

REVIEW OF THE *FLORA AND FAUNA GUARANTEE ACT 1988*

BAW BAW SHIRE COUNCIL COMMENTS ON THE CONSULTATION PAPER

24 MARCH 2017

- Overall, Council supports the proposed changes to the objectives and principles of the *Flora and Fauna Guarantee Act 1988* (the *Act*) as identified in the Consultation Paper. Due to the lengthy period of time that has passed since the introduction of the *Act* in 1988, the *Act* is now overly administratively burdensome and many of the powers made available under the *Act* to achieve the intended conservation objectives have not been used.

Any revisions to the *Act* need to understand and address why implementation of the current *Act* and its contribution to protection and management of Victoria's biodiversity has only been minimal (i.e., the *Act* has been completely ineffective on private land). The Consultation Paper does identify the failure of instruments such as critical habitat determinations and interim conservation orders. Why has this occurred?

- The failure of *Act's* regulatory instruments on private land has resulted in the primary use of other legislative instruments by Council to achieve biodiversity outcomes on private land (i.e., Clauses 52.16 and 52.17 of the *Planning and Environment Act 1987*, local government policy and overlays and *Environment Protection and Biodiversity Conservation Act 1999*). This has also resulted in Council being seen as the principle authority for protection and conservation of biodiversity on private land which is only ever addressed through the planning system for proposed or amended developments.

Over the past decade, the *Act* has mainly been used by Council to facilitate maintenance works by itself (or contractors working on Council's behalf) in road reserves where there is a requirement for a permit under the *Act* to remove protected or controlled flora. In most cases, these works in road reserves are exempt under other legislation where the requirement for a permit under the *Act* is seen as a waste of time and rarely results in the modification of works to achieve flora protection outcomes.

- A revised *Act* needs to be aligned with more up-to-date environmental strategies, frameworks and policies at a State and Commonwealth level. The *Act* also needs to consider how it will operate in association with other existing planning and land management legislation in Victoria for it to be effective and achieve its objectives (e.g., *Planning and Environment Act 1987*, *Catchment and Land Protection Act 1994*, *Wildlife Act 1975*) and nationally (e.g., *Environment Protection and Biodiversity Conservation Act 1999*).
- Council supports the proposal for the Department of Environment, Land, Water and Planning (DELWP) to have a clearer, defined role in implementing

the objectives of the *Act* and the proposal for ongoing state-wide reporting on the effectiveness of the *Act* in achieving its objectives and targets.

- Council supports the proposal for DELWP to have a role in the regulatory and compliance requirements of the *Act* in collaboration with other land management authorities. This is particularly relevant to regional and rural councils which have a reduced capacity to allocate resources to biodiversity compliance activities and also often have a larger number of biodiversity assets to consider.
- Council supports the proposal for the adoption of a common model for threatened species/communities listing and conservation status determination across the State and Commonwealth (i.e., use of IUCN categories and criteria).
- Council supports the proposal for a shift away from individual threatened species to habitats and communities, with the ability to retain an individual species focus when that species is not necessarily captured well under a community or habitat. Perhaps 'ecosystems' could also be considered as another conservation unit under the *Act* which could address biodiversity conservation and protection. The systems and processes in place under the current *Act* (e.g., Action Statements, ABC) are now failing due to ongoing reductions in resources being allocated by the State to biodiversity conservation over the past decade.
- Council supports the proposal to review the compliance and enforcement processes and tools of the *Act*. Penalties for breaches under the *Act* are clearly out of date and are completely ineffective as a deterrent. The concept of introducing an incentive tool of 'earned autonomy' is also supported, but such a tool would have to be well thought out and 'road tested' before adoption.
- Council supports the proposal for illegal removal of native vegetation to be enforced under the *Act*. The *Planning and Environment Act 1987 (P & E Act)* currently does not apply penalties that are sufficient to deter removal from occurring nor are many regional/rural council's sufficiently resourced to investigate and process incidents of illegal vegetation removal. Land owners and developers are simply building the cost of a pin for illegal removal under the *P & E Act* into their development costs. This is even more evident now that the cost for a planning permit for native vegetation removal has recently increased from \$102 to \$1240. There has already been a noticeable increase in illegal native vegetation removal incidents and drop in planning permit applications for vegetation removal in Baw Baw.
- Council supports the proposal to improve the accountability of the *Act* by introducing mandatory monitoring and review requirements. The absence of mechanisms to monitor and measure the performance of the *Act* in achieving its objectives over time in has been one of the fundamental flaws of the *Act*. If these monitoring instruments were in place within the current *Act*, the failings

of the *Act* would have been brought to the attention of government much earlier.

- Baw Baw Shire Council looks forward to continued engagement and consultation with DELWP regarding detail of the proposed amendments to the *Act*.