

Greater Shepparton City Council submission to Review of the Flora and Fauna Guarantee Act 1988

28 March 2017

Introduction

Greater Shepparton City Council welcomes the opportunity to contribute to the review of the *Flora and Fauna Guarantee Act 1988*. Council has taken every opportunity to provide comment and advice to the State in relation to protection of biodiversity.

The Greater Shepparton region is one of the most cleared regions in Victoria, the most cleared state in Australia. Less than 2.5% of the pre-European settlement remnant vegetation remains in the Greater Shepparton region. Remaining areas of native vegetation are generally confined to refugia along waterways and road reserves, although there are patches of remnant vegetation and remnant scattered trees on private land.

The diversity of flora and fauna within Greater Shepparton has greatly declined since European settlement with many species already locally extinct that may be found in more highly vegetated neighbouring areas. The native vegetation that remains is providing critical habitat for the majority of the 84 threatened fauna species located within Greater Shepparton. Scientific evidence recognizes that the loss of hollow-bearing large old trees from rural landscapes is a significant threat to already struggling populations of native fauna.

The existing *FFG Act 1988* was a milestone piece of legislation for biodiversity conservation when first enacted. Unfortunately, we recognise that the implementation of the Act has largely failed to achieve its objectives. One of the key criticisms of the existing Act is the prescription for outlining what is an offence in relation to the removal of flora and fauna.

Comments/recommendations

- Retain the word Guarantee in the naming of the Act – while it may be unfeasible to focus on all species, it is incumbent on governments to provide a framework for all species to be given the opportunity to respond and adapt to climate change and other existing and future risks and threats. It is not the role of government with limited understanding of biodiversity processes, functions, extent, synergies and adaptability, to make decisions that will lead to further loss in areas such as Greater Shepparton.
- Objectives – supportive however note:
 - The objective to halt the decline of threatened species on page 37 is in contrast to content in the description of the problem on page 36 where it is highlighted that “the singular focus on the emergency end of biodiversity decline may not enable a long term turn around in decline or be the most effective way of preventing extinctions”.
 - Promoting a landscape or area-based approach should specifically note regional approach to biodiversity planning supported by regional Catchment Management Authority plans. Reliance on modelled values, mapping etc, is not supported as the current system has proven to be inaccurate and lack any regard for on site

circumstances. This is leading to loss in biodiversity and has been highlighted throughout the native vegetation review process from 2012 under the previous Liberal Government and has continued to the present day.

- Supportive of including targets but note the lack of examples in the consultation paper. There is also a concern that targets may be set without having a clear understanding of, or way of accurately determining, what the current benchmarks are. In addition, this support is dependent upon State Government resources being made available to implement, monitor and report against the targets.
- DELWP's role – welcome the potential improvements outlined on page 43 but note that DELWP role in enforcement and compliance should also be clearly outlined. Enforcement and compliance was one of the major faults of the current Act. It is essential that the review clearly articulate the State is primarily responsible for the delivery, compliance and enforcement of the Act.
- Ensure breaches in the Act have increased and transparent penalties.
- Allow a trigger for Minister to intervene for significant cases.
- Provide for on ground compliance and enforcement staff in regional areas to support LGA's enforcement and compliance under the planning scheme and to investigate and enforce FFG Act offences.
- All responsible authorities must be obliged to act consistently with the provisions of the Act rather than 'have regard to'.
- The wording in the Offence section 47 needs to be reworded to ensure that there is clarity that any flora destroyed or removed without a permit has committed an offence. Please see below for an example of advice provided by DELWP in relation to the illegal removal of vegetation listed on the Act:

Hi,

As discussed, Council's Planning Department are of the belief one, possibly two Bulokes have been removed without appropriate Planning and DELWP permissions.

I've attached photos of the trees in their current state and a site map showing the previous location of the trees.

The owner advised he removed 2 alive and 3 dead trees. He advised he believed the two alive trees he removed were both Murray Pines, upon site inspection Buloke leaf/branches were identified by Council's Sustainability and Environment Officer it is not clear whether this was from one or two trees as the 5 trees have all been placed in a large pile.

If you could please advise of DELWP's required course of action in this matter that would be great.

Planning Investigations Officer
Greater Shepparton City Council

Hi,

Unfortunately under the FFG Act the offence requires that the person has "taken" the flora for the purposes of sale or sold or offered that flora for sale.

It could be argued that the flora was "moved". But I have had little success with that.

The most we could do would be issue a warning letter.

(1) A person must not take, trade in, keep, move or process protected flora without a licence or permit or unless authorised by Order of the Governor in Council published in the Government Gazette.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to the taking of flora by a person if that person—

(a) has accidentally taken that flora and has exercised reasonable care not to take that flora; or

(b) in the case of flora taken from private land, other than land which is part of the critical habitat of the flora, is the owner of the land or person who has been granted a lease by the owner of the land from which the flora is taken and has not taken that flora for the purposes of sale or sold or offered that flora for sale;

- Agree there is a role for all stakeholders but do not support increasing implementation or enforcement responsibilities for Local Government.
- Further public consultation should be undertaken after the development of the final reforms and prior to tabling for legislation. It is very difficult to comment on the proposed changes at a strategic discussion level as is offered in the current consultation paper.
- Support the notion of world's best practice Biodiversity Management however note there is no indication of what this is in the consultation paper.
- The revised Act should include newly identified key habitats including revegetation sites and specific sites where habitat is being provided by non-native or non-indigenous flora.
- Greater transparency of losses due to exemptions under the Act through annual reporting.

Conclusion

Greater Shepparton City Council thank DELWP for the opportunity to respond to the consultation paper into the Review of the *Flora and Fauna Guarantee Act 1988*. We would be pleased to expand further on any of the comments provided and hope to be involved in further consultation on this matter prior to legislation being enacted.

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Team Leader Sustainability and Environment
Greater Shepparton City Council.