

23 March 2017

Review of the FFG Act
Regulatory Strategy and Design
Department of Environment, Land, Water and Planning
PO Box 500
EAST MELBOURNE VIC 8002

Dear Sir/Madam,

Re: Review of Flora and Fauna Guarantee Act February 2017– response from Cardinia Shire Council

Thank you for the opportunity to comment on the review of the Flora and Fauna Guarantee Act (1988) [FFG Act]. This is an important issue within Cardinia Shire Council which is home to 226 listed threatened species and habitats.

Council officers have reviewed the proposed changes and support:

- increasing awareness of the FFG Act and voluntary conservation programs on private land. Agencies such as the Catchment Management Authority may be best placed to coordinate and deliver broader biodiversity programs referred to in the review. Any program must have clear targets and timelines to direct investment for threatened species protection and recovery;
- amendments to remove listed families of species that are not considered rare and adoption of the common assessment method;
- the landscape approach for conservation management across broader catchments. This will enable strategic priority setting of threatened species across the region and will be of benefit for future grant funding. It is imperative that the more general 'biodiversity standards' proposed in the new framework that will evolve away from the historic action statements must not lose the ability to identify priority actions that may be specific and unique to each individual threatened species. Conservation objectives for an individual listed species will still require specific, measureable targets with a delegated responsible organisation to stand the highest chance of success.

The review identifies that conservation outcomes for threatened species can be found through:

- the FFG Act coupled with the native vegetation permitted clearing regulations to protect threatened flora and fauna;
- private land voluntary initiatives that will protect threatened flora and fauna on private land.

While these statements may be supported for the minority of species or areas potentially listed as 'critical habitat,' the vast majority of Cardinia Shire's threatened species are not identified with this status. Council officers have generally found that the conservation initiatives identified in the review are not supported by on ground reality. We have found there is a comparative nett loss of vegetation on private land when comparing voluntary revegetation initiatives with rates of clearing.

A critical failing in the review of the FFG Act is that it does not address the core conservation issue which is a lack of security and protection mechanisms for threatened species on private land. The review must address this fundamental issue. It is our experience that voluntary conservation

initiatives on private land coupled with the native vegetation clearing regulations have not satisfactorily protected threatened species and must be complemented with additional security and protection instruments.

The permitted clearing regulations do not protect individual threatened flora and fauna species. The regulations only protect native vegetation as a whole and assumes that this encompasses threatened species. For proposals to remove less than 0.5 hectares of native vegetation the 'low risk' pathway applies, which requires no avoidance or minimisation of native vegetation and therefore does not require private landowners to have any regard of threatened species on site. By way of example a colony of the Cobra Greenhood, a threatened orchid species, has been entirely destroyed by the removal of 0.5 hectares of native vegetation.

Some threatened fauna species do not necessarily live in native vegetation. An example is Cardinia Shire's listed birds of prey including the Powerful Owl and the Masked Owl. These species which have home ranges of many hectares inhabit a complex matrix of vegetation types including hollow bearing trees and large tracts of understorey vegetation over private and public land areas.

Powerful Owls have been observed nesting in hollows of ageing pine trees on private land. The permitted clearing regulations do not protect these pine trees and these owl roosts can be destroyed without any permit on private land. A continuance of the existing incremental clearing of their habitat on private land will likely lead to the reduction in the distribution of these species to areas only on public land. Public land areas are less likely be sufficient to sustainably support these species.

Different Victorian and Australian government legislation work in isolation. These include the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act), the State Planning and Environment Act 1987 and the FFG Act. The Victorian Government legislation should consider the status and action plans of federally listed species. It is often the case that once land holders have a planning permit they often ignore or forget any other legislation.

Two common examples of Federally listed endangered species not protected by the planning scheme or the FFG Act on private land are the Southern Brown Bandicoot and the Growling Grass Frog. Both species are also found in non-native vegetation, so the removal of their habitat is not regulated by the planning scheme. Where Council receives an application to develop properties with bandicoot or frog habitat there is no trigger in any Victorian Government legislation to protect or regulate the species. It is triggered under the EPBC Act, although most developers are unaware. This leads to very disjointed planning outcomes, significant time delays for applicants and some threatened species being missed and their habitat being destroyed.

For the reasons listed above, we are seeking that due consideration be given to reinstating the protections that originally existed on private land when the Act was gazetted in 1988. This will require removing the exemption for threatened species on private land. This is not a new initiative because it will effectively be reinstating the protection mechanisms that were originally introduced.

Council officers require accurate threatened species data modelling to understand the locations and extent of species and to also ensure the conservation status is up to date. This requires more rigorous surveying of species populations than is currently being undertaken. Council officers consistently work with data on species listed under the FFG Act that is out of date which means that officers are unsure on how to respond to development proposals.

Cardinia Shire Council has had success in the conservation of a species by engaging the community around the project. A successful example is the Emerald Star Bush (case study attached). Ongoing funding to establish and develop local area projects such as the Emerald Star Bush program has been a fundamental component to successfully conserve this threatened species.

The review should more clearly articulate how the FFG Act will resolve the following issues;

- poor mechanisms to advertise the FFG Act within the general public and as result there is a poor community awareness of the FFG Act. This is a profound issue on roadsides that are actively managed by the general public who are unaware of the statutory controls within the FFG Act. The review does not clearly articulate how DELWP will reverse this trend;
- no obvious policing of the FFG Act visible within the community. Compliance appears optional which questions the competency of the FFG Act. There also needs to be a clear direction to enable the minister to apply "stop and protect powers" when important species are under threat;
- poor communication between the Victorian Government and Cardinia Shire Council over the issuing of FFG permits. Council is the agency that is most aware of on ground works that are occurring in the area, but Council is not informed of permits that have been issued.

The review needs to provide direction on how DELWP will be appropriately resourced to adequately manage the administrative roles associated with the FFG Act.

The majority of the listed threatened species in Cardinia Shire have poor to non-existent strategic planning initiatives to conserve species on private and public land. There is also a scarcity of funding sources to initiate conservation programs which will help to guarantee their protection into the future. It is unclear how the new 'general biodiversity standards' will resolve this issue.

Change in the management of our threatened species is required. If we continue with the current state of affairs, many of our threatened species that are struggling to survive will eventually become locally extinct. An increase in resourcing outcomes identified in the FFG Act review and this letter including better statutory controls on private land will reverse the progressive decline in the health of our native species.

Please feel free to contact [REDACTED] or [REDACTED] if you wish to discuss this response further.

[REDACTED]

Chief Executive Officer

Attachment 1: Case Study – Successful conservation of the White [Emerald] Star Bush

The most efficient and cost effective model for species conservation is a community partnership model. Cardinia Shire Council has had evidence of a successful community driven conservation program in Emerald to protect the White Star Bush (also known as the Emerald Star Bush).

Populations of these plants were progressively being destroyed on private and public land, often unknowingly, by land holders. With plants being slowly lost and little known about the extent of the population and an absence of any action or direction from the state, the local community formed a steering committee with Cardinia Shire Council to conserve the White Star Bush.

Council and the community have raised the awareness of the star bush through actions such as information brochures, market stalls and letterbox drops which have now doubled the known population of plants and their locations to 5,000 plants across 60 sites.

Although the action statement for the White Star Bush provides good strategic direction to, the successful campaign to improve the health of the species has been completely reliant on the outcomes from the community steering committee. In the absence of this species specific committee, many more populations of White Star Bush would have been lost and the species would be under threat of extinction.

The White Star Bush is an exceptional case of best practise species management which is in contrast to the experience of the majority of Cardinia Shire's threatened species.