Native Vegetation Council

Our ref
Your Ref

Contact: [redacted], Coordinator, Governance and Policy
[redacted]

81-95 Waymouth Street
Adelaide SA 5000

GPO Box 1047
Adelaide SA 5001

Ph| 08 8303 9777

nvc@sa.gov.au

9 February 2024

Biodiversity Coordination Unit
Department for Environment and Water
Email: biodiversityact@sa.gov.au

Dear Biodiversity Coordination Unit

Thank you for the opportunity to provide comments on the Developing a Biodiversity Act for South Australia Discussion Paper (Discussion Paper).

The Native Vegetation Council (Council) applauds the initiative to strengthen biodiversity protection in South Australia. The Council has for some time been concerned about the shortcomings of the *Native Vegetation Act 1991* (NV Act) in particular, and will welcome the opportunity to address some of these issues through the new Biodiversity Act and consequential amendments to the NV Act.

General comments

- In order to not only halt but reverse biodiversity loss and decline, we need to shift our policy thinking to 'nature positive': any decision should be outcome (not process) focussed, producing a nature positive outcome which leaves nature in a better state than found.
- It is crucial to make it clear what the purpose of the new Biodiversity Act will be, and how it will interact with other pieces of legislation in South Australia (and in Australia where relevant). In particular, the native vegetation offsetting scheme should not be replaced unless there is clear and demonstrable benefit to the environment to do so. For the new Act to be applied consistently and diligently, it must have primacy over other South Australian legislation. It would be desirable to measure its effectiveness in improving biodiversity, for example, through a statutory independent review every 5 years.
- The new legislation should make it clear that the conservation, protection and enhancement of our natural resources are everyone's responsibility. It should emphasise the need for, and importance of community and individual involvement, and provide avenues for everyone to get involved. South Australia runs a successful Native Vegetation Heritage Agreement program, and over the last decade we've

seen a strong commitment from landowners to conserve, protect and enhance native vegetation through voluntarily entering into heritage agreements.

- Our natural capital remains underfunded in South Australia, and the success of any legislation relies on appropriate funding and resourcing. The Council supports exploring the opportunities to find innovative funding methods in addition to State Appropriation funding for the implementation and administration of the new Act. This should also include funding for education and research.
- Aboriginal participation in the whole process is fully supported. The opinion of the First Nations and Peoples should be heard during the development of the new Act, in all decision making as well as during the implementation and delivery of projects.
- All decisions should take cumulative impacts into account to ensure broader environmental context perspective, rather than making decisions on a 'project by project' basis. If any planning is done under the new Act (state-wide or regional), it should also take cumulative impacts into consideration.
- The Council agrees that climate change needs to be taken into consideration in the new Act. Work needs to be done to help ensure that our nature is able to survive future conditions, and further research may be required to identify plant species with physiological features required to thrive in future South Australia.
- In principle, the Council supports the inclusion of the Mitigation Hierarchy for biodiversity in the Biodiversity Act. However, the Council seeks clarity on how this proposal would interact in practise with the NV Act, including what intention there is to expand or replace South Australia's existing environmental offsetting arrangements. Every decision must demonstrate that Avoidance and Minimisation have been exhausted before Restoration and particularly Offsetting are considered. Rigorous rules about offsets should be put into place to ensure they produce nature positive results. This Council will soon start an evaluation of the past outcomes of native vegetation offsetting with a view to reviewing its offsetting policies to make sure that offsetting projects meet the Objects of the NV Act.
- The new Biodiversity Act should offer both the carrot AND stick. In its own work the Council often encounters individuals and organisations who are very keen and enthusiastic about conserving biodiversity, and the new Act should provide for incentives and support for them. Compliance and enforcement provisions should be consistent across all pieces of legislation relating to biodiversity in South Australia. These provisions should offer different avenues, including ones that can quickly and effectively deal with minor and medium breaches of legislation. The Council from its own experience under the NV Act has seen time after time that compliance and enforcement can be very resource-intensive and expensive. The proposed amendments to the NV Act, currently under development, seek to address this issue by expanding the tools available, and the Council is very supportive of this initiative.
- While it may not be a legislative consideration, any policy developed to support the new Act could identify opportunities for collaboration between parties including organisations, statutory boards, government agencies and interest groups.
- The new Act should identify and protect the most environmentally sensitive areas from development, and strong safeguards should be put into place for critically important areas.
- The Council recommends examining the gaps in current legislation and identifying what is not working and whether it can be fixed through the new Biodiversity Act. An example is the definition of native vegetation which under the NV Act includes only plants indigenous to South Australia, but not if they were intentionally sown or

planted by a person (with some exemptions). Another issue is that the NV Act does not apply to the whole of South Australia, with specific exclusions of urban as well as peri-urban areas.

Below the Council will address specific topics from the Discussion Paper.

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

Aboriginal participation must be embedded in all biodiversity matters, including decision making and implementation/delivery of the Biodiversity Act.

The Council is also supporting this approach in the proposed amendments to the NV Act that are currently under development, with the aim of having a skills based Council, including a member with knowledge of First Nations land management.

Topic 2 – Avoiding impacts

In principle, the Council supports the inclusion of the Mitigation Hierarchy into the new Act, and rigorous rules need to be adopted to ensure its consistent application. Furthermore, the new Act should make it a condition of approval that any offsetting must result in a nature positive outcome.

Cumulative impacts need to be taken into account during decision making to avoid further harm to already impacted areas.

In Council's experience with large and major projects, early engagement with the applicant and other interested parties often results in positive outcomes. While this may not be a legislative consideration, it may be addressed in policy development.

Topic 3 – Transparent decision-making

The Council agrees that decision making needs to be transparent. Currently the Council publishes all decisions on Level 4 clearance applications (applications with significant impact) on its webpage. If the new Act will require government agencies to maintain a public register of all decisions and mandate reporting, then an efficient system to easily manage the register and the reporting requirements needs to be established, enabling this function to be performed without significant resourcing impacts.

In line with its comments above on offsetting, the Council supports the idea of imposing mandatory reporting to monitor the success of any offsets.

The introduction of the new Biodiversity Act may be a good opportunity to simplify, streamline and clarify the decision making processes. For example, currently there is a level of confusion amongst the public, developers, and to a degree planning authorities about the native vegetation clearance approval process, particularly its overlap with the *Planning, Development and Infrastructure Act 2016* (PDI Act). Additionally, the development application referral timeframe under the PDI Act does not meet the community consultation timeframes under the NV Act. The new Act may be an opportunity to ensure that these components of all 3 Acts are aligned.

In regard to Ecologically Sustainable Development, the Council feels that it is time for South Australia to join the emerging shift in public policy thinking from 'ecologically sustainable development' to 'nature positive' and 'ecologically functional landscapes'.

In a recently published (NSW) Independent Review of the Biodiversity Conservation Act 2016: Final Report[1], the Review Panel led by the former Commonwealth Treasury Secretary Dr Ken Henry AC, concluded:

> *Of more concern, the objects of the Biodiversity Conservation Act 2016 are already obsolete. The crafting of the Act was, understandably, guided by principles of sustainable development. Those principles are no longer fit for purpose. As has been recognised in many global forums over the past few years, the natural environment is now so damaged that we must commit to 'nature positive' if we are to have any confidence that future generations will have the opportunity to be as well off as we are.*
>
> *The Review Panel appreciates that this implies a major reset in public policy thinking, which many will find challenging. Even though sustainability concepts have been central to policy development for more than a generation, many in the community, and even within government circles, still struggle with the notion that policies to promote human progress should recognise any constraints, social or environmental. Yet the fact of humanity's dependence upon the quality of the biosphere, in both social and economic dimensions, is as immutable as the laws of physics. The case for giving primacy to environmental repair is inescapable. Our future depends upon it.*

These words strongly resonate with the Council's views on the overall state of biodiversity in South Australia.

This could be addressed by amending the approach to the Biodiversity Act from ecologically sustainable development to ensure the key object of the Act commits to sustaining South Australian biodiversity and ecosystems.

Topic 4 – Threats to biodiversity

Threats to our biodiversity need to be identified, and actions should be specified in the new Act. As mentioned before, cumulative impacts need to be taken into consideration.

Topic 5 – Assessing the risk of extinction

The Council sees value in establishing a scientific committee for threatened species in South Australia.

Topic 6 – Biodiversity planning and reporting

The Council supports state-wide biodiversity planning be included in the new Act. This plan could offer a long term vision for the whole of South Australia, across the regions, that will identify priorities to halt and reverse biodiversity loss.

[1] A copy of the final report is available from Report of Department of Planning and Environment entitled "Independent Review of the Biodiversity Conservation Act 2016: Final Report" (nsw.gov.au). Accessed 8 February 2024.

The Act should also specify who is responsible for the development, implementation and monitoring of this plan; the 'ownership' and accountability need to be clear. If a new statutory body is formed to undertake this task (along with having other functions under the new Act), then the board must be fully independent and skills based. Furthermore, proper consultation needs to take place as part of the plan development.

In terms of requiring other legislation or processes to consider or take account of the plan and its priorities, this Council has a similar responsibility under the *Landscape South Australia Act 2019*, which requires the Council to take into account provisions of the State Landscape Strategy and any relevant regional landscape plan in performing a function or exercising a power. If a similar requirement is embedded into the Biodiversity Act, then the biodiversity plan needs to be developed with such purpose to make it relevant and meaningful to the bodies that must take it into account.

Topic 7 – The benefits of information

The Council would welcome having a one stop shop for all biodiversity information.

Topic 8 – Achieving 30 by 30

Under the NV Act, an owner of land that is subject to a heritage agreement may receive financial or other assistance to manage the land, native vegetation on the land or any animals living on or visiting the land; preserve or enhance native vegetation on the land; establish native vegetation on the land; or undertake research in relation to the preservation, enhancement or management of native vegetation on the land or of animals living on or visiting the land. Additionally, the Minister responsible for the administration of the NV Act may also pay to the owner of the land an amount as an incentive to enter into the heritage agreement.

The Native Vegetation Heritage Agreement program has been very successful since it was first introduced in 1980, with more than 1700 landholders having agreed to ensure the long-term protection of over 1 million hectares of the state's native vegetation.

The Council supports the new Act creating appropriate schemes for the establishment and management of conservation areas in South Australia, and provision of financial and technical assistance to landowners.

Topic 9 – Biodiversity – a shared responsibility

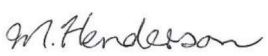
The Council is of the view that caring for our nature is everyone's responsibility, and this should be reflected in the new Act.

Topic 10 – Consequences of doing the wrong thing

As indicated above, compliance and enforcement provisions should be consistent, and should enable the responsible body to act quickly and effectively, and with a scaling range of enforcement options and penalties to fit the severity of any non-compliance. The Council supports exploration of other options rather than relying on the expensive and resource-intensive criminal proceedings.

Thank you again for the opportunity to provide comments. If you have any questions about this submission, please contact [redacted], Council's Secretary, on telephone [redacted]

Yours sincerely



Dr Marilyn Henderson
Presiding Member
NATIVE VEGETATION COUNCIL