

4th October, 2011

Project Manager – EPBC Strategic Assessment
Department of Premier and Cabinet
Level 25 Governor Stirling Tower
197 St George's Terrace
Perth WA 6000

Dear Sir/Madam

Submission – Strategic Assessment of the Perth and Peel Regions – Draft Terms of Reference

This is a submission on behalf of the Urban Bushland Council regarding the Draft Terms of Reference for the Strategic Assessment of the Plan for the Protection of Matters of National Environmental Significance in the Perth and Peel Regions of WA (the MNES Plan).

The Urban Bushland Council (UBC) is a peak community conservation body with over 60 member groups. The UBC encourages the protection and appropriate environmental management of bushland areas in and around the Perth Metropolitan Area and other urban centres in Western Australia. The Council participates in research and public education projects and has been active for well over a decade.

The *raison d'être* of the Urban Bushland Council is protection of remnant native vegetation in urbanised areas such as the Perth and Peel regions so we have a keen interest in any new initiative the State and Commonwealth might devise for the protection of matters of national environmental significance.

We wish to make it very clear at the outset that the UBC regards the Strategic Assessment initiative with considerable suspicion. At one level the proposal to adopt a broader scale approach to the environmental assessment of matters of national environmental significance for certain classes of actions could be seen to have the potential to improve environmental outcomes for our threatened and vulnerable species and communities in the longer term. However media reports over a considerable period have lead us to believe the development industry feels somewhat aggrieved with respect to its current responsibilities under the *EPBC Act* and it is our suspicion that this initiative has its genesis not in any State or Commonwealth government ambition to improve environmental outcomes but in an attempt to relieve the development industry of what it regards as burdensome processes and impediments.

The UBC has no great confidence in the letter of the *EPBC Act* or in the spirit in which it is generally administered and the current site-by-site assessment process is thought by some to miss the forest for the trees and to fail to address the problem of “the death of a thousand cuts,” but it does at least put some onus on potential developers to meet various environmental criteria and to come up with something in the way of offsets. The present proposal, if we understand its import correctly, takes the onus off individual developers and somehow places the responsibility for protecting matters of environmental significance on the State and Commonwealth through early identification and as yet unspecified measures which we assume includes planning mechanisms.

This would appear to constitute something of a boon for developers but we are not sure how it will better protect matters of environmental significance or the ordinary tax payer.

The only way the Urban Bushland Council can see this initiative yielding acceptable environmental outcomes is if it does indeed accurately identify and protect those species and communities and habitats that are deemed to be of national environmental significance, and sets in place binding legal mechanisms to make sure they are protected in perpetuity. We would stress the point that the south west of Western Australia is such a unique bioregion that virtually any species or community or habitat recognised as being of significant conservation significance at the State level is, ipso facto, significant at the Commonwealth level. The Perth and Peel regions, straddling the Swan Coastal Plain as they do, are of global let alone national significance for their species diversity and levels of endemism and we certainly will not accept any plan that envisages a few scattered reserves in a sea of urban development. The Urban Bushland Council is not against people or people living in dwellings but there is a great deal of land that is already cleared in the Perth and Peel regions and we strongly oppose the clearing of virgin bushland for urban development.

The Urban Bushland Council would expect the Report associated with the MNES Plan to be as accurate and detailed as possible. It would not be acceptable for mapping to be unsupported by accurate biological survey data and it is essential that the preparation of the Report is sufficiently resourced to allow all stakeholders to refer to it as an authoritative source of information. It is the UBC's strong view that a general moratorium on clearing would be in order until the Report has been produced and the MNES Plan adopted. We would make the point that the draft Report and MNES Plan are likely to be substantial documents and 28 days is not long enough for a public comment period.

Our specific comments relating to the Draft Terms of Reference are as follows:

1 Purpose

The UBC is not enthused in noting that the stated purpose of the MNES Plan is that matters of national environmental significance are managed in accordance with the objectives of the *EPBC Act*. Referring to a *Guide to the EPBC Act* published by the Australian Government in 2007, the objectives presented do not treat the protection of matters of national environmental significance so much as an imperative as an aspiration. The UBC has never been satisfied with the operations of the *EPBC Act* and has seen its processes produce some exceedingly undesirable environmental outcomes. Bogus environmental protection legislation is really about protecting environmental destruction and we are not aware of any admiration for the *EPBC Act* in the conservation community or in the community at large. In our experience the objective of providing "a streamlined national environmental assessment and approvals process" encapsulates the real nature of the *Act* and it is our view that it is not an instrument that will ever do much to relieve the nation of its appalling record of rendering species threatened, endangered and extinct. We do not apologise for this view and expect any MNES Plan to constitute a considerable improvement on the current workings of the *EPBC Act*. The continued existence of some endangered species could well depend on it.

2 Description of the Plan being Assessed

It is our advice that the proposed MNES Plan appears to have no legal force in and of itself in terms of compelling compliance or sanctioning actions contrary to whatever it may recommend or identify as being sacrosanct in terms of environmental protection. The MNES Plan should show how it will mesh with planning or other mechanisms so as to constitute a plan with the force of law in terms of proscribing or restricting certain actions in areas designated essential habitat for matters

of environmental significance. The Urban Bushland Council is generally in favour of the concept of “critical habitat” being employed and thus identified in relation to matters of national environmental significance. We are aware this concept has not been employed much with respect to the *EPBC Act* and that not all conservation groups regard it as a priority but we take the view that the protection of an estimated minimum habitat area required for the maintenance of a species, or a community, or an ecosystem is absolutely crucial for the longer term protection of our biodiversity. These areas would be the minimum we would expect to see an MNES Plan identifying for conservation purposes – and then protecting them through conforming State planning processes.

3. Promoting Ecologically Sustainable Development

The Urban Bushland Council is, in general terms, in favour of “ecologically sustainable” development but has come to realise it is often interpreted to mean that any development proposal or project can be made ecologically sustainable. This understanding of the concept encourages a mindset whereby proponents do not even have to entertain the prospect that their proposal may be ruled environmentally unacceptable but can merely bemoan the length of time it takes to secure approval. We regard this “any project can be made environmentally acceptable” mentality as perverse and it makes a mockery of authentic assessment processes. It is the Urban Bushland Council’s very strong view that the seeking of environmental approval should not merely be a matter of time but a matter of whether the natural environment can really sustain a proposal’s impacts while protecting ecological values, functions and processes.

The UBC is, in general terms, supportive of “recovery plans” but is not convinced they are likely to be effective unless they involve ambitious and aggressively pursued targets that are backed up by appropriate conservation measures. One of the key conservation measures that must be approached with determination and resolve is the reservation of essential habitat. Such activities as the construction of nesting boxes, the planting of tree seedlings that will take several hundred years to produce the hollows required by multifarious threatened native species, and the breeding of endangered species in laboratories, nurseries, tanks, and cages may create a public perception that “something is being done” but these measures do not surpass or, in the great majority of cases, even compare with the need to protect and enhance the *existing habitat* that is utilised, or can be utilised, by the species and communities under threat.

We take a similar view with respect to “threat abatement plans for key threatening processes listed under the *EPBC Act* or WA legislation.” It is well known that such activities as bushland clearing and the drawing of excessive amounts of ground water from the Gngangara Mound have created and will continue to create difficulties for threatened species and communities but unless such matters are addressed directly and with some purpose in threat abatement plans they will continue to be ineffectual.

The MNES Report should definitely address issues relating to weeds, exotic animals and disease but Jarrah Dieback, *Phytophthora cinnamomi*, warrants special treatment owing to its devastating impacts, its seemingly inexorable spread, and its resistance to control. Plant disease hygiene and the threat posed by arson may require the restriction of public access to certain key habitat areas and these matters should be canvassed in the MNES Report. The capacity to restrict public access to some areas may have to be included as one of the conservation measures the MNES Report recommends to protect matters of national significance.

With regard to climate change, the UBC is concerned that a mentality of “writing off” some species may take hold at an official level given some of the dire prognostications available relating to the south west’s climate. We would like to make it very clear that the UBC would never support or accept any tacit or explicit policy of abandoning any threatened species or community to its fate in

the face of climate-change induced pressures. We take the view that all species and communities are important and that all species and communities warrant whatever measures it takes to conserve them. Any view that some species or communities may have to be “sacrificed” or deprived of protective initiatives due to economic reasons or some opinion that they may slip below a sustainable threshold is unacceptable to us and probably to most Australians. Even Australian citizens who have a limited knowledge of or interest in the flora and fauna of this continent may not realise that the country’s leaders are in no position to lecture other nations on the subject of protecting rain forests or apes or whales or polar bears if the relevant foreign leaders can readily and quite justifiably point to Australia’s own dismal performance with respect to protecting its endemic species.

4. Avoiding Impacts on Matters of National Environmental Significance and Promoting the Protection and Conservation of Biodiversity and Heritage Values

The UBC is not convinced that the time frame for the preparation of the MNES Report will be sufficient to allow for the biological data that appears to be anticipated in the Draft Terms of Reference to be gathered, analysed, and presented. The UBC is all for detailed and informed mapping and further on-ground survey work but we do not know how it can be achieved in such a short space of time unless a great deal of resources are allocated for the task. We would be greatly unimpressed if the Report were to be largely informed by desk top surveys and educated guesswork.

We look forward to seeing such an apparently informative document but do express some puzzlement as to how some of these issues can be satisfactorily dealt with in the narrow time frame available. We do not know exactly how many hectares are required by Carnaby’s Cockatoo for feeding, for example, or which parts of its present habitat are expendable, or how such figures could be arrived at without the most extensive research.

Our comment would be that the Commonwealth must hold the WA Government to its obligation under the agreement to provide accurate and verifiable information in the MNES Report.

4.2 Nature and Implication of Impacts Affected by the MNES Plan

The UBC has long taken the view that the clearing of native vegetation in the Perth and Peel regions, whether in large scale operations or by the cumulative affect of many smaller scale operations, should be a thing of the past. Our flora and fauna is already struggling against a multitude of serious threats and a great deal of clearing has already occurred on the Swan Coastal Plain. Although it may be more expensive to develop land that is already cleared in the form of farmland, for example, it really is the only environmentally acceptable option.

It is the very strong view of the UBC that a great deal of land presently zoned for urban uses should be rezoned for conservation. A MNES Plan with a real goal of protecting matters of environmental significance would recommend such an approach to land use. It should not be the function of a MNES Plan to simply document anticipated ecological losses as if anticipating impacts somehow justifies them. It should be the function of the Plan to show how development can be approved without detrimentally affecting matters of national environmental significance and it should recommend against development if it does detrimentally affect such matters.

We do question the capacity of the WA Government to produce a Report that will be sufficiently backed up by biological data to reach reliable conclusions as to the impact of anticipated developments unless the Report were to take a precautionary approach along the lines that protecting habitat could not possibly harm matters of national environmental significance whereas failing to do so quite obviously could.

The UBC is in favour of higher housing densities in the city to meet future population growth but only for the purpose of gaining more reserved natural habitat on land that might otherwise be developed. Governments gain the benefit of reduced and more efficient infrastructure expenditure and more people can experience shorter travelling times and lower transport costs in attending work and seeking entertainment. Urban infill should be investigated further and promoted as an alternative to the clearing of native vegetation for housing. This could be a strategy canvassed in the MNES Plan.

4.3 Management, mitigation or offset of likely impacts of implementing the MNES Plan

The UBC is of the very strong view that there is little that can compensate for habitat loss when it comes to the protection of matters of national significance. Our experience of concepts like “offsets” and “mitigation” is invariably unsatisfactory and usually amounts to “damage control” - and even then more aptly in a public relations sense than in an ecological one. The promise of a seedling planting project in some obscure private paddock hardly compensates for the loss of hundreds of mature native trees on the Swan Coastal Plain and yet this is the kind of “offset” we see being deemed as officially acceptable and it is ridiculous. Equally questionable –indeed absurd – is the practice of using offset funds for land clearing to commission research into the propagation or breeding of species affected by the clearing whose decline and imperilment can be primarily attributed to habitat loss in the first place.

The UBC is sceptical when confronted by terms like “offsetting,” “mitigation,” “rehabilitation” and “impact management” and perceives them principally as attempted justifications for habitat destruction. We have some considerable concern that even if the MNES Plan recommends the setting aside of some natural areas, it will designate other natural areas as being “suitable for development.” We are used to seeing conservation initiatives being used as a means of “clearing down” and we can only say that a pie can only be divided in half so many times before there is effectively no pie left at all.

5. Adaptive Management, Addressing Uncertainty and Managing Risk

It is our strong view that the MNES Plan and Report will have to be monitored and reviewed periodically to determine whether it is in fact protecting matters of national significance effectively. This will be the key measure of its success or failure.

Thank you for the opportunity to comment on the Draft Terms of Reference for the MNES Plan.

Yours sincerely

Vice President
Urban Bushland Council WA Inc