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Please find below our comments on the Review of the Protected Plants Legislative Framework under the Nature Conservation Act 1992 Consultation Regulatory Impact Statement.

If the proposed framework were amended to reflect the object of the Nature Conservation Act, rather than its direct opposite, Option 1 would be our preferred option.

Yours sincerely

Margaret Moorhouse
ASH

Review of the Protected Plants Legislative Framework under the Nature Conservation Act 1992

Consultation Regulatory Impact Statement

COMMENTS
ALLIANCE TO SAVE HINCHINBROOK

INTRODUCTION

From the point of view of the conservation of biodiversity, all options presented in the Review of Protected Plants Legislative Framework suffer because of the failure of the framework to satisfy the object of the Nature Conservation Act.

If the proposed framework were amended to reflect the object of the Nature Conservation Act, rather than its direct opposite, Option 1 would be our preferred option.

The natural environment is the most important public good in the whole world, for everyone, present and future.

This fact is recognised in the many international agreements to which Australia and Queensland are signatory.

Reductions in plant species and plant communities in number, distribution, area, ecosystem complexity, and genetic variability are themselves threatening processes to the stability of biodiversity in the landscape.

This fact is widely ignored in government policy and development approvals. It is all our descendants, without exemption, who will bear the cost.

THE PROPOSED FRAMEWORK

The object of the *Nature Conservation Act 1992 Current as at 2 December 2012* (the Act) is stated thus:

> *The object of this Act is the conservation of nature.*

Under the Act development is limited by the imperative to maintain the life systems of nature and the potential to meet the needs and aspirations of future generations.

The object of the new framework

> *... managing protected plants without hindering economic and social development ...*

thus turns the purpose of the Act on its head. The proposed framework will label native plants "protected" but will "manage" them to allow development to proceed unhindered. Given this "imperative", none of the options can be considered acceptable for the purpose of maintaining

existing natural plant biomass or of restoring vulnerable species to a safer status.

The proposed framework specifically contradicts the meaning of *Conservation* as defined in the Act (Part 3 *Interpretation* clause 9):

> *the protection and maintenance of nature while allowing for its ecologically sustainable use*

and that of *biological diversity* as defined in the Act (Part 3 *Interpretation* clause 10 (1)):

> *(1) Biological diversity is the natural diversity of native wildlife, together with the environmental conditions necessary for their survival, and includes—*
>
> > *(a) regional diversity, that is, the diversity of the landscape components of a region, and the functional relationships that affect environmental conditions within ecosystems; …*
> >
> > *…*
> >
> > *(d) genetic diversity, that is, the diversity of genes within each species.*
>
> *(2) In subsection (1)-*
>
> *Landscape components includes landforms, soils, water, climate, wildlife and land uses.*

and that of *ecologically sustainable use* as defined in the Act (Part 3 *Interpretation* clause 11):

> *(c) maintaining the life support systems of nature*
>
> *(d) ensuring that the benefit of the use to present generations does not diminish the potential to meet the needs and aspirations of future generations.*

The proposed new framework for biodiversity does not meet the needs of the real world. The framework's first objective, the only one referring to biodiversity, ignores the landscape. It lacks a holistic view, relying on a extinction relativity - “maintains or improves the current conservation status”. What is it that's being “maintained” – a listed species' position on the steps-to-extinction list? Or the parlous state of the whole landscape? Where is the ground-truthing? Where is the life-sustaining standard to which Queensland aspires? What is the status of plant biodiversity in Queensland? What does “sustainability” mean? Where is the Precautionary Principle? In the context of the declared intent (development as first priority) the words “maintains or improves” have little meaning for any of the options, unless Option 1 can be upgraded to require actions that will ensure that species at risk become measurably less threatened.

This is because the proposed framework allows moving targets on a downwards sliding scale, limited by a narrow view of representativeness. This model of inaction until “higher” listing status is reached has already been a real factor in the destruction of ecosystems across the Queensland landscape. The result of the current nature conservation strategy will be a descent of listed species towards functional extinction. This impoverishment of Queensland's biodiversity will be accelerated by the absurd notion that some species can be declared “redundant” and therefore can be dispensed with altogether - in a context of climate change, inadequate knowledge base, dependence of many plant communities on specific geological and climatic contexts, and the irreversibility of extinction.

This review is an opportunity to improve the security and diversity of Queensland's native vegetation, and to reduce the adverse impacts of present practice on downstream territories – such as the Great Barrier Reef World Heritage Area. None of the options however address the need for restoring the landscape function of lost and damaged plant communities.

Budgetary constraints are man-made. They are no excuse for writing bad policy and bad legislative provisions, and no excuse for handing the landscape over to its users and abusers.

Missing in action 1: Landscape fragility not addressed

The proposed framework does not address the continuing loss of plant diversity arising from the impacts of natural events exacerbated by human activities which have created fragility in the landscape.

Example - the fragmentation of rainforest by roads and other linear clearings. The cyclone winds which frequent the Wet Tropics coast cannot penetrate a large area of old growth rainforest when it is intact; because the pressure of air trapped inside the forest causes the winds to rise over rather then push through. When roads (or other clearings) cut across an otherwise robust forest, the wind is free to pass through, tearing trees apart, stripping them of leaves and branches, remaining vines stripped bare. From the road one can see far into the forest, a brand new experience. This is not a natural impact of cyclones. It is due to human interference.

Both rogue clearing/earthworks and and overenthusiastic volunteer “cleaning up” after cyclones is having long-lasting and in some cases permanent effects when councils think that new concrete structures make a better contribution to a post-cyclone clean-up-denuded beach area (Bingil Bay) then rehabilitating (for example) the native vegetation that had flourished there before the cyclone.

See DEHP's Tim Moore for photos (from ASH) of post-Yasi “recovery” and what happens when vegetation is exposed unnaturally to the elements.

Missing in action 2: Riparian vegetation.

Where is the option that will restore river health? Riparian vegetation is fundamental to river health. Under River Protection Permits and other means, river banks have been stripped. Neither the Water Act (recently amended) nor the Vegetation Management Act have any provisions that would protect riparian vegetation *as* riparian vegetation protecting a stream, ie in its functional setting.

Even though UNESCO has called Australia and Queensland to account for the land based impacts on the GBRHWA, the trend continues downwards. The framework and the options offered would do nothing to halt or reverse this decline.

If all native vegetation is “protected”, why are the rivers of NQ and FNQ pouring so much silt into the GBRWHA? And it's not “just” run-off. The Johnstone River banks are so denuded, by River Protection Permits (what sort of bad joke is that?) and other clearing, that the river runs red with every rainfall, as the banks slip. River and ocean ecosystems cannot continue to function productively unless storm waters pass through a wide vegetated area before reaching rivers, but there is no real protection of this keystone of ecosystem health, despite it having a direct bearing on Queensland's biodiversity – its native plants, rivers, and coastal resources.

Missing in action 3: Missing definitions

"Efficient" is not defined and seems to relate solely to minimising government expenditure on the basis that a paper framework will protect biodiversity in the real world. An efficient framework in terms of an appropriate goal (eg net increase in biodioversity, species becoming less threatened, no more extinctions) would be one which ensured that illegal clearing was easily prosecuted and reparation enforced with serious consequences; and the efficiency would lie in framework designed to ensure cessation of illegal clearing. As it is now, in a context of poor political leadership, local officers pass the buck, play helpless or just turn a blind eye.

There is much vagueness in the Review which leaves too many items open to interpretation; eg – what is a "plant issue" in Option 3 (Page 9)?

Missing in action 4: Relationship of biodiversity to climate change and microclimate disturbance

The framework pays scant attention to climate change and none to microclimate disturbance. Built complexes alter microclimates and water regimes and affect surrounding plant communities.

Example: The northern part of Girramay National Park was starved of all sweet water surface flows by the building in 1994 of a 750 m long bund wall to contain dredge spoil. By 2000 much of the artificially droughted section (*endangered* melaleuca viridflora, livistona drudie, xanthorrhea etc, habitat for the *endangered* mahogany glider) was dead. Pioneering mangrove ferns were evident soon after, and by 2005 these were tall and dense. No repair of this high conservation land has occurred.

THE OPTIONS

Option 1

Leaving aside the proposed new framework, Option 1 is at least nominally consistent with the Act. An improvement on the Option 1 purpose "manage threatening processes and conserve biodiversity" would be "conserve biodiversity and prevent or minimise threatening processes", with provisions that were effective in protecting biodiversity in the landscape and preventing threats to genetic biodiversity.

Option 2

Option 2 is "risk-based" (4.2.1). The ethical basis of the proposed Option 2 risk management is not presented. Where is the formula for the risk assessment proposed? The ethical basis and the evidence and arguments to support it?

Under a declared imperative of " *managing protected plants without hindering economic and social development"*, Option 2 can possibly satisfy the object of the Act, despite the claims on p18 of the Review.

Option 2 incorrectly claims that it will ensure that *populations of threatened and commercially valuable plants are not depleted* (p19, 5.2.3 Benefits and Costs Table).

This claim is immediately undermined by Option 2's potential for the clearing of *endangered* plants and communities and by the lifting of restrictions on clearing of *least concern* plants.

The lack of ground-truthing, of detailed botanical survey of much of Queensland, renders unsafe the underlying assumption that the *least concern* classification contains no new or endangered species and no new threats (invasive species, pollution, climatic changes) is patently unsafe.

Least concern species will include newly discovered species simply because there is no information about the species at the time of discovery; and because, unless survey information is up to date, the least concern category will also include undiscovered species and communities and those already at risk but not yet listed as such. Not only does this make it impossible for Option 2 to "prevent depletion ...", to lift restrictions on clearing of l*east concern* species can only hasten the loss of real-life biodiversity, the truth masked by the lack of formal information and reporting.

Given the above, "long term" as described in Option 2 is clearly not consistent with the Act's intention to maintain options for future generations. With respect to harvesting, how is long-term sustainability to be demonstrated? On what scale? Will this allow virtual removal of a species from a local area?

In sum, Option 2 closes the books on biodiversity, narrowing government actions to species classified as *threatened.* The rest would be left to the goodwill of land developers to report on the botanical condition of land they want to clear, and to the largely non-expert if well-motivated community who have no access to those private lands. Where is the risk assessment of this proposal? Where is the evidence that Option 2 outcomes will satisfy the object of the Act?

Applications for licences are not always open to public consultation. To remove public scrutiny of proposals affecting the public good would be bad governance. The EIA process must remain, with adequate time frames for the public to understand and respond thoughtfully to documents, which must be easily obtainable on the web and in paper form.

Fines for carrying out unlawful activities can be readily accommodated into business models. The more control allowed the land holder/developer, the more land degradation will accumulate. The reason for having government in the first place is precisely because there is no other way of preventing some people from wrecking the world for everyone else. Fines and other sanctions must therefore by a serious impost on the transgressor, and unavoidable, if not to be seen as just another business overhead. Provisions have to be drafted with the object of ensuring that cases of law-breaking are easy to prosecute.

Option 3

Option 3 fails the object of Nature Conservation Act

Option 3 fails the object of the Act - and in many ways. It cannot satisfy the Act in conserving biodiversity in one of its critical aspects: genetic diversity.

Rather than ensuring no decline in abundance and distribution of plant species, the final sentence on page 8 of the Review states that the overall goal is preventing extinction in the wild. This minimalist intention, no more than maintaining a position on the list of threatened species, is a recipe for rapid further degradation of Queensland's undiscovered plants and those classified as of *least concern*.

The real-life decline of a large number of plant species will not be visible in the model. For instance, the assessment of some species as redundant will prevent many species from being recorded on the list.

The Act makes numerous references to gathering information, researching, monitoring, etc, presenting a picture of active leadership by the government and engagement of the community in protection of native flora. The proposal to cease formal and proactive botanical surveys (option 3) is consistent with the stated intent "development is not to be hindered by nature conservation" but directly contradicts the Act.

Co-regulation – clearly unacceptable

In view of the acknowledged lack of information about plant biodiversity in Queensland, to allow clearing without requiring a detailed survey, or to allow clearing as of right, and leaving it to developers and landholders to do surveys and tick the boxes, can only result in widespread and rapid degradation of biodiversity in the landscape.

Where is the evidence that a system of voluntarily reporting impediments to clearing has ever been effective? Those with appropriate skills and motivation to conserve biodiversity are scarcely likely to be given notice of clearing or access to affected properties.

The public, whether through its government officers or through EIA consultation, must not be excluded from being informed about and having meaningful input into any decisions affecting the natural environment, a public good. Witness the rising disquiet over coal mining and coal seam gas extraction and the fate of the GBRWHA. Increasing numbers of people are seeing the connections.

The development imperative has already led to the Queensland offsets policy opening the door to the destruction of biodiversity for cash. Under self-regulation even the cash would no longer be required.

Self-monitoring is unreliable

It's not mere guesswork to state that self-monitoring will not achieve reliably good outcomes.

In the 1990s it was clearly articulated by some FNQ prawn farmers, to a closed conference audience, that government monitoring was essential. In advocating government monitoring, one farmer explained clearly that self-monitoring would lead directly to "cheating" because each farmer knew that the other prawn farmers would do the same; therefore (he said), if self monitoring were allowed, he would cheat because this was the only way for him (and his competitors) to compete economically.

Easing environmental regulation is not good for governance.

Apart from the desire to compete on a level playing field, good practice which has a cost will bend to the human tendency to get more than you were due for – a "win". When the only limitation is money, and the goal of the project is money, the only curbs on developer activities are regulation and community protest. When regulation is absent or not applied, the community will take direct action. Past NQ and FNQ examples include Iwasaki Resort, "Port Hinchinbrook" canal estate, SkyRail, False Cape, and the electrocuting of flying foxes in NQ (the Boswell case); more recently we have seen action against coal seam gas projects.

There is something fundamentally wrong with government when good people are putting their bodies in the way of bulldozers because of government inaction, spending their meagre incomes in the public interest, and risking life-long poverty when governments and developers abuse the legal system to punish them and defund the not-for-profit public interest groups they support. *See "Slapping on the writs" by Brian Walters S.C.,* which led to the amendment of the nation's defamation laws. *end*