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The Hon Robert J Debus MP
Attorney General and Minister for the Environment
Level 36
Governor Macquarie Tower

1 Farrer Place
Sydney 2000

19 April 2004

Dear Minister,

Threatened Species Position Paper and Response to Reforms

Please find attached a submission from the Environmental Liaison group to the Discussion Paper on Changes to Threatened Species Reform provided to us on 8 April 2004.

Please contact Jeff Angel on 9299 5680 if you wish to discuss this further.

Yours sincerely

Jeff Angel
For the groups



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Threatened Species Position Paper and Response to Reforms (04/2004)

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1. Introduction

The *Threatened Species Conservation Act 1995* (TSC Act) was established to protect and conserve the threatened species of NSW. It has largely failed to do so due to woeful resourcing and a lack of political will. Now that an opportunity for reform has arisen, instead of providing the desperately needed resources and will-power, the Government has presented a reform agenda pandering to the concerns of developers and farmers, potentially to the exclusion of the community.

It is understood that the current review of the *TSC Act 1995* has been prompted by recent reforms in natural resources management and other developments, such as to the planning regime and the *Environment Planning and Assessment Act 1979*. Environment groups welcome the opportunity to make a submission on this important opportunity for reform.

Whilst acknowledging the current departmental changes and broader natural resource and planning reform processes, the ELO group would like to emphasise that there are certain key principles for effective conservation and protection of threatened species that are sacrosanct. These must be maintained regardless of administrative changes. These core issues include: public participation; accountability and transparency of process; independence of the Scientific Committee; maintained veto right; and third party rights; and adoption of a precautionary approach.

This paper comprises four parts. The first part is the introduction. The second part is an overview of the strengths and weaknesses of the current regime, as contextual background material for the ELO response to the Discussion Paper.¹ Part three incorporates responses from peak environment groups to the Draft Discussion Paper.

The key concerns with the proposed reforms relate to:

- General concerns
- Certification and streamlining
- Institutional capacity
- Roles of different bodies
- Listing and recovery planning
- Interaction of instruments, institutions and reform processes.

Part four provides conclusions and recommendations.

¹ Prior to the publication of the Draft Discussion Paper (circulated by the Minister's office on 8 April 2004), members of the ELO group¹ had requested that the EDO review the *Threatened Species Conservation Act 1995* (TSC Act 1995) in light of mooted changes. This involved briefly evaluating the strengths and weaknesses of the current regulatory regime, and commenting on desired amendments to the legislation in light of ongoing structural system changes, for example, delegation of responsibility for threatened species assessment from the Department of Environment and Conservation (DEC).

2. Strengths and Weaknesses of the current system

The *TSC Act 1995* has had a chequered history since its passage in 1995. At the time of its inception, the Act provided hope that the continuing loss of biodiversity in NSW would be stopped. The latest State of the Environment Report (2003) and the State Government's own assessments show that the legislation has not achieved its aims.

The following table summarises plan-making statistics.

Plan	Draft Plans (public exhibition or preparation stages)	Plans pending finalisation	Final Plans	Total Plans
Endangered Species Recovery Plans	4	21	43	68
Vulnerable Species Recovery Plans	0	7	13	20
Threat Abatement Plans			2	2

These statistics are a clear indication of under-resourcing and lack of political commitment to implementing the aims of the legislation. The greater number of listings than originally expected (800 species) illustrates the desperate state of many species in NSW, and this warrants more resourcing – not less mandatory planning.

In terms of matters before the Court, a search of the case law reveals 25 cases that have been brought involving the NSW Act.² The cases mostly involve challenges to council decisions brought by either the proponent of the development application, or community groups opposing approval. The case law can be divided as follows:

- Community v Council
- Proponents v Council (this is the majority)
- Community v Proponent
- Community v Commonwealth Minister
- Community v Scientific Committee
- Application for security costs

The current system has certain strengths as illustrated by the ability of the community to play a role in enforcement of the Act. Furthermore, where sufficient resources have been provided, species have benefited from recovery planning, for example, on Lord Howe Island. The independence of the Scientific Committee has also enhanced the scientific rigour underpinning the listing process (in contrast to the *(CTH) Environment Protection and Biodiversity Conservation Act 1999*).

However, the current system has a number of weaknesses. Community and environment groups have noted a number of these including:

- lack of enforcement by NPWS (now DEC).

² See Prosecution for breach of NPWAct (NSW) resulting in damage to threatened species habitat of species listed under the TSCAct 1995 (NSW): *Carmody v Brancourts Nominees Pty Ltd* [2003] NSWLEC 84

- insufficient resourcing of NPWS for the proper performance of statutory duties under the Act (leading to delays in Recovery and Threat Abatement planning)
- variable degrees of threatened species expertise and capacity within different local councils undertaking development assessments.
- problematic application of the significance test, for example, the failure to account for cumulative impacts.

Environment groups acknowledge the challenges of implementing the current system, in particular the lack of resources and political commitment; however hold concerns regarding a new “streamlined” assessment approach. These concerns are outlined below.

3. Response to proposed reforms

This part is arranged according to the following themes:

- General concerns
- Certification and Streamlining
- Institutional capacity
- Roles of different bodies
- Listing and Recovery planning
- Interaction of instruments, institutions and reform processes

3.1 General concerns

The Discussion Paper is more in the form of a spin-doctored Ministerial document than a disinterested paper prepared by departmental staff. This makes it difficult to engage properly. Is it really the aim of the reforms is to “deliver programs and requirements that seem reasonable to farmers, developers and the community and which make it easier for them to contribute.”? If so, this is at odds with the stated objects of the *TSC Act 1995*. Or is this mere rhetoric – a la the Wentworth model – to couch reforms in language that farmers and developers can understand?

Proper assessment of the new system by the conservation groups needs to be based on proper information. In this respect, the ELO group need a copy of the draft Bill and adequate time to assess the reforms.

The present consultation process has been woefully inadequate and amounts to a significant departure from the historical commitment of DEC to proper community consultation.

The Draft Discussion Paper flags a new approach to biodiversity protection. It is based on two principles. The first is the “greater good”, as evidenced by its emphasis on the strategic planning framework at the expense of individual developments and the advent of a Priority Action Statement, to the detriment of recovery and threat abatement plans. The second is “streamlining”, which is sought to be achieved by the strategic planning shift in emphasis above and by protecting landholders from the uncertainty of third party challenges.

A strategic planning approach and a prioritisation of actions are essential elements of biodiversity conservation. However, these need to be fundamentally based on ecological considerations, be properly resourced and be accompanied by appropriate and well-established checks and balances. The reforms – as far as can be discerned – move away from

these considerations. The ELO group seeks an assurance that fundamental elements of threatened species protection, public participation, transparency and accountability will survive the streamlining process.

The value and importance of threatened Species

It is a truism that permanent habitat protection and habitat restoration are the most efficient methods of achieving protection and recovery (and here the links to the *Native Vegetation Act 2003* and *EP&A Act 1979* are crucial).

However, the *TSC Act 1995* has had an important historical role in adopting and defining a triage approach to biodiversity conservation. The protection and recovery of threatened species, communities and populations is essential to ensure the ecological sustainability of development and activities in NSW.

The current objects of the Act reflect such ecological considerations. Any changes to the planning and threatened species regime must seek to enhance biodiversity conservation for all threatened species, consistent with the objects of the Act.

The reforms potentially move away from a commitment to biodiversity conservation by privileging certainty and socio-economic factors. This is contrary to the experience and approach in other jurisdictions. For example, the United States *Endangered Species Act* provides that all federal agencies must “ensure that actions authorized, funded or carried out by them do not jeopardize the continued existence” or an endangered species or “result in the destruction or modification of habitat” of such species. This provision not only applies to government bodies which wish to carry out development, but also restricts a government authority from issuing a consent which will result in a species becoming extinct.

Consequently, and contrary to the tenor of the reforms, the ELO group would support the following amendments to clarify the importance of biodiversity protection in real life circumstances, not just at the strategic planning level. For example, the *EP&A Act 1979* should be amended to prohibit the grant of a development consent or approval which, if granted, would be likely to result in the local or total extinction of a species.

More broadly, to reflect such a commitment, the *TSC Act 1995* should be amended to clarify that 3(a) “to conserve biological diversity and promote ESD” is the primary objective. At present the 6 objects of the Act are not distinguished. The only way they make real sense is if the conservation of biodiversity and promotion of ESD are primary objectives under the legislation whilst the other objectives reflect the means of achieving these objectives. The basis of this argument is the recognition that, by and large, objectives (b)-(f) mirror the mechanisms established by the legislation for conserving biodiversity (for example, critical habitat, key threatening processes, impact assessment). In a similar vein, the Act should also make specific provision for public participation under its objects.

Accountability mechanisms

NSW is one of the leading jurisdictions in Australia for its commitment to public participation. Recent developments – such as the special legislation regarding the Clyde Waste Transfer Terminal and the ousting of environmental laws under the [*Snony Mountains Cloud Seeding Trial Act 2004*](#) – have dented this reputation.

The tenor and language of the Discussion Paper provides little confidence that the Government will maintain its commitment to public participation under the Act. However, public participation has been crucial in ensuring the quality of information used in, and the rigour of, the decision-making process. Under the proposed system of EPI certification it is imperative that the public participate in the assessment of EPIs for certification, and that the process is transparent. This is particularly important as the reforms indicate that third party rights post-certification will be limited.

Public participation processes should also be maintained as at present – for example, it should include the stages of considering whether impacts will occur to threatened species (7-part test), assessing how the impacts are addressed if impacts will result (current Species Impact Statement process) and the justification of the approval or rejection of the development.

Third Party Rights

The Discussion Paper alludes to the uncertainty of legal challenges (pp 3 and 10) and the need to cut red-tape. Once again, it is difficult to assess whether this is a view honestly held or a rhetorical flourish. Consistent with an evidence-based approach, the ELO group would like to see the basis on which these conclusions were reached.

The equation of legal challenges with uncertainty and red tape is particularly disturbing. In NSW, legal challenges can only be brought if there are “reasonable prospects of success”. Challenges that are “vexatious and frivolous” may be struck out and otherwise unmeritorious cases can be dealt with by way of significant orders to pay legal costs.

Therefore, the only basis on which legal action can, or is likely to, be brought are those where legitimate questions about the operation of the *TSC Act 1995* or the decision-making processes arise. The ability of third parties to legally challenge the operation of the Act and decisions made under it must be retained.

3.2 Certification and Streamlining

Certification of EPIs

Environment groups oppose the divorcing of the community from the certification process.

The certification process must be transparent and accountable with full and meaningful public participation. The biodiversity certification process must be spelt out clearly in the legislation. The Ministerial discretion to certify must be clearly defined. Certification should be referred to the Scientific Committee; and the Minister must take into account the Committee recommendations. Any decision to act contrary to the recommendations must be accompanied by reasons. Certification should be subject to third party merit appeal in the courts.

Further concerns of environment groups regarding the certification of EPIs surround the quality of pre-certification assessment, the proof that such a model will yield improved threatened species conservation outcomes, and the lack of regulatory “safety net” post-certification.

For the system of EPI certification to result in comprehensive threatened species protection, it is necessary that assessment and data collection at the certification stage is as comprehensive and rigorous as possible. Not only will this require sufficient resources, but there are logistical challenges to overcome, for example, effective data collection for LEP mapping will require entry on to private land. To ensure that data collection and assessment prior to certification has been sufficient, the Scientific Committee should have a concurrence role in certifying EPIs.

The reforms should make it clear that certified EPIs can (and should) be reviewed earlier than every 10 years. This is particularly important where new scientific information and listings occur. (See discussion of New Listings below).

The Discussion Paper lacks specific detail. For example, it is unclear whether biodiversity DCPs be certified. This is an important point to clarify given the level of detail they may contain. Similarly, it is unclear whether the Minister be able to certify any amendments to an EPI made by the Minister for Planning, either via amendment to an LEP or via a SEPP or REP. Environment groups require further clarification on how the certification system will actually work.

Cumulative impacts

The EPI certification process and the streamlined assessment option both need to take into account cumulative impacts. The issue of incremental loss is one that the current legislation (such as the EP&A Act, EPBC Act and TSC Act) fails to address.

EPI certification is proposed to be for 10 years, and this could have dire consequences if cumulative impacts are not fully considered at the outset. Consequently, EPI certification must be open for review where new information about cumulative impacts comes to light.

Regional planning provides a good opportunity to assess and predict cumulative impacts at a regional level, but consideration also needs to be taken into account at the site level where appropriate.

Certification of the Native Vegetation Reform package

The EDO and environment groups have been involved in the native vegetation reform process and are currently working on the Regulations with DIPNR and NSWFA. As many details are not yet finalised (in particular regarding the environmental test, RAMAs and PVPs), the threatened species reforms cannot rely on unconfirmed regulatory detail to give adequate protection.

DEC must not certify the native vegetation reform package unless the regulatory definition of RAMAs is suitably limited, for example by setting specific limits on clearing distances. Environment groups are highly concerned that RAMAs are exempt from threatened species assessment, as the reforms provide that a critically endangered ecological community or critical habitat could be cleared for a fence or dam without the need for any approval. The RAMA regulation and any CMA variation influencing the siting of RAMAs must ensure that high conservation value areas are not degraded or fragmented.

Similarly, DEC must not certify the native vegetation reform package unless the PVP Regulation and the Environmental Test Regulation specifically provide adequate threatened

species assessment and consideration in the PVP process. This includes a biodiversity veto in the environment test.

Specifically, rigorous assessment for threatened species must be built into the PVP application process, and utilise the methodology of the new 7 part test. Assessment should be performed only by professionals accredited by the Minister (under accreditation amendments made to the Act) or skilled CMA staff. PVPs must contain a clear map of high conservation areas and description of conservation actions relating to threatened species.

Complying development and “low impact”

Implementing a system that creates certified EPIs that remove the need for subsequent Species Impact Statements or assessment is, in effect, creating a system of complying development for threatened species assessment. Under the EPA Act complying development does not apply to environmentally sensitive areas, because the specific ecological characteristics can differ so much. Under the proposed reforms, the exclusion of some development applications on basis of inherent “low impact” ignores special site issues.

In addition, there is continuing pressure to remove notification requirements from complying developments, and this is particularly concerning where threatened species may be involved. Complying development by definition removes assessment requirements, but also removes the vital elements of transparency. Under this process there would be not opportunity for the public to participate or comment on the impact of an application on threatened species. Additionally opportunities to challenge an application legally on threatened species grounds would be removed.

Under the proposed EPI certification system, complying development could be valid for up to 10 years without review, even where new information concerning threatened species becomes apparent. This is unacceptable.

Amendments not yet in force

The proposed reforms provide that where the EPI certification option is not adopted by local councils, a “streamlined” version of the assessment process will apply, based on amendments passed in 2002.

The three-year Parliamentary review of the Act in 1999 made a number of recommendations to improve the Act and many of these suggestions were implemented through amendments to the TSC Act in 2002. Unfortunately some of these changes are still to commence, such as the new seven-part test, ability to establish a register of accredited consultants to prepare species impact statements and a new vulnerable ecological community category. All uncommenced provisions would improve the Act and these should be commenced immediately.³

³ The amendments not yet in force include:

- The definition of a Vulnerable Ecological Community (Sch 1, cl 2)
- Any other references to Vulnerable Ecological Community (Sch 1, Cl 3,5,7,10, 18, 37, 80; Sch 2.1, Cl 1,2,3,6,7)
- The new 7 part test (replaces the 8 part test) in Parts 4 and 5 of the EP&A Act and Fisheries Act (Sch 1, Cl 53; Sch 2.1, Cl 4; Sch 2.2 Cl 5)

Accreditation of private consultants

The ELO supports the introduction of an accreditation process for SIS consultants, with specific details in a Regulation. However, the group does not support accreditation of private threatened species certifiers. Private certification in development assessment has already caused huge problems for local councils and proven to be extremely difficult to regulate

3.3 Institutional capacity

Deregulation of threatened species controls will not lead to improved threatened species recovery. The roles of DIPNR, DEC, CMAs and local councils need to be clearly defined and coordinated. Delegation of threatened species responsibilities will fail in the absence of clear direction, institutional capacity and the provision of adequate resources.

DEC

DEC should retain its role as the lead agency on threatened species protection, both at the strategic planning and development assessment and control levels. DEC staff have the suitable expertise and technical skills to understand the requirements of threatened species in relation to proposed developments.

A central and properly resourced DEC is in the best position to ensure that consistent and central expert advice is available to CMAs and local councils to inform the development approval process in relation to threatened species issues.

DEC should retain its concurrence role in the consent of developments and activities requiring a Species Impact Statement. Delegation of DEC concurrence powers in relation to development assessments is not supported.

The reforms remove concurrence roles for activities that are in accordance with a certified EPI. If this occurs, DEC must retain the power to “call in” a proposed development, including where a certified plan is being breached or is found to be inadequate.

CMAs

It is clear that DEC will need to maintain its supervisory role and be fully resourced to do so. While CMAs will have some involvement in threatened species, species range across CMA boundaries and there is a clear need to link public and private land management (unlike vegetation management which can be addressed at sub-catchment or property level).

Furthermore, a universal and properly resourced audit and assessment process must be established by the NRC and CMAs from the outset (it is essential to foster a culture of conscientious assessment and approval in the early stages of CMA assumption of threatened

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- Ability of Minister to publish assessment guidelines for test of significance in 7/8 part test (Sch 1, Cl 54; Sch 2.2 Cl 6)
 - Establishment of a TS licence application register (Sch 1, Cl 55)
 - Inclusion of additional matters in an SIS - ie. adequacy of representation in reserves and limits of distribution (Sch 1, Cl 59, 60).

species responsibilities). Also, CMAs should publish annual reports that detail activities and decision-making process related to threatened species. These reports should be held by the NRC and be publicly accessible

Mapping and survey information

The reforms rely heavily on the development of comprehensive LEP's that have all threatened species communities satisfactorily mapped and protected. If properly resourced and undertaken with conservation as the highest priority, the development of a certified LEP process to guide strategic planning based on solid data could be effective. However, the Discussion Paper does not provide adequate detail and too many aspects remain uncertain.

A fundamental element underpinning the capacity of CMAs and local councils to properly implement these reforms is access to accurate data. These bodies will need access to detailed and current distributional data and maps (via compatible and online accessible GIS).

Currently DEC has very little mapped information (except relating to the Sydney region). DEC must be adequately resourced to rectify this. Similarly, CMAs will need to provide DEC with updated and newly created data to enable DEC metadata management, so as to enable state-wide strategic assessment and planning. Cooperation and consistency across the 13 CMA databases is essential and will require sufficient funding. Funding sources such as development levies, and the Planfirst monies should be utilised.

In this respect, recent work to model the likely locations of threatened species should be better utilised. Data derived from this can then determine landscape-wide core habitats and networks (for example, CORE Project in western NSW, Key Habitats and Corridors Project in NE NSW). These tools could assist with defining development envelopes that can be incorporated into the planning process via fixed provisions in LEPs or REPs. This would provide greater certainty and direction for future development.

Local councils

The ability and capacity of local councils to perform specialist services such as threatened species assessment varies greatly between regions. The track record of certain local councils is not strong. As noted, threatened species responsibilities should only be delegated where competence and adequate resources are demonstrated, with DEC retaining power to intervene.

Councils must provide DEC with updated and newly created data to enable DEC metadata management. This is essential to enable state-wide strategic assessment and planning.

Successful outcomes have been achieved where greater funding of local council biodiversity initiatives has been complemented by greater practical support from DEC. A good example of this is that Biodiversity Strategy funding has underpinned successful NPWS cooperation with Cootamundra Shire.

3.4 Listings and Biodiversity Conservation

New Listings

The Discussion Paper states that:

“In the event that a new species is listed as threatened subsequent to the biodiversity certification being given, development which is consistent with the certified plan will still not need to address the new species. Certified plans provide an assurance to applicants that development in accordance with the plan will not be thrown into doubt by new listing or the potential for new listings.” (page 10).

Plans will be certified for a period of 10 years. In this time the cumulative impacts of development in a local government area on threatened species as well as environmental changes (drought, floods altered fire regimes) could dramatically alter a species status.

The Government must commit to utilising IPOs and directed reviews of certified EPIs where new information comes to light or a new listing is made.

Environment and community groups require an assurance regarding the listing of species and the corresponding categorisation of levels of threat. It is necessary to clarify that the different levels of threat will not translate into lesser levels of protection.

Priority Action Statements

The reforms provide for a Priority Action Statement to be published every two years, after seeking input from the NRC, the Scientific Committee, a Socio-Economic Advisory Committee, agencies and the public.

This Statement will replace the current emphasis on Recovery Plans and Threat Abatement Plans, making these discretionary. The result will almost inevitably signal the death of Recovery Plans (no longer being accountable to Treasury regarding the use of monies to perform statutory duties).

The value of the Statement needs to be established. It risks being a toothless document which tracks species extinction and prioritises species protection according to non-ecological criteria. In particular, the ELO group has the following questions:

- What is the statutory weight of this statement?
- Will DEC be properly resourced to deliver a meaningful Statement that provides a useful tool for biodiversity protection?
- Will the Statement lead to revisions in certified plans if the content a certified is inconsistent with the Statement?
- If it is not this statement that guides the Minister in requesting a certified plan take into account new listings, what process will the Minister use to guide a request that a certified plan take into account new listings?
- Will it deal with species only at a state-wide level or a CMA level as well?

It is noted that provisions currently exist for the prioritisation of both recovery plans and threat abatement plans (sections 58 and 76). These include the likelihood of extinction and likelihood of recovery, together with whether they are a keystone species or indicator species.

3.5 The role of statutory bodies

Independence of the Scientific Committee

The retention of the independence of the Scientific Committee is welcomed. However, the reforms flag that there will be a change in membership of the Scientific Committee. The rationale for this is not clear. More detail is needed on what the changes are, and how they ensure that the independence of the Committee is maintained. In this respect, it is noted that the conservation groups opposed a previous amendment to add a new member – namely, a scientist who is employed by a public authority that has land management responsibilities – on the basis that this gave an additional voice to State Forests and the Minister the majority of nominations.

It is also noted that the Discussion Paper refers to the NRC being able to 'better direct' the Scientific Committee. The NRC should have an advisory not a directive relationship with the Committee in order to retain the Committee's independence.

The Socio-Economic Advisory Committee

The establishment of a Socio-Economic Advisory Committee (SEAC) under the Act is misplaced, misunderstands the idea of ecologically sustainable development (ESD) and is at odds with the stated objects of the Act.

At present, the Director-General or the Minister is often asked to consider the likely social and economic consequences of his/her determination and/or ways of minimising such consequences. At most points, this is *in addition* to the duty to consider ESD.

Such provisions seem to be based on the view that ESD is an exclusively environmental concept that needs to be “balanced”. However, ESD has always been premised on the integration of environmental and economic factors into decision-making (allowing economic factors to be given equal consideration to environmental factors without the need for more). Prima facie, the present Act seems to be privileging economic and development considerations insofar as it allows for these matters to be “doubly” weighted.

The new reforms and a new statutory SEAC will result in a “triple weighting” for socio-economic considerations. Such a weighting is likely to have adverse consequences for biodiversity conservation.

The privileging of socio-economic considerations is embedded in the logic of the Discussion Paper. The Discussion Paper suggests that the Environment Minister's certification of the native vegetation reform package and EPIs will include socio-economic considerations. This is of great concern as it might lead to the undermining of the environmental test and other key regulations. Such factors are not required by the *Native Vegetation Act* introduces a dangerous precedent for the native vegetation regulations.

Biological Diversity Advisory Council

The reforms propose that BDAC is to become non-statutory. The basis for this is not stated. However, once again, it tends to suggest that developer viewpoints (urban and rural) are

being privileged under the reforms while biodiversity conservation is not. It is ludicrous that BDAC is not one of the bodies to be consulted about the 'Priority Action Statement'.

3.6 Interaction of instruments, institutions and reform processes

Relationship between Local Government and CMAs

The relationship between CMAs and local councils is not yet adequately defined. To address this grey area, environment groups recommend that each CMA should establish a working group with representation from the planning sections of all the local councils in the catchment area, and with key threatened species staff of DEC to ensure consistency. Furthermore, a framework must be established to ensure that Catchment Action Plans do not weaken the environmental standards of Local and Regional Environment Plans.

Status of CAPs

It is understood that CAPS will not be certified. The NRC will set the standards and targets that will inform threatened species and vegetation conservation measures adopted by Catchment Action Plans (CAPs). These will inform CMA assessment of PVPs and other development applications.

CAPs should incorporate all recovery plans and threat abatement plans within the region. CAPs should also identify additional recovery plans or critical habitat mapping that may be required. Such plans and mapping should be commissioned from DEC's Threatened Species Unit, which should be resourced to support such requests.

The CAPS are proposed to contain a map of vegetation communities to guide CMA policy, priorities and decision making. It is unclear whether the content of these maps will be used to guide certified EPIs. Environment groups are concerned about consistency between instruments (both certified and non-certified). For example, it is essential that mapping in CAPs is consistent with mapping in REPs, LEPs and PVPs.

Status of rezonings, staged approvals, variation of approvals, and integration with the broader planning reforms

Under the proposed reforms it is unclear what will happen to rezonings, staged approvals, and variations of approvals. They may seek to change the development's physical footprint or undertake activities that have an indirect impact on threatened species. These cannot be solved via a landscape approach, they are site specific. Concurrence provisions must apply.

DCPs for biodiversity if developed will need to be certified and made mandatory.

Integration with current Planning Reforms

DIPNR is currently undertaking a broader planning reform process that has involved various taskforce reviews including a Local Development Assessment Taskforce. The tenor of the planning reforms has been on streamlining and simplifying development assessment. The EDO and environment groups are concerned about the integration of threatened species assessment and protection into the broader reforms. It is necessary for the government to provide a comprehensive briefing on the integration of the current reform processes as soon as possible.

Some concerns are as follows:

- Planning instruments to be updated to include threatened species requirements following the introduction of the TSC Act. This has not yet occurred in an adequate or consistent manner. This experience suggests that reform of planning instruments to comprehensively provide for threatened species protection will require political will and enhanced support from DEC. Will uncertified EPIs be required to improve threatened species assessment requirements?
- Efforts to introduce threatened species protection through improving the zoning (and certification of zoning) should be accompanied by a dramatic strengthening of the legal weight of such zoning. This should preclude spot rezoning where such rezoning will have a negative impact on threatened species protection.
- A legally binding master planning process (as suggested in the current planning reform process) should require a master plan to be based on comprehensive and independent threatened species assessment, be consistent with relevant certified EPIs.
- If there are any changes to threatened species provisions in EPIs (both certified and non-certified), these should require the concurrence of the Minister for the Environment.
- Clarification is required regarding the hierarchy of instruments in the planning system. For example, if a new SEPP overrides a certified LEP and there is a conflict, would certification be withdrawn or the LEP amended?

4. Conclusion

NSW is currently going through wide-ranging and necessary reform processes regarding natural resource management and planning. Maintaining the importance and the necessary protection for threatened species amid these reforms is a primary objective of environment groups.

Without assurances that public participation, accountability and transparency of process will be maintained, environment groups will be unable to support any 'streamlining' of threatened species assessment.

Environment groups request an opportunity to examine the proposed amendments to the TSC Act as soon as possible.

Further clarification is required on how the reforms will be implemented and resourced. Currently there is little evidence that these reforms will protect threatened species. Given the Government's commitment to evidence-based programs, environment groups would be interested to know what other jurisdictions or models the NSW reforms are based upon.

Environment groups would like a commitment to review these reforms 2 years after implementation.