

24 December 2008

Secretariat to the Independent review of the EPBC Act 1999
GPO Box 787
Canberra ACT 2601
Australia

Dear Secretariat,

RE: REVIEW OF THE EPBC ACT

The City of Wanneroo is located 22 kilometres north of Perth and covers an area of 687.5 square kilometres. This area includes thousands of hectares of important habitat for listed matters of national environmental significance, including the Carnaby's Black Cockatoo.

The City is also one of the fastest growing municipalities in the country, with a great deal of habitat undergoing planning for urban development, and is working at a local scale to contribute to the protection of matters of national environmental significance through local planning processes and decisions.

The City appreciates the opportunity to provide comment on the current review of the EPBC Act. The review terms of reference have been considered at officer level, and officer comments are attached.

Yours faithfully,



Len Kosova
DIRECTOR PLANNING AND SUSTAINABILITY

EPBC Act 10 Year Review City of Wanneroo Officer Submission

Alignment with local planning decisions and processes

There is currently no alignment between EPBC referral and assessment processes and local planning decisions. In a number of instances, the City of Wanneroo has adopted structure plans providing for urban development prior to these being referred by proponents under the EPBC Act.

In a local government area undergoing significant urbanization, district and local structure planning is a key opportunity to influence the development of an area. This is a key level for matters of national environmental significance to be considered to avoid or minimize any potential adverse impact through planning processes. However, as a planning decision does not constitute an action under the act, there is no legal obligation for proponents to refer at this level. Whilst the City provides opportunity for the Department for the Environment, Water, Heritage and the Arts to comment on structure plans lodged with Council, and encourages proponents to refer, the City is unlikely to refer structure plans on behalf of reluctant proponents when the decision does not constitute an action and there is no legal obligation for referral.

If a structure plan is not referred, there is limited certainty for the City that the decision is appropriate or will stand. If matters of national environmental significance are not adequately assessed and protected through structure planning, significant modification may be required to manage any significant impact. Where Council has already adopted a structure plan, significant change to the planning of an area is a time consuming, costly, and generally undesirable outcome and may impact on other planning considerations, for example local employment opportunities and transport. However, neither the EPBC Act nor the City has a mechanism to require referral of structure plans.

Appropriate planning proposals (that do not in themselves involve any construction or activity) should either be specifically listed as an action, or assessment of these proposals should be mandated where a significant impact is likely, to ensure better alignment of the EPBC Act with local planning processes. Such a mechanism is essential to ensure matters of NES are assessed and appropriately protected or managed through local planning processes and to provide certainty to local governments and developers that local planning decisions will not be compromised by subsequent referral under the EPBC Act.

<p>Recommendation 1: That consideration be given to expanding the definition of an action under the EPBC Act to include any statutory planning proposal under state or local legislation, the implementation of which would have the effect of causing an 'action' to occur.</p>

Strategic Assessments

It is recognised that the EPBC Act provides for strategic assessments of regional plans to enable cumulative assessment of impacts and provide greater certainty to developers and local governments. Although district level structure plans can be considered through a strategic assessment, there has been reluctance by proponents in the City of Wanneroo to do this. It is uncertain as to whether a local government has the ability under the Act to facilitate a strategic assessment on a proponent's behalf, but not necessarily with that proponent's support. Clarification should be provided on this matter.

Additionally, in significant development areas where impacts on matters of NES are anticipated, consideration should be given to providing the Minister with the power to call in a strategic assessment, rather than relying on the good will of developers, to enable certainty of local decision making and cumulative assessment of impacts across a large area.

Recommendation 2: That clarification be provided in respect of local government's ability to facilitate strategic assessment of planning proposals.

Recommendation 3: That consideration be given to introducing a power in the EPBC act for the Minister to require strategic assessment of regional plans where a significant impact is likely.

Local government responsibilities under the Act to refer proposed actions to the Minister

There is a need to establish a clear and consistent (administrative/strategic) framework between local governments, state/territory governments and the federal government to provide guidance for the referral of proposed actions that could affect matters of national environmental significance, prior to any regional or local planning decisions being made.

If an area is found to be a critical habitat for a listed species, the responsibility for state and local planning authorities to require appropriate investigations and referral prior to a planning decision being made, needs to be clarified.

Recommendation 4: That clarification be provided on the role and responsibility of local and state governments in referring actions prior to planning decisions being made.

National database to spatially represent areas for biodiversity conservation

Existing spatial information regarding the location of listed matters of national environmental significance, particularly in terms of known critical habitat for listed species, is not easily accessible and useable by local governments.

An information database describing the spatial arrangement of listed matters of national environmental significance is required to provide clear direction for local governments

during the planning and development process. Such an approach would enable local governments to recognise these areas at an early stage to ensure planning is shaped to respond to the environment.

Recommendation 5: That a database be developed that clearly defines the spatial arrangement of listed matters of national environmental significance, for example known critical habitat for listed species.