

28 February 2025

South Australia's new Biodiversity Act – Adelaide Hills Council Administration Submission

To whom it may concern,

Adelaide Hills Council staff have prepared the following comments in regard to the Draft South Australian Biodiversity Act.

Council's administration supports the following:

- The Biodiversity Act being declared a Special Legislative Scheme for the purposes of the PDI Act. State Planning Policy should take more than critical habitat into account, it should also consider the degree of fragmentation, acknowledging that plants and wildlife need to be able to move across the landscape to facilitate evolution, resilience and adaptation to climate change. These outcomes can't be achieved if there are large tracts of developed land preventing native species moving themselves across the landscape as rainfall and other climatic conditions change, relying instead on onerous and resource heavy translocation/intervention plans.
- Expanding the definitions of native animals to include all Australian animals as 'protected' and including threatened invertebrates, amphibians and fish species.
- Establishment of a statutory list of threatened ecological communities, in addition to threatened species, to ensure appropriate consideration in decision making under the Biodiversity Act and other Acts.
- Establishment of spatial information to be available for the public and government and non-government agencies to assist with identification of threatened species, threatened ecological communities or critical habitats to better assist with land-use decision making.
- Greater improvements for conservation responses for threatened species, threatened ecological communities or critical habitats. Threatened ecological communities and threatened species will need to be better mapped across the State.
- Provisions, and budget, for the development of action plans for threatened species, threatened ecological communities or critical habitats.
- The Act could require government to maintain a public register to ensure decisions that impact biodiversity are disclosed.
- The Act could require mandatory reporting so that impacts to biodiversity and actions taken to repair biodiversity are fully disclosed.
- The Act could incorporate a clear definition of Ecologically Sustainable Development and ensure a process is created so that application of the Ecologically Sustainable Development principles are required in the context of decision making about biodiversity.
- The Act could include statutory obligations for actions to address threats to biodiversity.
- Support the inclusion of threatened fish, amphibians and invertebrates in protected fauna, but these will need to be assigned a conservation rating or have their ratings reviewed. The current ratings are outdated.
- State Biodiversity Plan to identify and map priorities for conservation and restoration.

- The proposed increases in penalties for breaches, compliance and enforcement, except that expiation fees where contravening a condition of consent should be higher to act as a meaningful deterrent.
- Review of processes associated with maintenance pruning on public land and roadsides and rail vegetation management to improve uncertainty with Roadside Vegetation Management Plans and the 'one size fits all' State Guideline document. This will provide greater clarity for Councils dealing with legislative responsibilities under the LG Act.
- Establishing a publicly accessible biodiversity register.
- The introduction of 'no development' orders to prevent developers considering expiations and penalties as an operating or business cost. If land is cleared but not developed, the area still has opportunity to recover through natural regeneration or remediation measures.

Council's administration has a number of concerns pertaining to:

- The authority of the NPCAC to grant consent for clearance of critical habitat. There does not seem to be any further stringent requirements than a regular clearance application, to apply for clearance consent (ie data report, application of the mitigation hierarchy, SEB, application fee). How does this deter proponents in applying to clear these significant areas?
- With regards to the inclusion of all 'Australian' plants in the definition of 'native plants', we recommend that non-local 'Australian' plants which pose a threat to SA native vegetation, be exempted from the list of protected 'native plants' eg *Acacia longifolia ssp longifolia*, *Melaleuca armillaris*, *Billardiera heterophylla*, *Pittosporum angustifolium*. If this is a piece of Statewide legislation, then the native plants should be reserved for those indigenous to SA. Protecting 'planted' native plants needs to be reserved for those that are indigenous to SA and not all 'Australian' plants. This distinction needs to be clear.

Council's administration would like to see the inclusion and/or greater consideration of:

Threatened Species

- Include measures to intercept declining species before reaching threatened criteria, such as woodland birds across the MLR.
- Enabling the uploading (especially bulk data) to BDBSA or Bio Data SA via the establishment of an easier process so external agencies and the public can support the collection and maintenance of datasets that are useful for scientific analysis.

Fauna management

- Who administers the determination of targeted controls for fauna management? This process needs to be carefully regulated and based upon up-to-date and robust species data so that quotas and destruction permits are reflective of changes in regional population numbers, densities and landscape changes.
- Wildlife destructions should only be undertaken after co-habitation strategies have been explored. Wildlife control should be undertaken solely by trained and licensed contractors who are required to keep records and provide reports and are audited/monitored to facilitate better compliance with guidelines and humane methods.
- Wombats should be protected species, exempt from destruction orders.

Remnancy

- Remnancy should be a factor in determining harm, in that it cannot be considered 'trivial' if representing low remnancy - e.g. a paddock tree is cleared causing considerable habitat loss for any bats and birds with no other suitable habitat to turn to.
- State remnancy figures need to be reviewed. The latest figures are 10 years old and much has been cleared and degraded in that period.

Conservation and Vegetation Management

- Improve the access to resourcing to support maintenance of land in conservation agreements, including declared weeds on roadsides and in adjacent properties, especially where well established management and monitoring programs in place.
- Increasing the network of lands managed for conservation purposes. Reducing administrative load for Heritage Agreements, supporting/expediting processes (ie to facilitate rededications and incorporating unmade road reserves) to help reach ambitions 30 x 30 targets.
- Significant habitat loss is still occurring (death by a thousand cuts). Road reserves and unmade roads should be acknowledged as viable corridors to facilitate species movement and gene flow.
- The public school system should have a strong focus on biodiversity and ecosystem services, how this supports life on Earth and resilience in the face of climate change, strengthening the general public's understanding of the connection between healthy ecosystems and clean air & water.
- Renaming Heritage Agreements to 'Biodiversity Agreements' may retract from a known and recognised terminology that many people are unfamiliar with. In addition, all the existing signage would need to be removed and reissued.
- Creation of new types of Conservation Agreements time limited to a minimum of 20 years does not encourage a long-term commitment to conservation. These areas will initially be available to contribute to government conservation target metrics but will need to be readjusted after the life of their conservation period. This will jeopardise the conservation values, resources and conservation efforts over the conservation period and risk losing the area to clearance, development or rezoning.
- Consultants must evidence that native vegetation is planted before claiming the plants are exempt from protection under the legislation.
- Acknowledge and protect native plants that cannot be propagated (eg *Lomandra fibrata* and *Lepidosperma semeteres*) and that the surface/soil interaction they provide is lost for several decades - these crucial species enable small marsupials and other native wildlife to move about the landscape with greatly reduced detection and predation by foxes and cats.
- There should be requirements relating to appropriate plant species for landscaping in proximity to critical habitats to prevent garden escapees degrading adjacent habitat quality, or at minimum incentives (such as wholesale native plants).
- The area where the *Native Vegetation Act 1991* currently applies does not include the Metropolitan area. There should be re-consideration given to include this in the Biodiversity Act jurisdiction.

Native Vegetation Clearance

- Prescribed burning as a potentially cumulative threat to habitat values. Further consideration needs to be applied to frequency of burns and their regional impacts to woodland birds, and other native fauna, across biodiversity hotspots such as the Mount Lofty Ranges.
- Agencies such as utilities providers should be required to apply the mitigation hierarchy in any their Standard Operating Procedures, they have in place with the NVC. Maximum allowable clearance should be avoided unless absolutely necessary.
- Measures be implemented in Planning Guidelines and Approvals process to ensure that the mitigation hierarchy is implemented in the first stages of development planning with regard to placement of dwellings and buildings on the block, so that development approvals do not result in native vegetation clearances around dwellings and structures, including into road reserves/reserves, to reduce BAL ratings or perceived fuel loads.
- Development should be monitored promptly to ensure clearance footprints and areas of permitted impact complies with plans/approvals.
- Subdivisions and fence placement should also be considered in the context of unregulated vegetation clearance on the block.
- 5m clearance for a fenceline or track is excessive and should also be reduced to 'where necessary' for the installation and maintenance of the fence and clearance should still need to apply mitigation hierarchy. These unregulated activities could be deliberately enacted for the purpose of clearing native vegetation while avoiding permit applications and offset requirements. A proposal should be submitted that is assessed to determine if 5m and proposed placement is absolutely necessary and identify any threatened species impacted.
- While there is need to sometimes clear native vegetation to manage roads, CFS tracks, access points, clearance proponents are known to creative interpret the parameters around unregulated activities which often leads to a maximum clearance without having to explore alternatives or apply the mitigation hierarchy. There should be a verification process to ensure that that allowable clearances are not exceeded, and that justification is provided as to why maximum clearance is required.
- NPCAC assessment should include site visits and thorough auditing to verify consultant reports are accurate. Where native vegetation is claimed to be planted and therefore exempt under the NV Act, consultants must be able to evidence this prior to approval. A greater level of oversight and scrutiny is required by the Department of Environment and Water.
- There needs to be guidelines that graziers must comply with around how grazing will not result in permanent degradation of native vegetation. And should this result in permanent damage, then penalties must apply.
- We request the introduction of the requirement to apply the precautionary principle to developments, where the developer is required to provide evidence that their development will not be to the detriment of protected species.

SEBs

- SEB areas should not be excluded from other resourcing/grants to complement SEB payments - there is no guarantee of amount/duration of funding for these sites, it's a deterrent to registering offset sites. Additionally, SEB site management via the management plan needs to reflect the long-term nature of the SEB offsets which are 'in perpetuity'.

Education

- Educational materials that make it easy to understand obligations under the Act should be developed for residents and developers, Local Government can facilitate dispersal of educational information.
- Regulatory requirements should be mandatorily provided to developers with developed 'scripts' so that there cannot be any claim that developers were unaware of or didn't know or understand their obligations.
- There should be clear guidelines for planners with regard to planning approvals and interactions with various relevant legislation, and that questions/FAQs be catalogued in a location available to all planners to enable efficiency, consistency and transparency.

Biodiversity Plan

- Although reviewed every 5 years, the Biodiversity Plan needs to set and hold the trajectory for a 100 - 200 year vision which is adhered to, to prevent loss of momentum every time leadership changes and gains made by programs already well underway.

Compliance and Enforcement

- Civil actions should not be considered a reason for a Biodiversity Act Officer to decline pursuing offences under the Act.
- Enforceable undertakings must include an ongoing maintenance/monitoring component to ensure long-term viability of remediations that will be verified as best practice and viable by an independent assessment.
- Where remediation orders in place, that should be monitored and proponent held accountable for a number of years to ensure satisfactory remediation.

Yours sincerely,

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Manager Open Space
Adelaide Hills Council