

**REVIEW OF
THE FLORA AND FAUNA GUARANTEE ACT 1988**

March 2017

Submission by Manningham City Council

Introduction

Manningham City Council (MCC) officers welcome the opportunity to comment on the *Review of the Flora and Fauna Guarantee Act 1988* (FFG Act).

The City of Manningham has an area of approximately 113 square kilometres almost entirely with 30 kilometres of the centre of Melbourne and falls within the Yarra River catchment. Officers' comments are made in the context of local government area with a mix of urban, peri-urban and rural properties, but also considers the overall state-wide implications of biodiversity and environmental legislation, of which this Act is a part.

The City of Manningham is a highly fragmented landscape with large and small bushland and hobby farm private properties, along with large areas of public land. Council has demonstrated commitment to protecting the municipality's biodiversity, including services including active community engagement and education, incentives for private landholders to protect biodiversity values, responsible bushland management, and strong evidence-based strategic and statutory planning that reflects the values that the Manningham community places on biodiversity.

Despite this commitment, there is an ongoing decline of biodiversity locally, as well as more broadly across the State. The State of Victoria's regulatory approaches to biodiversity protection are failing. The current reviews of the *Flora and Fauna Guarantee Act* and the *Native Vegetation Clearing Regulations* have missed a once in a generation opportunity to review and integrate these Acts as well as others, including the *Environmental Protection Act 1970*, the *Wildlife Act 1975*, the *Planning and Environment Act 1975*, and the *Catchment and Land Protection Act 1994* (CaLP Act). In particular, the fundamental mismatch between the application of the *Planning and Environment Act* on private land and the objectives and principles of the FFG Act are of significant concern.

Setting the direction

Council officers support setting clear objectives to achieve biodiversity protection. The FFG Act must set visionary goals to achieve outcomes that protect biodiversity across all land tenures in Victoria. The Act must not only protect threatened species and habitats but also protect "ordinary" bush and common species. In uncertain times of climate change and extreme weather events we must protect against sudden or unexpected species or habitat crashes. It is only by ensuring that all bushland is protected and connected that genetic diversity can keep a species strong and that refugia and corridors are available in the event of disaster, such as fire or flood.

The Act must drive management actions to achieve these outcomes. This will only be possible through significantly increased and ongoing resourcing at all levels, including State government departments, authorities and agencies, local governments, community groups and landholders.

Revised objectives

Protecting, restoring and enhancing biodiversity so native flora and fauna improve in the wild, including genetic and habitat diversity and the ecological processes that support biodiversity.

Council officers support this objective. However there are concerns that the definition of biodiversity (in the Victorian Planning Provisions) is confined to that which occurs in native vegetation. There are numerous examples of species living in or using exotic vegetation. City of Manningham examples include Powerful Owls roosting in Monterey Pines and Oak trees and Brush-tailed Phascogales living in nest boxes in peri-urban areas of Warrandyte and Wonga Park. It was suggested at the DELWP information session held at the Municipal Association of Victoria (MAV) offices in February that species-specific overlays could remedy this. Implementing these for all

threatened species would be very time consuming and expensive and would do nothing for 'secure' species.

It is a State government responsibility to protect flora and fauna. Requiring species specific overlays would shift this responsibility to local government and biodiversity protection outcomes would likely worsen at a time when the State government imposed rate cap financially constrains local government's capacity to take on this responsibility.

There is also the consideration of genetic diversity being compromised by the current offsetting arrangement in the Permitted Clearing Regulations. Where no offset sites are available locally and offsets are bought elsewhere, we are losing genetic diversity, particularly of species that may be at the edge of their natural range. This is an example of how an overhaul of all State biodiversity legislation at once could have achieved a much better result for biodiversity.

Halting the overall decline of threatened species and communities and securing the greatest possible number in the wild in the context of climate change.

Council officers support this objective. However, we believe it needs to be broader to include all species and communities and to have greater clarity. Preventing species and communities becoming threatened should be a clear objective in itself. While it is probable that no matter what resources were available, some species are still likely to become extinct under climate change, there must be some clear goals and targets rather than the vague statement "securing the greatest possible number". A much clearer objective would be something positive and visionary such as Zoos Victoria's 2014-2019 Wildlife Conservation Plan:

"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."

Ensuring the use of native flora and fauna is sustainable.

Council officers also support this objective. Particularly in peri-urban areas currently, Kangaroo culling results in waste, for example clear plans for how the animals' carcasses will be sustainably used should be required as part of a Kangaroo Management Plan.

Managing the impacts of threats to biodiversity, including climate change.

Council officers support this objective.

Promoting a landscape or area-based approach to biodiversity planning and ensuring the delivery of conservation actions maximises benefits to biodiversity.

Council officers support this objective with qualifications. Landscape or area-based planning can potentially have the most positive impact on the broadest range of species. In some situations though, focus on a particular species within an area can have detrimental effects on other species. An example of this locally would be management actions such as fire at a particular time of year used to stimulate flowering of a threatened orchid species may impact on other species, such as short-lived annual flora species with tiny seed easily destroyed by fire.

In a peri-urban area with fragmented landscapes, small reserves and pockets of bushland are often disregarded as potential havens for threatened species, however they can be equally valuable and also easier to manage, so should be considered and included in area-based planning. Tindals Wildflower Reserve in Warrandyte, at just over 2 hectares, has a rich and diverse flora including

numerous orchid species and flourishes with well-planned regular bush crew management and a passionate local community.

Supporting a collaborative approach to managing biodiversity across stakeholders.

Council officers support this objective, but would like to see it include an aim of restoration and enhancement, not just “managing biodiversity”.

In particular we would like to see more collaboration with local land carers with accumulated local knowledge, including residents, Friends Groups and Landcare members and Council staff. There is a tendency for authorities and land managers to only consider the area they are responsible for and not to consider neighbouring land of different tenures. Local land carers are more likely to see a site as part of a landscape they are familiar with and have seen survive droughts, fires, floods, revegetation, differing levels and techniques of management, local extinctions etc. This understanding of a site’s responses can be valuable in informing future management.

Facilitating the involvement of Traditional Owners, acknowledging their connection to country and unique role in, and knowledge of, biodiversity conservation.

Council officers support this objective. Biodiversity legislation may not align well with heritage legislation including the *Aboriginal Heritage Act* and Cultural Heritage Management Plans. Consultation with Traditional Owners should always be a priority in decision making processes regarding native vegetation. One example is offsetting of native vegetation clearing going outside the local area. This may disregard the value of this local vegetation to the local traditional owners.

There are some excellent programs that help to reconnect traditional owners with traditional land management whilst teaching and utilising best practice modern land management techniques. The Narrap team project operating in the Nillumbik local government area is a good example of this. Programs such as these should be refined, extended and given ongoing secure funding which would benefit both flora and fauna and traditional owners.

Improving the management of biodiversity by developing and sharing knowledge and monitoring biodiversity outcomes to enable adaptive changes to approaches are necessary.

Council officers support this objective. There is a vast amount of knowledge amongst community groups, landholders, bushland management practitioners and all levels of government. Sharing this knowledge, supporting current monitoring or developing new monitoring programs to enable better adaptive management is vital to effective and efficient biodiversity management.

The role of the Act could include specifying:

- a requirement to include the targets in the Biodiversity Plan
- a review period and process for developing the targets
- the matters that must be included in the targets
- reporting against the targets.

We support inclusion of the Biodiversity Plan targets and the details above of how this will operate, including regular reviews with a stated review period. We refer to our comments provided on the Biodiversity Plan in 2016 including that the targets are worthless without funding. There is no clear explanation in that plan or the current review of the FFG Act of what it would cost to implement the targets or how the additional expenditure will be funded.

Potential Improvements

The Review proposes principles to help ensure balanced decision making. Environmental, social and economic factors may be given different weight by different decision makers. The Review acknowledges that the lack of principles may be a factor in the lack of use of some statutory tools, e.g. the declaration of critical habitat.

Integrating and balancing environment, social and economic objectives.

Council officers support this principle. Short term gain tends to influence decision making towards economic benefits being given greater weight than potential long term biodiversity losses.

Informed decision making – to ensure decisions are based on the best available information and scientific uncertainty and risk is properly accounted for.

Council officers support this principle.

Primacy of prevention – to ensure appropriate weight is placed on preventing harm and avoiding impacts to biodiversity over the minimisation or mitigation of impacts.

Council officers support this principle.

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.

Council officers support this principle. This will require significant resourcing to be effective.

Intergenerational and intra-generational equity – to ensure decision makers consider how decisions may affect specific parts of the community and future generations.

Council officers support this principle. We would like to see included that failure to make decisions can also cause a negative impact e.g. delayed listing of species or implementation of action plans. Lack of implementation of action statements is currently contributing to declines of many species.

Coordination and integration across government

Council officers agree that to achieve the FFG Act's objectives will require a whole-of-government approach, including that biodiversity be considered at an early stage in all government decisions at all levels. We would welcome clear descriptions of roles and responsibilities for biodiversity for public authorities as well as all levels of government. We would also like to see this extended to private land where significant biodiversity values exist with little protection. The poorly enforced CaLP Act is ineffective in protection on private land e.g. it does not cover most environmental weeds or deer, which are threats in many situations.

Council officers support providing power for the Minister to request information or provide a ministerial direction under the FFG Act. This will provide transparency and accountability on the benefits and impacts of land management by government departments, authorities and agencies, including local governments and DELWP.

Council officers also support the preparation and provision of guidance materials and standards. These would need to have stated review periods to allow for new information to be incorporated or guidance to be adapted as it becomes available.

It is currently apparent in the City of Manningham that Parks Victoria (PV) has insufficient funding to protect biodiversity assets in Warrandyte State Park (WSP). Many high value areas of WSP have become over-run by weeds or pest animals despite efforts by Rangers, Friends of Warrandyte State Park and Andersons Creek Catchment Landcare (ACCA) to maintain PV land. This weed and pest load impacts on private land where land owners supported by Council are working to protect both threatened species and core habitat on their own land. An emerging issue are deer (mainly Sambar, but also Red and Fallow) which are having a huge impact on local habitat. At a time when Melbourne Water is promoting citizen science to search for the fast disappearing Southern Toadlet, Sambar Deer are creating wallows in its habitat throughout WSP.

DELWP issues permits for seed collection. In 2016, commercial seed collectors under a DELWP permit were collecting seed from a regenerating ACCA Landcare site on public land. Landcare participants had collected seed on their own properties and propagated it to revegetate the site. While none of the species planted were themselves threatened, the group's aim had been to create habitat for threatened species. The land carers were discouraged by their propagules being harvested for commercial interests. If Council had been made aware of the permit it would have been possible to avoid collection from sensitive (both environmentally and socially) sites.

Council officers support the development of public authority management agreements. There could be many benefits in linkages across landscapes that could consider issues beyond biodiversity. These could include impacts of weeds jumping fences, hydrology and erosion to name a few. Local governments and local communities would welcome the opportunity to be included in developing agreements.

Strategic approach to biodiversity planning and species listing

The Review states it is intended to retain the existing requirement to prepare a statewide biodiversity plan under the Act. MCC submitted comments to the Biodiversity Plan in 2016 which are relevant to this current submission.

Conservation advice – we support the publication of current, up to date information on listed species, communities and threatening processes. This information has been lacking under the current system. Incomplete and out of date action plans have hindered protection of species and communities.

An online database with spatial context would allow for peer review which could facilitate updating the habitat importance maps for the native vegetation permitted clearing regulations.

Priority actions – the identification of priority actions following conservation advice will be of vital importance, as will timely and funded implementation of these actions.

Having a spatial element to the actions will be essential. The Port Phillip and Westernport Catchment Management Authority spatial tool created to host the Regional Catchment Strategy could be adapted to also host these priority actions.

Priority actions must be able to be adaptable both to the changing climate and to natural disasters.

Biodiversity response planning – we strongly support the collaborative approach to involving all stakeholders in an area or landscape.

As stated under **revised objectives** "Landscape or area based planning can potentially have the most positive impact on the broadest range of species. In some situations though, focus on a particular species within an area can have detrimental effects to other species."

A local example is environmental flows being released into the Yarra River to assist Australian Grayling breeding. This may have a range of impacts or benefits for numerous other species which may not have been considered. We also stated that small areas should not be discounted areas for protection of threatened species as this has been proved to not always be the case.

Common Assessment Method

In general Council officers support developing a common assessment method to resolve uncertainty between various lists and provide clarity about how and why species are or are not listed. There are numerous points that will need to be considered in the process. These include:

- The listing processes and identification processes between Ecological Vegetation Classes (EVCs), 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 EVCs 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.
- The use of International Union for Conservation of Nature (IUCN) categories to determine the status of threatened species will likely generate significant increases in the numbers of species listed for some vegetation communities. It will require significant time and resources to identify and list the likely numerous species to be listed under the IUCN categories.
- The new listing process must ensure that the current status of remaining habitat is included within the characterisation. Species and communities where the majority of remaining habitat is on unsecured public land or 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.
- There must be quicker listing and delisting processes available for species listed under the Common Assessment Method – both under the Commonwealth *Environment Protection and Biodiversity Act 1987* (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. Wine-lipped Spider-orchid) 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 on 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 Powerful Owls and Red-Tailed Black Cockatoos.
- While we acknowledge that much of the FFG Act focuses on threatened species, it is important to remember that the Act was established to protect all Victorian flora and fauna. ‘Common’ wildlife and ‘ordinary’ bushland, particularly on the peri-urban fringe, are vital to giving residents a connection with nature, as well as giving tourists an opportunity to see

kangaroos and gum trees where they belong, rather than in a zoo or a botanic gardens. This aligns with the biodiversity plan *Protecting Victoria's Biodiversity 2036*

"Goal 1: to encourage Victoria's more Victorians to value nature

Victorians understand that their personal wellbeing and the economic wellbeing of Victoria are dependent on the health of the natural environment."

Habitat Protection and Regulation

Council officers are strongly of the opinion that objectives and principles of the FFG Act must relate to both public and private land. The Act should also better integrate with the EPBC Act, especially given the proposed Common Assessment Method. The interactions between all the various forms of biodiversity legislation are complex, confusing and at times contradictory. As stated earlier, we believe the best way to protect flora and fauna into the future would be to overhaul biodiversity legislation as a whole, rather than piece by piece. By doing this, the State could effectively protect species and habitats whether within native vegetation or not and across all land tenures.

Council officers are particularly concerned with the proposed "earned autonomy" approach. We believe that all companies, agencies and industries should be expected to operate within the law and should not need rewards for responsible behaviour.

It is clear that the current enforcement tools within the system do not act as a sufficient deterrent for breaches. 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 normal regulatory approaches.

The use of strategic mechanisms for multiple or on-going activities is supported in principle. Local governments must be involved in the development of such agreements and mechanisms that affect their local biodiversity and their communities.

Critical Habitat Acquisition

One area not adequately covered within the Review 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, a fund should be made available to provide ongoing compensation to private landowners for management and voluntary acquisition processes set up if they 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 placed 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 politically palatable.

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. The reforms should also establish the need for offset reserves to secure in-perpetuity funding arrangements rather than the current approach of only managing offset reserves for 10 years.

Compliance and enforcement

Council officers agree that penalties are currently too low and do not match related legislation. This is another reason for the need for a complete overhaul of biodiversity legislation.

We believe that penalties for breaches of the Act should be in line other Victorian legislation. There must be equality between environmental, social and economic rights and responsibilities (the triple bottom line principle). This would result in much higher maximum penalties and send a message to all Victorians that illegal threat to or destruction of biodiversity will not be tolerated.

Penalties for corporations should be increased even further, in line with comparable legislation in other areas. Council officers agree that imprisonment should be introduced for the worst breaches of the Act.

Remediation orders would only work with fixed enforceable timeframes for completion, along with ongoing maintenance requirements.

Accountability and Transparency

The proposed reforms to the accountability and transparency of the Act, including the five year independent report, public consultation period and legal ability to challenge decisions are supported. All efforts to increase accountability and decision making within biodiversity legislation are important, particularly in relation to ensuring that the levels of investment are appropriate.

Transparency must also extend to the implementation of independent auditing of decisions made by State and local governments on the application of biodiversity legislation. All offsets sites and auditing reports should be publicly available.