

SUBMISSION PAPER

SA's draft Biodiversity Bill



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The City of Port Adelaide Enfield (PAE) welcomes the opportunity to provide a submission to the Department for Environment and Water (DEW) on the draft Biodiversity Bill. Council commends the State Government for addressing South Australia's biodiversity crisis and acknowledging the shortcomings of existing laws. Urgent, stronger, and more modern legislation is essential to halt biodiversity decline and support its recovery.

The objects, guiding principles, and general duty proposed in the draft Bill are supported by council. The following comments are provided to assist DEW in finalising SA's first Biodiversity Act.

In reference to Part 1 – Definition of 'native plant'

Over abundant native plants

The Bill proposes protections for all plants indigenous to Australia. While this new definition of 'native plant' is commendable to afford all native plant species a higher level of protection, consideration should be made to the potentially problematic native species, which may be overabundant or locally invasive when growing outside of their naturally occurring vegetation ecosystem or in more favourable conditions, e.g. additional water availability. There's a need to explore how the Bill will allow for effective management of such species, which could hinder biodiversity restoration and environmental management efforts.

One example within the City of PAE is Folland Park where native *Acacia* and *Senna* species are over dominant and restricting/smothering out native understorey thereby reducing biodiversity within the reserve. The removal of *Acacia* and *Senna* would be classified as a regulated activity requiring consent under the draft Bill. To support effective implementation, practical guidance and training will be essential, enabling councils to comply with the Act without placing excessive strain on local government operations and resources. This also true for local Bushcare groups who may need permits to remove invasive and/or dominating native species, creating additional burden for these, often volunteer, groups.

In reference to Part 3 – Administration

The proposed governance framework is supported overall however Council requests further consideration and clarification regarding:

- new committee membership: Is there an intent to have Local Government representation on the new committees? If so, is it likely this will be from LGA or nominations from individual Councils? It is recommended that the selected representative is suitably skilled and qualified in the environmental field of expertise which will serve the committee the best.
- the allocation of funds from the Biodiversity Restoration Fund and the Conservation Fund, including whether they will be directed toward state-identified projects, distributed through grant applications, or if both funds can be used to support a single project?
- transparency and a clear delineation between funds for Act administration and funds for other purposes, particularly "offsets".

In reference to Part 4: Native Plants

Offsetting

No amount of compensation or 'offsets' should allow degradation of any ecosystem.

The concept of the mitigation hierarchy which lists 'avoid' before 'minimise', 'rehabilitate/restore' and 'offset' in the order of measures to conserve biodiversity is supported, but with hesitation, as it has not been implemented as such in the past. There are many examples within South Australia where offsetting the environmental damage caused by development has not been 'like for like' or come anywhere close to improving biodiversity outcomes. This must not continue.

To halt biodiversity decline and restore ecosystem health, offsets must be used seldomly and only as a last resort. Then, if all other mitigation measures have been considered, and an offset is the only option, a requirement should be for any offset to achieve a biodiversity benefit in perpetuity, be non-reversible (unless to benefit biodiversity), and must include monitoring and reporting requirements to track whether gains and improvements are being delivered.

It is understood that guidelines will be developed to help proponents understand how to apply the mitigation hierarchy in their applications. Guidelines for the application of the mitigation hierarchy should be completed as a priority, must be clear, and provide several examples on how the hierarchy tool is intended to be applied. This will help ensure the tool is used appropriately before any precedent is set for unintended applications.

New protections for 20+ year old planted native plants

Council supports the proposed new measures aimed at protecting planted native plants more than 20 years old, excluding those in private gardens or commercial forests. However, Council requests further clarification on:

- what 20+ year old native plant means in practice and what evidence (if any) will be required to demonstrate or prove the plants are of this age. Historic aerial imagery is one method that may be used however it is important to understand what will be required, especially in situations where there is no evidence or disagreements on age classification.
- situations where plantings have been done in a mosaic or in-fill method, thus area may only have a portion of the plantings at 20+ years. A clearer definition, with situational examples, would be beneficial to avoid confusion. Currently, this new protection measure is ambiguous and if left as is may create much confusion and various interpretations.
- how this new provision will interact with current best practices and principles around biodiversity protection and restoration.
- the potential impact on the ability of local councils to manage open spaces, especially in urban areas where such vegetation may exist in areas that are being redeveloped or maintained for public use (council reserves). We request further clarity on how the Bill applies to these situations and whether specific exemptions or management strategies will be provided for councils to manage these spaces effectively.

In reference to Part 5: Native animals:

The concept of 'regulated' and 'unregulated' activities as well as the removal of the list for 'unprotected' native animals is supported. Having all native animals protected under the Act (aligned with the NPW Act¹) and increasing the penalties for wildlife crime is a positive step, however there is still room to strengthen this section of the Bill to provide adequate protection for

¹ National Parks and Wildlife Act 1972

Australian native animals. It will be important to establish clear enforcement protocols/regulations and ensure adequate resources for monitoring and compliance.

Regarding the new approach of higher penalties being applied to 'trafficable quantities' of a protected species, it is good in concept however how exactly will this be determined and with what advice or expertise given so many different native species are illegally captured and removed. What will be the appropriate number for 'trafficable quantities' and how will that be determined? There is a need for relevant expertise being relied upon to determine a meaningful quantity in each case.

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

Assessment and listing process

The proposed assessment process for listing threatened species under the new Act appears sound and is supported, however, concerns exist around timing and how long it may take to compile the list of threatened species and ecological communities. There is a risk that the assessment process, while needing to be systematic and thorough, may be too slow which would delay key protections for vulnerable species and ecological communities.

Critical habitat

Council strongly supports the introduction of new critical habitat provisions into the draft Bill. This aligns with legislation in NSW where declared critical habitats such as for the endangered Little Penguin and Grey Nurse Shark populations in Sydney Harbour have long been afforded extra protection.

To strengthen the legislation however, it should be mandatory for critical habitat to be identified and declared once a species ecological community, or ecological entity is listed. Currently the draft Bill proposes it is at the discretion of the minister if a critical habitat should be declared once a listing has been made. This will not give adequate protection. To aid in the efficacy of this new protection measure a clear definition of critical habitat, beyond what is currently in the draft Bill is also required.

Action Plans

Action plans and threat abatement plans should be required and amended in the draft Bill as "must" under sections where the wording includes the minister "may" prepare action plans and threat abatement plans threatened species and threatening processes.

In reference to Part 7: Conserved areas

Council supports the renaming of Heritage Agreements to 'Biodiversity Agreements' to better reflect the role of these agreements and what they aim to achieve.

A review of current Heritage Agreements with landowners is strongly recommended to determine if current status is still supported e.g. **City of PAE Folland Park** should be listed as a "Biodiversity Protected Area" under the new Act. Council has previously advocated for this through Native Veg Council but have had little traction to date. A review would provide a good opportunity to update listing and upgrade protections for key biodiversity sites in the Adelaide metro area such as for Folland Park, White Hollow Reserve, and Biodiversity Park in the City of PAE.

General comments:

Adelaide Dolphin Sanctuary (ADS)

The Biodiversity Act 2025 needs to strengthen protections for the ADS by introducing new conservation measures. The Adelaide Dolphin Sanctuary Act 2005 was established to protect the resident dolphins and their habitat. Despite these protections, significant declines in the dolphin's population across the last decade suggest that current conservation and protection measures for the ADS are not adequate.

It is expected that the new provisions within the draft Biodiversity Bill, including listing threatened ecological communities, identifying and protecting critical habitats, and developing threat abatement plans will improve habitat protection, and complement and strengthen existing ADS legislation.

Since 2015, the Parks and Wilderness Council, established under the National Parks and Wildlife Act 1972, has served as the legislative Council under the Adelaide Dolphin Sanctuary Act 2005. No details were available on what the future intent is for the Parks and Wilderness Council or what role it will have under the new Act. It is important to consider new governance arrangements and if new representation is required. Currently the ADS has good representation on the Council through its membership and request that information is shared, when available, on how nominations or appointments to positions on the Council will be made.

Coastal flora and fauna protection

The City of PAE has intact coastal dune vegetation, much of which is native due to the restoration and revegetation efforts of Council and volunteer community groups. The draft Biodiversity Bill does not explicitly mention coastal flora and fauna protection, however its provisions regarding general biodiversity protection, recovery, and land-use planning are expected to indirectly benefit coastal ecosystems and vegetation.

The Bill proposes the development of a new State Biodiversity Plan that will identify conservation priorities. It is recommended that this plan include specific priorities and actions for coastal flora and fauna which can be particularly sensitive to pressures including development, invasive species, and climate change.

Resourcing the Plan

Government managed land (National Parks, Sanctuaries, SA Water and Forestry SA) is significantly under-resourced for biodiversity monitoring, conservation and restoration. For example, invasive plants are one of the biggest threats to biodiversity conservation within our national parks and conservation areas. However, the resources, including strategies, management plans and expertise are lacking to make a significant difference in biodiversity conservation. In recent years, so much of the 'heavy lifting' in invasive plant management and on-ground works is now being delivered by Friends groups.

While the importance of Friends groups cannot be understated, they should not be solely relied on to carry out the vital work of Rangers and key DEW Staff.

These actions must be backed by adequate resources to ensure proper implementation; without sufficient funding, threat mitigation efforts will fall short, jeopardizing biodiversity goals.

More investment in education programs and cultural learning.

Increased investment is essential for improving education and cultural learning initiatives. Community outreach is needed to raise awareness about actionable steps that individuals can take to improve biodiversity and meet targeted goals for biodiversity restoration in South Australia. Given that approximately 70% of the landscape is privately owned, landowners have the potential

to contribute significantly to biodiversity conservation, surpassing the efforts possible on the 30% of government-protected lands.

It is crucial to integrate traditional knowledge into the management and stewardship of local ecosystems through a collaborative "Learning on Country" approach. This should involve partnerships between Landcare SA, government departments, and other stakeholders focused on land use and environmental care. It is also important to provide space for authentic cultural leaders to share First Nations Traditional Ecological Knowledge and narratives that guide the care of the land.

Additionally, it is necessary to ensure equitable opportunities for all cultural communities within South Australia to gain knowledge and practical actions towards biodiversity restoration.

State biodiversity data

A central biodiversity information hub is needed to cross-share openly the databases of BDBSA², NatureMaps, SA Museum data, journals and publications etc. Importantly this state biodiversity info hub should also include robust citizen science data, where citizen scientist can see their data reflected and know their contributions are valuable. The hub's framework needs to support community knowledge-sharing and provide up-to-date information, resources, guidelines and best practices for biodiversity monitoring and restoration.

The City of PAE is thankful for the opportunity to provide feedback on the draft Biodiversity Bill. The development of a new Biodiversity Act presents a critical opportunity to prioritise meaningful action. Now is the time to protect our environment for future generations.

² Biological Databases of South Australia