



Review of the *Flora and Fauna Guarantee Act 1988*

27 March 2017

Name of respondent – Hume City Council

1. Setting the Direction

Hume City Council supports the focus on setting clear objectives, principle and targets under the revised *Flora and Fauna Guarantee Act 1987* (FFG Act). Effort must continue to be made in both the emergency end of biodiversity conservation and at the proactive end to protect as many species as possible across the state. Given Victoria's long history of extinction, particularly for mammal species, the main objective should always be to prevent extinction for any species. Anything less does a disservice to future generations.

Council supports the view that the revised Act should drive management actions across the state. These actions must be supported and facilitated through improved access to funding and resources for state government department and agencies, local government and the community.

Council has concerns that the relationship and integration between the objectives of the FFG Act and the planning mechanisms within the *Planning and Environment Act 1987* (P&E Act) have not been appropriately resolved through the review. In particular the review has failed to demonstrate how biodiversity which occurs within non-native habitats is to be protected on private land. Implementing species specific overlays such as the Giant Gippsland Earthworm Environmental Significance Overlay are extremely expensive and time consuming to establish and place too much responsibility on local government to drive species protection outcomes. The State Government must adequately legislate to ensure that these species can be protected across all land tenures.

1.1. Objectives

The paper proposes changes to the overall objectives within the Act. A review of the objectives is supported by Hume City Council and Council sees merit in aligning with other recent policy reviews – Biodiversity Strategy and Permitted Clearing Regulations.

Table 1 – Areas proposed to be covered by revised objectives

Revised objectives	Hume comments
<i>Protecting, restoring and enhancing biodiversity so native flora and fauna improve in the wild,</i>	Supported. Genetic diversity is currently not well considered in the permitted clearing regulations – for example when specific

<p><i>including genetic and habitat diversity and the ecological processes that support biodiversity.</i></p>	<p>biodiversity equivalence units are required, these offsets can be anywhere within the state. There is potential to lose genetic resources, at end of ranges that can be well adapted to the changing climate and sub-species of plants and animals that have not been subject to scientific investigation. This process also picks winners and losers across the state without a clear understanding of which habitat are the most important refuges in a changing climate. The FFG review and the permitted clearing regulations review should better consider protection of genetic diversity in addition to the protection of taxa.</p> <p>See section 4 below.</p>
<p><i>Halting the overall decline of threatened species and communities and securing the greatest possible number in the wild in the context of climate change.</i></p>	<p>Supported in principle.</p> <p>The Act should continue with the original objective to <i>guarantee that all taxa of Victoria's flora and fauna other than the taxa listed in the Excluded List can survive, flourish and retain their potential for evolutionary development in the wild.</i> Preventing currently listed common species moving to threatened categories should be a key objective within the Act. It is not adequately considered within other legislation, such as the P&E Act, so removing the guarantee may lead to species loss.</p> <p>The <i>'greatest possible'</i> objective contrasts with moves by other state based organisations such as Zoos Victoria whose 2014-2019 Wildlife Conservation Plan states: <i>We are committed to the recovery of 20 native threatened species all of which require urgent conservation intervention. We've promised that no Victorian terrestrial vertebrate species will go extinct on our watch. This is an enormous but necessary undertaking and will require Zoos Victoria to work through strategic partnerships whilst mobilising community support.</i></p> <p>While Council acknowledges that under climate change all species might not be saved, open and transparent decision-making is required where attempts will no longer be made to save a particular species.</p>
<p><i>Ensuring the use of native flora and fauna is sustainable.</i></p>	<p>Supported.</p> <p>Currently there is a significant discrepancy in the way flora and fauna use provisions are applied.</p> <p>For example, Kangaroo Management Plans are a tool used within urban development areas. In most cases these plans aim to prevent land locking by moving animals on and culling. The plans have not proven to be an effective tool in managing kangaroos and do not lead to a sustainable use of the animal post culling. Partnering with Traditional Owners to utilise the pelts for cultural clothing, for example, would provide a beneficial and sustainable use.</p> <p>In addition, there are many threatened and common native</p>

	<p>fauna species destroyed by machinery as part of the construction process occurring within urban developments. The Department of Environment Land Water and Planning (DELWP) has moved away from the previous policy and practice of salvage and translocation of animals to secure conservation reserves, and as a result these animals are currently being destroyed. More humane solutions are needed to achieve broader community outcomes for these species.</p>
<p><i>Managing the impacts of threats to biodiversity, including climate change.</i></p>	<p>Supported.</p> <p>Without proactive and funded management actions biodiversity will continue to decline across the state as a result of climate change impacts.</p>
<p><i>Promoting a landscape or area-based approach to biodiversity planning and ensuring the delivery of conservation actions maximises benefits to biodiversity.</i></p>	<p>Supported in principle. See section 3.3 below.</p>
<p><i>Supporting a collaborative approach to managing biodiversity across stakeholders.</i></p>	<p>Supported.</p> <p>'Managing' alone will not reverse the landscape wide decline in biodiversity; improving biodiversity outcomes on land managed by a variety of stakeholders by 'restoring and enhancing' is required.</p>
<p><i>Facilitating the involvement of Traditional Owners, acknowledging their connection to country and unique role in, and knowledge of, biodiversity conservation.</i></p>	<p>Supported. See section 4.1 below.</p>
<p><i>Improving the management of biodiversity by developing and sharing knowledge and monitoring biodiversity outcomes to enable adaptive changes to approaches are necessary.</i></p>	<p>Supported.</p> <p>The local government sector has a substantial amount of knowledge of and experience in improving and effectively managing ecological values within their boundaries. This knowledge and experience is not always called upon in government decision making processes. Local government was represented on the Stakeholder Reference Group for the recent review of the Permitted Clearing Regulations, and was able to provide practical technical advice which has led directly to proposed improvements to the Regulations.</p> <p>An adaptive monitoring approach to ecological programs that is conducted by all levels of government, in private land conservation, academia and community groups will enable learning and adapting to occur across the sector and state.</p>
<p><i>The role of the Act could include specifying:</i></p> <ul style="list-style-type: none"> • <i>a requirement to include</i> 	<p>Supported. See section 1.3 below.</p>

<p><i>the targets in the Biodiversity Plan</i></p> <ul style="list-style-type: none"> • <i>a review period and process for developing the targets</i> • <i>the matters that must be included in the targets</i> • <i>reporting against the targets.</i> 	
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1.2 Principles

Table 2 – Comments on the framing of the proposed principles.

Proposed principles	Hume comments
<p><i>Integrating and balancing environment, social and economic objectives.</i></p>	<p>Supported in principle.</p> <p>Current accounting methodologies which seek to balance a range of objectives often significantly undervalue the role of biodiversity, ecosystem services and the long term nature of biodiversity impacts, and overstate the sometimes shorter term benefits of economic gains.</p> <p>Further guidance, research and case studies will be required to identify what the FFG Act requires in triple bottom line decision making.</p>
<p><i>Informed decision making – to ensure decisions are based on the best available information and scientific uncertainty and risk is properly accounted for.</i></p>	<p>Supported.</p>
<p><i>Primacy of prevention – to ensure appropriate weight is placed on preventing harm and avoiding impacts to biodiversity over the minimisation or mitigation of impacts.</i></p>	<p>Supported.</p>
<p><i>Shared responsibility – to provide a platform to use a range of mechanisms and work with a range of stakeholders to take action to prevent harm to, or restore, biodiversity.</i></p>	<p>Supported in principle.</p> <p>In order to achieve this principle, additional resources at state government level and including state agencies will be required so that government can lead by example.</p>
<p><i>Intergenerational and Intragenerational equity – to ensure decision makers consider how decisions may affect specific parts of the community and future generations.</i></p>	<p>Supported.</p> <p>Decision makers should also be required to consider the impact of ‘failure to make decisions’ – such as the delayed listing of species or the failure implement action statements. Most current action statements for species listed within the FFG Act would stop the decline of species, but they have</p>

simply not been implemented.

1.3 Targets

Target setting must occur at all spatial scales: a species with habitat within a small urban area supported by an active passionate community should not be disadvantaged by a landscape scale approach. Extinction always starts at a local level. Common or threatened species rely on reserves of all spatial scales, from orchids and butterflies that may only survive in small, locally managed reserves, to some mammals and birds with wider habitat ranges.

Local government must be involved in the setting of conservation targets. This sector plays a key role in funding conservation activities on public and private land, and in creating connections between public land and community participation in conservation programs.

Targets must be strong, with monitoring and auditing performed regularly, and there must be government accountability for performance (or lack thereof) against targets. Targets, as well as the monitoring, auditing and accountability framework, should be subjected to a second round of consultation and should be species and ecological community dependent.

A critical gap in the Biodiversity Strategy (which will sit under this reform) is an explanation of what expenditure is currently directed to biodiversity protection and how much increase in expenditure is needed to meet the targets of the Strategy. Without clear funding streams the reformed FFG Act will continue to be ineffective in achieving biodiversity protection in Victoria.

2. Coordination and Integration Across Government

Hume City Council supports the notion that biodiversity can only be protected and improved across the state with clearly defined responsibilities and accountability for all government departments.

2.1 Leadership

The inclusion of biodiversity considerations into all government legislation and decision making is essential. This should extend beyond land use decisions into procurement and tendering policies, and take into account direct and indirect impacts on biodiversity both within the state, across the country and internationally.

Providing powers to the Minister to require information about how a public authority is managing a listed threatening process or how a high value biodiversity asset is being managed will increase the transparency and accountability of legislation. It is very difficult for local government to instigate enforcement proceedings against public agencies and this reform must allow the state government to resolve issues that are caused by state agencies. This will also allow for the state to investigate cases where local government is impacting on biodiversity, which currently only occurs by the Commonwealth.

2.2 Duties on government departments

The proposed reform to place duties on public authorities is supported. Council has seen the lack of funding provided to public land managers such as Parks Victoria contribute to a decline in biodiversity values of significant public assets.

Other public land managers such as VicTrack and VicRoads must contribute their 'fair share' of proactive land management protection of biodiversity assets on land under their control. Data collected within the Hume municipality shows a significant decline in the quality and

condition of rail reserve BioSites over the last 20 years; anecdotally this is occurring across the state.

The duty must also extend to the role DELWP undertakes as the Crown Land manager and all of its relevant leases, licences and committees of management. The duty should also apply to the disposal or sale of any crown land that has significant biodiversity assets. If Crown land or any public land assets are sold which contain significant biodiversity values these should be pre-secured through the use of on-title agreements such as Trust for Nature Conservation Covenants.

Similar duties should be extended to the owners of private land, given the extensive area with biodiversity values in private ownership. Duties should extend to all threatened processes, where critical habitat determinations have been issued across all land tenures.

2.3 Guidance Material and Standards

The availability of guidance material and standards is supported. There must be a review period for all guidance material so that it remains up to date as new scientific information about biodiversity values becomes available. The scope and influence of guidance material and standards should be specified in the Act to clarify the circumstances under which they are to be used. This is particularly relevant for their influence on land use planning decisions.

Biodiversity standards and guidance material must be adaptive and responsive to changing conditions. For example if key areas of habitat or populations suffer impacts from natural disasters then a process to better protect other areas of habitat must be initiated until the true impacts are understood and accounted for, maintaining the guarantee that all species will survive into the future.

2.4 Management Agreements

Council supports the use and development of public authority management agreements. These agreements could be wider in scope than just biodiversity, taking into consideration all land management and land sustainability issues, such as the impact of weeds on adjacent conservation reserves, the role of land in strategic fire breaks, the impact on hydrological function and erosion within the landscape, and the use of land to reinstate native vegetation and biodiversity values for linkages (e.g. revegetation within rail and road reserves). These management agreements should be a requirement of any public land including land where a lease, licence and committee of management agreement exists.

DELWP should not be the only stakeholder involved in these negotiations; local government and local communities should also be involved in setting and developing these agreements.

3. Strategic Approaches to Biodiversity Planning and Species Listing

Hume City Council submitted a response to the draft state-wide biodiversity strategy in May 2016. Please note that all comments made in that submission are relevant to this current submission.

3.1 Publishing Ecological information for each species, distribution and key threats

Hume City Council supports the publication of up to date information for each species, community and threatening process. Lack of current information has been a key failure of biodiversity legislation in the past at both a state and Commonwealth level, with a number of Action Plans not being completed and most being significantly out of date. These documents should be held on an online database, preferably with a spatial component, so that not only

can communities identify what species are likely to occur near to where they live, but what actions need to occur, where and what actions are occurring and by whom, and how and where to support the species.

Information collected through this process should be used to peer review and update the habitat importance maps utilised through the Permitted Clearing legislation, and to make timely critical habitat determinations where required.

3.2 Priority actions for each listed species and communities

The identification of priority actions for each listed species and community is of critical importance, as is the commitment to undertake and fund these actions.

The government should have an easily accessible list of all actions that are required for all species and a current status update on progress against each action. This list could help direct private investment and public involvement in threatened species and community conservation. As above, all priority actions should include a spatial component.

The spatial tool that Port Phillip and Westernport Catchment Management Authority has created to host and distribute the Regional Catchment Strategy could be expanded to host all specific priority actions.

Priority actions should also be rapidly adaptable to changing climate conditions and significant natural disasters. For example, an insurance fund could be established to fund biodiversity recovery following significant fire or flood events, similar to funds for impacts to the built environment.

3.3 Landscape or Area-Based Planning

The proposed move towards landscape or area-based planning must enable the conservation of the broadest range of species and functioning ecological communities as possible and avoid relying too heavily on modelling of cost effectiveness rather than determined local values and priorities. Management activities that focus only on threatened species, can lead to impacts on other species within an area. A balanced approach between focusing on the protection of an individual species and a landscape approach must be considered.

For example, under the Melbourne Strategic Assessment and Biodiversity Conservation Strategy the Growling Grass Frog has been the main species used to determine ecological impacts of the urban growth expansion on waterway corridors. This has led to important species such as the Platypus, patches of native vegetation, Striped Legless Lizard habitat and other values within these reserves not being adequately considered in the planning and proposed management and funding strategies. Habitat should be restored to provide a benefit to the greatest number of species, not benefit a single species to the exclusion of all other species. Public use and health and wellbeing outcomes should also be considered as part of a landscape based approach.

Landscape or area-based planning must also avoid the scientifically uncertain concept that larger conservation areas provide the best (or only) conservation outcomes for the greatest number of species. Research by Dr John Morgan from La Trobe University, has shown that numerous small scale conservation reserves such as the Evans Street Wildflower Grassland in Sunbury can protect just as many threatened species as a larger reserve. In many ways larger connected reserves can be more difficult to manage, are less likely to see significant community involvement in land management and may be subject to more significant natural catastrophes in a changing climate. Diversity within the conservation estate, in size, location, surrounding conditions, land manager and management styles are important to maintain the

broadest range of biodiversity across the State and give local communities as many opportunities to connect to biodiversity in the areas where they live and work.

Local government plays a key role in funding conservation activities on public and private land. It also plays an important role in creating connections between public land and community participation in conservation programs. Target setting and landscape planning should occur at all spatial scales: a species with habitat within a small urban area supported by an active passionate community should not be disadvantaged by a landscape scale approach.

Area-based planning is not currently adequately considered through the current Native Vegetation Permitted Clearing Regulations and these would need to be modified to consider these values. In particular indirect and compounding impacts on biodiversity are not well considered through the planning scheme, for example small to medium scale physical impacts, like roads, that reduce habitat connectivity.

3.4 Common Assessment Method

Hume City Council generally supports the basis behind the proposal to use the Common Assessment Method; however the following areas of concern should be addressed:

- The listing processes and identification processes between Ecological Vegetation Classes (EVC's), FFG listed communities and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) listed communities do not always adequately align. A process for consolidating the habitat characteristics will be required in order to adequately implement the Common Assessment Method.
- Where mapped and modelled EVC's are used in the determination of listed communities, the accuracy of the data must be ensured to avoid inaccurate definitions of the presence of listed communities.
- Financial and staff resources must be committed to ensure that the identification and listing of new species under the IUCN categories occurs within a timeframe that allows for appropriate action.
- The current status of remaining habitat must be included within the characterisation. Species and communities where the majority of remaining habitat is on unsecured public land like rail and road reserves, and private land, must have more substantial listing status than species that are found on secured and managed public land and private land conservation reserves. A species with limited secured habitat on public or private land may be currently common – but may also be under significant threatening pressures.
- Listing and delisting processes available for species listed under the Common Assessment Method must be conducted in real time – both under the EPBC Act and the FFG Act. Species listing status should be subject to a mandatory five year review to ensure that species that may be declining rapidly can be up-listed (e.g. Growling Grass Frog) and species that may be more common than the original listing documentation indicated (e.g. Golden Sun Moth) can be down-listed or delisted. The process for listing species should be simplified and available to the public to nominate species or vegetation communities. DELWP and the Commonwealth should ensure that appropriate resources are allocated to departments and agencies to allow for fast processing of listing and delisting species.
- Specific and deliberate effort to research and list less charismatic species which are less likely to be listed by the general public such as invertebrates, reptiles, aquatic vegetation, bats and fungi must be a requirement of the revised FFG Act. Without this focus many species may be lost without anyone noticing.
- Specific and deliberate effort should be made to place protection controls on public and private land for species where the bulk of the habitat does not occur within areas

of native vegetation and may actually occur in weedy species that are listed under the *Catchment and Land Protection Act 1987* (such as Blackberries and Gorse which protect Southern Brown Bandicoots, and Pine Trees that provide habitat for Red-Tailed Black Cockatoos).

- Effort should also be made to protect charismatic 'Australian Wildlife' such as Wallabies, Platypus and Koalas from impacts from development. While these species are not endangered they allow the general public to better connect to the Australian Bush. They also provide key tourism opportunities and provide a focus for public and private land conservation activities. The FFG Act was not established as threatened species legislation – it was to protect all Flora and Fauna – this should remain a key focus of the Act.

4. Habitat Protection and Regulation

Fundamental to Council's concerns about the approach to the changes to the FFG Act is the failure by the Victorian State Government not to review the entire scope of biodiversity and planning regulation as part of this review. This review is a once in a generation opportunity to streamline and improve the approach to biodiversity regulation across the state. The complexity in comprehending the reforms proposed to private land, for example, illustrate why a full review of all biodiversity regulation is needed.

Some possible improvements to the suite of biodiversity legislation are listed below.

- Due to the composition of biodiversity legislation in Victoria, local government must use other means such as the Planning Scheme to protect habitat for species where they occur in areas which are not within native vegetation. Responsibility for the protection and identification of species habitat for state significance should rest with the state.
- The limited scope of the P&E Act to act as a deterrent to illegal clearing is used in the review as justification to increase the enforcement tools within the FFG Act. Insufficient rectification tools and penalties exist within the P&E Act for native vegetation clearing. As DELWP now includes all planning functions of the government, as well as the environment functions, this process should be used to identify and drive reforms to the P&E Act. Attempting to split between approvals for clearing through the P&E Act and the enforcement of illegal removal through the FFG Act will be excessively complex to implement. The proposed reforms do not provide suitable integration between the FFG Act and P&E Act. Council suggests that the P&E Act could be rectified to easily achieve the biodiversity outcomes sought within the review.
- Clause 12 of the Planning Scheme speaks to all Environmental and Landscape Values and states that '*Planning should protect sites and features of nature conservation, biodiversity, geological or landscape value*'. The Planning Scheme has the ability to protect species in all habitat types, including native and non-native vegetation. Council suggests that a new particular provision be created within the Planning Scheme which includes habitat importance maps of species which do not occur within native vegetation which create planning permit triggers. DELWP would be the recommending authority for these cases.
- The enforcement and compliance tools within the P&E Act must be repaired so that the legal ramifications of doing the wrong thing are a sufficient deterrent to offenders (applying penalties and requiring offsets and rectification of land). DELWP officers should become Authorised Officers under the P&E Act and agreements entered into between local government and the state government about which kinds of illegal clearance cases will be handed to the state.
- Alternatively to the above, high value biodiversity regulations could be treated in a similar approach to Aboriginal Heritage regulations. Applications which are seeking to

impact on areas of cultural heritage sensitivity are required to seek and gain approval for impacts from the Registered Aboriginal Party prior to receiving any planning permit. This process could be replicated for biodiversity, where applicants would be required to obtain approval under the FFG Act prior to the issuing of a planning permit. Any illegal impacts to native vegetation and biodiversity would be enforced solely under the FFG Act.

4.1 Traditional Owners

One of the problems with the application of biodiversity legislation on private land is that it does not always align with the Cultural Heritage Management Plan process or the Aboriginal Heritage Act.

The value that traditional owners place upon native vegetation should be included in decision making processes both on public and private land. This should include the need to secure local offsets that are within traditional owner boundaries so that losses within one Country are not placed within another Country except with the approval of the Registered Aboriginal Parties or Aboriginal Affairs Victoria.

Traditional Owners could be supported by funding streams to allow for their continuing management and for the reconnection of land management across the landscape. The duty of public authorities should extend to connecting and assisting Traditional Owners connection to biodiversity.

4.2 Risk based approach to protected flora

Council has significant concerns with an earned autonomy approach proposed within the reforms. It is clear that the current enforcement tools within the system do not act as a sufficient deterrent for breaches. Allowing companies and agencies even less scope for oversight is likely to result in significant impacts to biodiversity. If an earned autonomy approach is incorporated, enforcement and compliance of any breaches should be significantly more onerous than within sites that are subject to current regulatory approaches.

4.3 Strategic mechanism for assessment and approval of biodiversity impacts

While the use of strategic mechanisms is supported in principle local government must be involved in the development of agreements and mechanisms that affect their local biodiversity and their communities.

4.4 Compliance and enforcement

See Section 4 above.

4.5 Critical Habitat Acquisition

One area not adequately covered within the paper is the government acquisition of land that supports critical habitat into the government owned conservation estate. Where the state government determines that an area is critical habitat and the development potential of the land is lost, a fund could be made available to provide ongoing compensation to private landowners for management, and voluntary acquisition processes set up if landowners want to move off the land. This could mean that the land is acquired by the state and then placed into the Crown Land conservation estate or acquired by Trust for Nature and permanent protection covenants place upon the land prior to reselling to a conservation minded landowner. Having a process such as this may increase the likelihood that Critical Habitat Determinations will be acceptable to both government and the wider community.

4.6 Land Security

The changes should introduce a new fit for purpose mechanism for securing permanent protection of native vegetation offset reserves. Whilst the *Victorian Conservation Trusts Act 1972* (Trust for Nature) and *Conservation Forest and Lands Act 1987* (Bushbroker/S69 agreements) have set up land security mechanisms for offset sites these are not bespoke and the enforcement and compliance tools within them are not fit for purpose. The reforms should establish a specific on-title agreement process for the securing of offset reserves that includes appropriate restitution rules in case of breaches. It should also establish the need for offset reserves to have securing in-perpetuity funding arrangements rather than the current approach of only managing offset reserves for 10 years to reduce the ongoing financial burden on local government and other public land managers.

5. Accountability and Transparency

The proposed reforms to the accountability and transparency of the Act, including the five year independent report on targets, public consultation period, publicly available information and third party standing rights to challenge decisions are supported. This accountability must extend to ensuring that the levels of investment by the state and Commonwealth governments are appropriate to achieve the objectives of the Act.