The Biodiversity Bill presents a much-needed step for protecting, managing and restoring our natural environment, bringing it closer to aligning with national legislation. A new Act must constitute a strong foundation for positive action to reverse biodiversity decline, have clear interaction with other relevant Acts to ensure biodiversity protection is prioritised, establish a robust compliance and enforcement framework, and be supported by appropriate investment in the agencies and programs that will deliver on its objectives.

We support the aim of the Biodiversity Bill to address the issues raised through consolidating existing legislation and introducing stronger protections, including tougher penalties for biodiversity harm and provisions for ecosystem restoration, but feel the draft Bill may not quite have achieved the desired outcome. Whilst the Bill acknowledges the urgent need to address biodiversity decline, it appears to have missed many opportunities to take the transformative thinking required for this to occur.

The inclusion of a general duty to prevent non-trivial harm to biodiversity and the requirement for a State Biodiversity Plan are commendable initiatives that could lead to more proactive conservation measures, and are considered a positive step, however we feel additional clarification around what constitutes 'harm' is needed.

The Bill largely focuses on regional and rural biodiversity, and whilst the entirety of the City of Onkaparinga is covered in this legislation, it appears to have missed the opportunity to address the critical role that other urban ecosystems play in conservation. The Adelaide metropolitan area is home to numerous areas of threatened ecosystems, particularly in coastal areas, riverine corridors, and the foothills—all of which provide critical habitat identified in the draft Urban Greening Strategy that should be formally recognised under the Act. This is particularly important given the ambitious revegetation initiatives of many metropolitan councils. We would like to see improved protection and connectivity of native vegetation from our council area towards metropolitan Adelaide. This is particularly important along the coastal zone, through the Sturt River corridor and along the southern foothills.

The ambitions of a new Biodiversity Act will not be successfully realised without an initial assessment of the current condition and value of biodiversity as a whole, and current funding and management arrangements, in addition to and alongside the measures outlined in the discussion paper. The Act should help to improve overall coordination of biodiversity across multiple stakeholders which is critical to successful outcomes.

Australia has committed to the Kunming-Montreal Global Biodiversity Framework and the state government acknowledge that habitat loss and degradation is the most dominant cause of species loss, followed by invasive species and diseases, pollution, adverse fire regimes and climate change. Considering this, state funding for biodiversity initiatives must be commensurate with the scale of the problem and sufficient to meet the goals, targets, and aspirations of legislative frameworks. Current state funding arrangements remain worryingly inadequate for the scale of work required and are insufficient to stop, let alone reverse, declining environmental trends.

Key points for consideration in the development of the new legislation are summarised below:

- We welcome and encourage a strategic approach to managing biodiversity, gathering data and mapping for baseline purposes. Consideration should be given to include regional mapping as a requirement for the associated regulations relating to Section 159 of the Biodiversity Act. Mapping of biodiversity data and ecosystems at a regional level and standardised mapping for ongoing local data management and monitoring will be critical to delivering real change.
- Whilst we acknowledge that the proposed Act will help to streamline existing pieces of legislation, it is at risk of not achieving the intended outcome of improving the existing confusion between existing legislation such as the PDI Act and *Native Vegetation Act 1991* (NV Act). Apart from consolidation and improvements to the PDI Act, it is not clear that the clearance application process will improve considerably apart from areas declared critical habitat (See Part 1, Section 4 and 'Related amendments').
- We reiterate our position that appropriate resourcing needs to be committed to achieve the intentions and objects of the proposed new Biodiversity Bill. This will require a significant increase in state government investment in biodiversity programs and initiatives, which remains worryingly inadequate to address the scale of environmental decline in our state.
- There is a significant missed opportunity to extend the application of the Act for clearance purposes and protections into the metropolitan area. As identified in the urban greening strategy for South Australia, a large proportion of biodiversity is located within the urban area and will be increasingly at risk, and important, moving forward.
- We recommend that additional clarifications and definitions are provided to help improve interpretation of the Act as outlined in the submission. This includes the definition of what constitutes 'harm' under the general duty.
- Much of the proposed Act references regulations, policies and guidelines that are yet to be developed which limits the feedback that can be provided. It is imperative that these are developed to align with the introduction of the new Act to ensure appropriate implementation can be achieved and avoid any negative impacts to native vegetation or biodiversity if it does not.
- We support the increase in transparency of the administration of the Act and separate allocation of funds, but not the application of the funds for the purposes of administration of the Act.
- We reiterate the state government obligation to consider road safety, consistent with *South Australia's Road Safety Strategy to 2031* which states that 'road safety will be a key criterion in all decision making frameworks for investment decisions and policy setting'. We understand that integration of this consideration will be addressed via updates to documents such as the Department of Infrastructure *Vegetation Impact Assessment Guideline* in consultation with stakeholders including local government.

- The City of Onkaparinga supports the proposed powers for the Environment, Resources and Development (ERD) Court to enforce a breach of the Act through the making of 'no development' orders. This will, as noted, eliminate any incentive to circumvent native vegetation / biodiversity legislation.
- We support the proposal to declare the Biodiversity Act as a Special Legislative Scheme for the purposes of the PDI Act, and the recognition to consider biodiversity at the Code Amendment stage.
- We recommend that there is a need to review how the (proposed) Biodiversity Act works with the PDI Act, together with more accessible and better education and information for both applicants and planning practitioners.

Part 1: Preliminary

The City of Onkaparinga:

- Welcomes the extension to the definition of 'plant' to acknowledge the broader species that have ecological significance. This was highlighted in our previous submission.
- Supports in principle adopting the expanded definition of native plant as per the *National Parks and Wildlife Act 1972* (NPW Act) with some notes for consideration:
 - Whilst we acknowledge the need to cater for a changing climate, it is important to ensure that additional problems are not introduced as a result. We highlight the increased importance of the excluded species list and understand the complexities involved in implementing this. For example, managing the impacts of species that can become problematic such as certain species of acacias (e.g. *acacia cyclops*, *acacia longifolia* var. *longifolia*). These have the tendency to develop into local weeds.
 - How will this be managed and what will be the administrative implications? We would hope that Local Government will have opportunity to input on the development of this list to help address these issues.
 - We express some concern over the potential financial and administrative burden this will add to the current amount of work for clearance applications and sufficient authorised staff to undertake the work.
- Questions the impact of the application of Section 4:
Interaction with other Acts
(1) Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

Whilst we support the attempt to streamline the interaction of legislation, we query the capacity for this clause to resolve the existing confusion and issues that currently exist between the different pieces of legislation. For example, the proposed mechanism for approvals relating to Regulated trees and clearance between the proposed PDI Act appears to remain similar to that which currently exists.

- Question the lack of application to the broader Metropolitan area. Urban biodiversity is essential to the development of a liveable and sustainable community. Green spaces, creek corridors, and coastal reserves act as refuges for native species, improve climate resilience, and enhance the well-being of residents as identified in the draft Urban Greening Strategy. The exclusion of comprehensive vegetation protections in metropolitan Adelaide leaves these critical habitats vulnerable to ongoing urban expansion, infrastructure projects, and inadequate planning provisions. This is considered a significant missed opportunity.

Part 2: Objects, principles and general duty

The City of Onkaparinga:

- Strongly supports the proposed objectives and principles of the Biodiversity Act. The objects and principles align with Council's recently adopted Community Vision and reflect the need for new and different approaches to managing biodiversity.
- Perceives there is a need for more clarity around what constitutes 'harm' for the purposes of the general biodiversity duty. It is currently unclear and reliant on the biodiversity regulations or other policy which is yet to be developed.
- Acknowledges and supports the intent behind the introduction of the general duty for biodiversity, but questions the impact this will have if there is a lack of enforcement associated with breaching this Section.

Part 3: Administration

The City of Onkaparinga:

- Supports the increase in transparency of the administration of the Act and separate allocation of funds.
- Acknowledges and supports the inclusion of the local government sector in the proposed Biodiversity Council and as a key stakeholder requiring consultation as highlighted in the previous LGA submission on the discussion paper.
- Is not supportive of the proposed use of the levy funds for administration purposes. We reiterate a previous LGA submission on the Native Vegetation Act review. *Rather, for the purposes of general administration and policy functions, conducted by DEW officers, these functions should be funded from general appropriation.*
- Seeks the opportunity to provide input into the formulation of regulations that set out the skills and expertise and process to guide the composition and appointment of the NPCAC (Native Plants Clearance Assessment Committee). We note the makeup of this Committee is yet to be determined, and we would like to ensure that the process results in a fair and balanced assessment outcome.

As per our previous submission on the discussion paper, while we welcome the establishment of a scientific committee, we highlight the need for a lead department or body to coordinate and provide oversight of all entities operating within the legislative framework. This is necessary to ensure that

the activities of responsible entities are collectively delivering on and achieving the objectives of legislative frameworks and state objectives for biodiversity.

We also reiterate our position that appropriate resourcing needs to be committed to achieve the intentions and objects of the proposed new Biodiversity Bill. This will require a significant increase in state government investment in biodiversity programs and initiatives, which remains worryingly inadequate to address the scale of environmental decline in our state.

It is our view that the investment program of \$62.3 million for Department for Environment and Water (DEW) programs announced in the State Budget 2024-25 remains insufficient to stop, let alone reverse, declining environmental trends. This figure represents a \$36.5 million decrease from the amount budgeted for DEW programs in 2023-24 (\$98.8 million) at a time when more funding, not less, is required in this space.

We continue to see little direct funding for biodiversity and restoration projects under either new or existing projects in the state budget.

Current state funding arrangements remain worryingly inadequate for the scale of work required in our national parks. We reiterate our calls for additional resourcing for conservation and restoration works in national parks to be made an urgent priority after years of underfunding, noting that budget funding for 'Parks Renewal Investment' remains at just \$2 million in 2024-25, the same as in 2023-24.

Budget targets fail to address the significant on-the-ground conservation work required across our national parks, and the programs that will be necessary to ensure that biodiversity conservation and restoration is a responsibility equally shared across all sectors.

Finally, we are concerned that just 1.7% of the 2024-25 state Mid Year Business Review total is allocated for environmental protection measures. This percentage will need to be increased to reverse the current critical decline of biodiversity within South Australia

Part 4: Native Plants

The City of Onkaparinga:

- Supports the introduction of unregulated/regulated activities providing there is clear guidance for this.
- Supports the introduction of a mechanism to appeal/escalate unfavourable decisions for review and resubmitting, providing there is a clear process for this to occur.
- Suggests that additional clarity is provided on the definition of 'prescribed species' according to the Act. This needs to be made clearer or a definition provided.
- Supports the application of the mitigation hierarchy to clearance assessments in Section 49, however consider there is a missed opportunity in revising the process for areas declared as critical habitat. We believe these should be afforded a higher level of protection.

- Supports the inclusion of *Section 50 – Circumstances in which consent may be given* and suggest removing the term ‘etc’ from this title.
Clause (3) addresses to some extent the issue we raised in relation to offsets, however there are a few items of concern in this clause and feel this could be extended further for critical habitats (Part 6).

Our concerns include:

- Section 50 (8)
‘If the application under this Division relates to a native plant that is a critical habitat feature of critical habitat, the NPCAC must not give consent unless satisfied that the proposed clearance will not cause or contribute to an increase in the risk of extinction or collapse of the threatened species, threatened ecological community or listed ecological entity that was the basis for the habitat’s eligibility to be declared as critical habitat.’

There is a lack of clarity as to how this will be implemented appropriately as it does not reference a process, qualifications or requirements to achieve this. We would like to see this addressed in a regulation or guideline.

- Section 50 (e),(f), and (g)
(e) clearance of native plants for the purposes of establishing or maintaining a track for recreational activity involving pedestrians, bicycles or horses; 30
(f) clearance of native plants for the purposes of establishing or widening a track that is more than 5 m in width and reasonably required to provide access for commercial purposes by vehicles having at least 4 wheels, other than clearance on a road reserve, rail corridor or rail reserve;
(g) clearance of native plants incidental to the lawful construction or expansion 35 of a dam situated on pastoral land.

We acknowledge the intent of this section but raise concern over the potential for misuse and negative impacts associated with these clauses. We question how this will be regulated and managed appropriately, and feel additional work is required to address this and how it will be administered.

- Supports in principle the measure to include native plants that are more than 20 years old outlined in Division 1 Part 3, to acknowledge the value and level of resources invested into revegetation projects, which the City of Onkaparinga and our community have invested a significant amount.
 - We question the intent behind the 20 year figure. Acknowledging that the aim is to provide protection for established revegetation, many vegetation communities provide ecological benefits after much less time, such as coastal revegetation which provides benefit after five years.
 - Does this also mean that the planted vegetation is protected from 20 years old, but the natural regeneration coming from these plants, as soon as they are of seed producing age, is protected immediately, as naturally grown ‘native plants’?

We would like to see a clear rationale and evidence base for this approach adopted as part of establishing such a provision.

- Reiterates the state government obligation to consider road safety, consistent with *South Australia's Road Safety Strategy to 2031* which states that 'road safety will be a key criterion in all decision making frameworks for investment decisions and policy setting'. We understand that integration of this consideration will be addressed via updates to documents such as the Department of Infrastructure *Vegetation Impact Assessment Guideline* in consultation with stakeholders including local government.
- Requests that the responsible department, in relation to Section 53 (4) 'Other matters relating to consents', to ensure that the information required here in relation to decisions made as part of the Act, as well as other information required as part of the Biodiversity Register in Part 6, is required to be easily accessible and user friendly to the public in a centralised location.
- Acknowledges that the intent of the new Act is to help strengthen and streamline the protection and management of biodiversity and commend the approach to align with similar national and interstate legislation and that is step forward. However, we feel there is a missed opportunity to introduce more of a net gain approach to development. In particular, higher protections are required for areas of critical habitat, and a move away from the standard offset approach for managing biodiversity to reversing and enhancing the current decline.

Part 5: Native Animals

The City of Onkaparinga does not have a specific position or feedback on this section of the draft Act.

Part 6: Threatened species, threatened ecological communities and other ecological entities

The City of Onkaparinga:

- Supports Part 6 of the Act, acknowledging that much of this section works to address council's previous submission on the Biodiversity Act discussion paper in relation to identifying and listing threatened species and threatening processes and bringing this in line with other state and national legislation. Some suggestions to strengthen this Part include:
 - In relation to Critical Habitat in Division 5, we support the potential to require an action plan in Section 83 and the separate offences outlined in Section 84.
 - In relation to Section 87, we question how it will be determined that a proposed clearance is not going to cause 'an increase in risk of extinction or collapse'? We support the additional requirement outlined in 87(3) to increase protection for areas of critical habitat but would like to ensure that this can be administered adequately so that we don't reach a critical threshold for an at risk species.

While we strongly support the listing of threatened species, we are concerned about a lack of clarity in several key areas about the utility of the list and how this information will be used. More information is required about how listed species will be assessed and prioritised within and against other threatened species. For example, some species of bandicoots are currently listed as 'endangered' while other species are considered as 'vulnerable' or of 'least concern'. Greater clarity on how animal species are prioritised, and which are considered 'more important' and why, should be provided and form part of the listing process.

We also reiterate a missed opportunity highlighted from the previous submission, regarding the importance of identifying existing natural assets on developments within the Biodiversity Act. Guidelines should also be developed for identifying and assessing potential impacts from development and establishing a process or threshold to assist this. We also reiterate that any ecosystem assessments or reports need to be undertaken by appropriately qualified parties, using established criteria that can be validated through an agreed, evidence-based methodology and measures.

Part 7: Conserved areas

The City of Onkaparinga suggests renaming to 'Biodiversity Protection Agreements' to reflect the heritage/conservation element.

Part 8: Enforcement

The City of Onkaparinga supports the proposed powers for the Environment, Resources and Development (ERD) Court to enforce a breach of the Act through making 'no development' orders. This will, as noted, eliminate any incentive to circumvent native vegetation / biodiversity legislation.

Part 9: Permits

The City of Onkaparinga does not have any specific feedback on this section.

Part 10: Miscellaneous

The City of Onkaparinga:

- Supports the following proposed provisions set out in Part 10 of the draft Biodiversity Act with suggested amendments or clarifications:

Section 159 – State biodiversity data

- We suggest that the requirements for data collection also include spatial data, a mechanism for establishing various key information such as condition and location of threatened species or communities as highlighted in the draft Act, as well as tracking this over time.

- There is no mention of connectivity or catchment management in terms of data and it is hoped that this can be covered in the relevant guidelines or policies suggested to ensure biodiversity can be better managed in a holistic manner.
- Currently local government and other stakeholders collect a range of data on local biodiversity. We would like to see an improvement in connectivity between state and local government data. As per our previous submission, any legislated monitoring should establish measures and criteria for consistent datasets, developed in conjunction with stakeholders who currently have some of this data. It should include ways to measure and monitor:
 - high level ecosystems
 - catchment scale creek and river systems
 - biodiversity condition at a more regional level
 - state and regional threatened species
 - priority state and regional pests and disease.

The information should be provided spatially, like available canopy and heat mapping data. This could potentially be incorporated into the BioData SA project or other accessible public mapping systems.

We also support statewide plans and strategies being regularly reviewed and updated. In our view, a new Act should be founded upon principles of adaptive management, thereby allowing it to be dynamic and responsive to the evolving impacts of climate change. This would need to be coordinated across state government departments including PIRSA and local governments who already have some data. Due to the scale of change proposed for this Act, we suggest an interim review sooner than the proposed five year interval, to ensure any unintended implications or issues can be addressed.

Section 162 – Biodiversity Register

As highlighted in Part 4, Section 53(4), the Biodiversity Register needs to be centralised, user friendly and easily accessible to the public.

Schedule 2: Regulated acts or activities exclusions

The City of Onkaparinga supports the move to improve streamlining of legislation, however also considers it a missed opportunity to review and modernise this legislation.

We provide the following feedback specific to Schedule 2:

- Division 1, Section 3 – Intentionally sown or planted native plants. Additional clarification could be provided for this section as clause 3 (c) seems to negate part (b)?
- Division 3, Section 9 – Impact assessed development – there is no definition provided for EIS.
- Division 4, Section 10 – Pedestrian tracks on private land. We note that this has been transferred from Regulation 8(7) in the current *Native Vegetation Regulations 2017*, however clause (1)(b) relating to walking tracks is not included?

(1)(b) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared.

In the proposed draft Act, this means that there is no requirement to submit to NPCAC for this activity, so no opportunity to check that the mitigation hierarchy has been applied. We also question whether this applies to proposed biodiversity or conservation agreements? This is not specified in the proposed new legislation, whereas it is in the current NV Regulations.

- We note the following has also been excluded from the proposed new Act and we question whether this also applies to biodiversity or conservation agreements? It's not specified in the draft Act.
 - Division 4, Section 11 - Vehicle tracks – Requires notification to NPCAC, but has left out clauses (1)(a), (b) and (c) of current Regulation 8(14) as follows: -
 - (a) the fence is reasonably required to control access by people or the movement of animals; and*
 - (b) the clearance is required to give reasonable access to the fence and is limited to the extent reasonably required to achieve that access; and*
 - (c) there is no other practicable alternative (including, in the case of a new fence, to the position of the fence) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and*
- Division 7, Section 19 – Fire hazard reduction – We query whether this applies to biodiversity or conservation agreements?
- Division 9, Section 24 - Regrowth – subclause (2). We suggest that this might need to include SEB offset areas (or areas subject to management agreements) and note that it already includes biodiversity or conservation agreements.
- Part 3, Section 29 – Maintenance pruning needs to have a definition or clarification provided. We suggest reference to either the definition outlined in the Oxford Dictionary or Australian Standard 4373-2007 'Pruning of amenity trees'.

Schedule 3: Principles of preservation of native plants

The City of Onkaparinga supports this amendment to provide consistency to the legislation.

Related amendments

The City of Onkaparinga:

- Supports the proposal to declare the Biodiversity Act as a Special Legislative Scheme for the purposes of the PDI Act, and the recognition to consider biodiversity at the Code Amendment stage.
- Supports the process as outlined for requiring an Environmental Impact Statement (EIS) for an Impact Assessed Development, amendments to the Planning and Design Code (Code) to better capture areas of biodiversity and concurrence of the Biodiversity Act Minister, where required.
- Acknowledges that through the Planning and Design Code (created under the PDI Act), the Native Vegetation Overlay applies to the entirety of the City of Onkaparinga – the Native Vegetation Overlay gives effect to the NV Act.
- In our experience, there is often confusion with how the NV Act interacts with the PDI Act and what 'approvals' may be required or not - particularly for the removal of regulated or significant trees and clearance for approved built form developments (e.g. dwelling on a site that seeks to remove non-regulated vegetation).
- Recommends that there is a need to review how the (proposed) Biodiversity Act works with the PDI Act, together with more accessible and better education and information for both applicants and planning practitioners.

Conclusion

Ongoing biodiversity decline threatens the sustainability of our region and the prosperity of our communities. We can no longer afford to overlook the gradual deterioration of our invaluable ecosystems and the essential services they provide.

The challenges we face will only increase with the escalating impact of climate change. Urgent action is needed. The development of a new Biodiversity Act provides the opportunity to ensure that appropriate action is taken as a priority.

We acknowledge that this draft Act is a positive step forward and addresses many of the issues highlighted in our original submission, however due to the current crisis outlined for biodiversity in our state, we feel there are also missed opportunities for this to propel us into the action required to sufficiently address this decline.

Yours sincerely

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