MOUNT BARKER
DISTRICT COUNCIL

Reference: FOL/24/280

14 February 2024

Biodiversity Coordination Unit
Department for Environment and Water
GPO BOX 1047
Adelaide SA 5001

Via email: biodiversityact@sa.gov.au

Dear Sir/Madam

RE: Mount Barker District Council Submission to Biodiversity Act Discussion Paper

Thank you for the opportunity to provide feedback on the proposed Biodiversity Act for SA.

Mount Barker District Council has prepared and encloses a response on the Biodiversity Act Discussion Paper. In principle, Council supports the implementation of a Statewide Biodiversity Act to guide the state's key environmental legislation for better biodiversity protection and outcomes.

Furthermore, we would welcome the opportunity to participate in future engagement with the Department for Environment and Water on this matter.

For any enquiries regarding our submission please contact Emma Montgomery, Environmental Project Officer, via email [redacted] or telephone [redacted]

Yours sincerely

Phil Burton
GENERAL MANAGER INFRASTRUCTURE

Mount Barker District Council (MBDC) – Biodiversity Act Discussion Paper – Submission

Topic	Matters for Consideration	Response from MBDC
Topic 1 – Biodiversity and South Australia's First Nations people		Council supports engaging with First Nations people in regard to Biodiversity and Land Management.
Topic 2 – Avoiding Impacts	The Act should seek to prioritise avoidance and minimisation of impacts to biodiversity and make it clear that any negative impacts to biodiversity are the last resort. The Act should provide for a framework that includes clear guidance on the requirements to avoid and minimise impacts to biodiversity. The Act should require evidence is provided justifying how avoidance and minimisation have first been addressed as per the mitigation hierarchy. The Act should make it clear that any action taken having impacts to biodiversity must leave biodiversity in a measurably better state than it was before	Council supports the critical considerations with the following comments. The Biodiversity Act needs to consider the loopholes used under the current legislation that allows for native vegetation clearance rather than avoidance and minimisation. This includes private organisations and State Government Agencies where Council has little authority or control in minimising clearance, even on Council managed roads. When vegetation clearance is unable to be avoided, offset plantings should be in close proximity to the cleared area and have similar vegetation to that was cleared, i.e. the relevant vegetation association Ongoing care and maintenance should be mandatory and enforced. Consideration to soil removal and disturbance should be considered.

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		Greater offset payments for legal clearance of vegetation, increase offset requirements to act as a deterrent rather than legal clearing.
Topic 3 – Transparent Decision Making	The Act should require government maintain a public register to ensure decisions made that impact biodiversity are disclosed. The Act should require mandatory reporting so that impacts to biodiversity and actions taken to repair biodiversity are fully disclosed. The Act should incorporate a clear definition of Ecologically Sustainable Development and ensure a process is created so that application of the ESD principles are required in the context of decision making about biodiversity.	The public register should be easily available for reference and be thorough. Consideration to the validity of and auditing of the mandatory reporting. The Act should have strong detection, reporting and enforcement regulations for any breaches.
Topic 4 – Threats to Biodiversity	The Act should provide for a framework for the identification of threats to biodiversity. The Act should include statutory obligations for actions to address threats to biodiversity.	Establishing a framework for identifying threats to biodiversity and including statutory obligations to address these threats is supported. Measures to protect remnant vegetation and land particularly after sale of land.

Topic	Matters for Consideration	Response from MBDC
Topic 5 – Assessing the risk of extinction	A scientific committee should be established to guide listing, assessment and review of extinction risk of biodiversity. The Act should provide greater clarity on the types of native species that can be considered as threatened. The Act should require the creation of a formal listing, assessment and review process that establishes clear pathways for nomination, consultation and review. The Act could adopt a streamlined process for list amendments to ensure lists remain current. The Act should ensure that programs implemented to address biodiversity decline are evaluated. Where a new extinction occurs, the Act could establish a requirement to examine and report on the causes and actions that contributed to it. The Act should establish a framework to document measures to improve the status of biodiversity assessed as threatened.	A rigorous science based approach to the listing, assessment and review of biodiversity threats is supported. It is essential that this is well resourced in order for it to be effective. The Act should consider a process to reduce the impacts of wildlife when clearance is occurring, including inspecting hollows and trees, shrubs, ground for nests prior to clearance. Local government representation should be included in the scientific committee as local biodiversity issues are known on a local level. Loss of habitat from species invasion and land clearing requires clear action to prevent further loss of biodiversity and extinction.

Topic	Matters for Consideration	Response from MBDC
Topic 6- Biodiversity planning and reporting	The Act could mandate a state-wide biodiversity plan or strategy where measurable targets are set and regularly reported on The Act should require any state-wide plan or strategy to be regularly reviewed and updated.	A mandated state-wide biodiversity plan or strategy is supported. The plan or strategy should include specific information and management actions organised by Landscapes SA regions. Principle based approach to change to be more outcome orientated whilst investigating the merits of change.
Topic 7 – The benefits of information	The new Act should provide for a framework to enable the sharing of biodiversity information with the community and across all levels of government to assist in decision-making. The new Act should establish the Department for Environment and Water as the responsible government agency for the management of South Australia's biodiversity information. The new Act should establish requirements for the submission of biodiversity data collected in South Australia to a central repository. The new Act should direct the development of a policy that describes requirements for the collection, collation, interpretation and dissemination of biodiversity information.	The Act works in conjunction with other Acts but other Acts don't abrogate or diminish other powers or functions. There needs to be clarity around how this Act will interact with existing Acts i.e. Native Vegetation receives little protections within the Planning and Design Code.

Topic	Matters for Consideration	Response from MBDC
Topic 8 – Achieving 30 by 30	The Act should consider broadening or creating schemes to further support the establishment and management of conservation areas on private and other land. The Act should seek to enable additional incentives, including the provision of financial and technical assistance, to landholders who have entered into formal agreements for conservation.	Council supports broadening or creating schemes to further support the establishment and management of conservation areas on private and other land. Support should include and be cognisant of areas that form, or could form, corridors and habitat connectors across private and public land and roadsides.
Topic 9 – Biodiversity – a shared responsibility	The Act should be clear about the respective roles and responsibilities of the community by introducing a 'biodiversity duty of care', which makes the protection of biodiversity a continuous legal and social responsibility. If the inclusion of a 'biodiversity duty of care' in the Act is supported, it should be tied to relevant administrative powers and to civil penalties. The Act should include provisions so that guidelines and regulations can be made to ensure South Australians understand and comply with a 'biodiversity duty of care' obligation.	A biodiversity duty of care is supported. This duty of care should include greater emphasis and support for education and engagement and volunteer programs. Increase support for volunteer programs.

Topic	Matters for Consideration	Response from MBDC
Topic 10 – The consequences of doing the wrong thing	The Act could seek to align sanctions and penalties for similar offences, having consideration where possible of levels imposed through other jurisdictions. The Act could enable suitable non-government parties to commence proceedings for offences under appropriate circumstances. The Act could apply a contemporary risk based approach to the types of enforcement actions available such as compliance and remediation orders, civil remedies and other alternative penalties.	The Act should have a heavy penalty for breaches.