

LEGISLATIVE COUNCIL SELECT COMMITTEE - INQUIRY INTO GROWING TASMANIA'S ECONOMY

A joint submission to the Committee by –

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Subject of the submission:

THE ADVERSE IMPACTS ON PRIVATE LANDOWNERS, LOCAL COMMUNITIES, AND THE STATE'S THREATENED SPECIES PROGRAMS AND ECONOMY IN GENERAL ARISING DIRECTLY FROM THE FAILURE TO APPLY THE CO-OPERATIVE LAND MANAGEMENT PROVISIONS OF THE THREATENED SPECIES PROTECTION ACT 1995 IN RESOLVING THREATENED SPECIES ISSUES ON PRIVATE LAND IN TASMANIA.

Overview of the issues raised by the submission:

The submission deals with the policy of the Department of Primary Industries, Parks, Water & Environment (the agency) not to apply the landowner assistance provisions of Tasmania's Threatened Species Protection Act 1995 (the Act), restricting any available agency support instead through its 'Voluntary Conservation Covenanting Program' to voluntary participants only, unjustly refusing the same services to private land owners wishing to establish formal threatened species habitat protection agreements under the Act to help facilitate beneficial developments on their land.

The policy by-passes these co-operative management mechanisms of the Act and its published Government policy instruments, unfairly 'locking out' affected landowners from access to that support, from participating in joint habitat management projects with the Government, and from access to reviews by the statutory body, the Community Review Committee, established by the Act to assist that process and ensure the social and economic impacts are fully considered.

The Act's essential facilities and processes recognise the clear public benefit of Tasmania's threatened species protection programs, and accordingly are intended under the Act's Threatened Species Protection System (TSPS) to help fairly resolve threatened species issues and achieve effective outcomes for affected landowners, the State economy and the Government's progress with the State's threatened flora and fauna protection programs.

As a direct result of the policy, the key objectives of this important legislation are failing to be achieved and affected private landholders in Tasmania are being seriously hindered in the investigation and implementation of projects with significant social and economic benefits to local and regional communities around the State. Concurrently, valuable opportunities to establish permanently protected and managed habitats for the State's threatened flora and fauna are being lost.

This submission outlines as a very relevant case-example the resulting unjustified barriers imposed on a straightforward flood mitigation and water conservation proposal at the Port Sorell Golf Course in northern Tasmania.

The submission seeks the Committee's support for a change in policy whereby the Act is fully and properly applied as intended by the Tasmanian Parliament.

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ATTACHMENTS

1. Project Report - Flood Mitigation and Irrigation Water Augmentation Proposals for the Port Sorell Golf Course, Port Sorell, Tasmania

DEFINITIONS

The Act	<u>Threatened Species Protection Act 1995</u>
The agency/DPIPWE	Department of Primary Industries, Parks, Water & Environment, Tasmania
CRC	Community Review Committee
RMPS	Resource Management & Planning System of Tasmania
SAC	Scientific Advisory Committee
The Secretary	Secretary, Department of primary Industries, Parks, Water & Environment, Tasmania
TSPS	Threatened Species Protection System for Tasmania to be established under the Act

1. **THREATENED SPECIES PROTECTION ACT 1995** – SUMMARY OF POLICY & IMPLEMENTATION ISSUES

Relevant sections of the Act	Provision	DPIPWE's Implementation Policy
Sections 4 & 7	Place a statutory obligation on the Secretary to further the objectives of the Threatened Species Protection System (TSPS) established by the Act, including assistance to landholders in conserving threatened flora and fauna, through co-operative agreements for land management under the Act.	Co-operative agreements for land management under the Act, including assistance to landholders in conserving threatened flora and fauna, have not been made available to date.
Section 9	Establishes the Community Review Committee (CRC), with majority membership from industry and the community, and with essential functions in land management planning and agreement processes under the Act.	DPIPWE's policy of not furthering key objectives of the TSPS as required by the Act effectively makes these essential functions of the CRC superfluous.
Sections 10 & 11	Require the Secretary to prepare a State Strategy to guide the implementation of programs to achieve the Act's objectives.	A State Strategy was approved by the Minister in 2000, incorporating all the elements, including co-operative agreements, to fully implement the TSPS. DPIPWE has not implemented this essential part of the Strategy, however, in conflict with the required commitment to the Strategy by all sectors of the community.
Sections 13 to 21; & 48 to 56	Assessment of the status of species and their need for listing under the Act; legal and offence provisions of the Act.	Along with the State Strategy and Recovery Plan development and publishing provisions, these listing and regulatory provisions mainly comprise the only parts of the Act applied by DPIPWE to date. This has resulted in many listed species but with a large back-log of high priority species on privately owned land requiring action to reduce the risks to their long term survival.
Section 23	Enables the Secretary to determine critical habitats, with a land management plan for that habitat under section 29 by the Secretary then mandatory within 90 days thereof.	This section has never been applied due to claimed difficulties in defining critical habitats in the manner required by the Act. The policy is also likely to be due to DPIPWE's budgetary concerns if it were to pursue the full objectives of the TSPS as intended by the Act.
Section 25	Enables the Secretary, with the Minister's approval, to make a recovery Plan for a listed species or group of species.	As with the State Strategy under sections 10 and 11, Recovery Plans have been published with all necessary elements to fully implement the TSPS. This essential facility of the Plans is not being applied however, apart from on a limited voluntary basis only and to the exclusion of many affected private landholders.
Sections 29 & 30	Enables assistance to landholders in the conservation of threatened flora and fauna, through co-operative land management plans and agreements.	Despite the obligations set out at sections 4 and 7 of the Act, these mechanisms have never been applied by the Secretary, preventing these key objectives of the TSPS from being achieved to date.
Section 44	Established a Threatened Species Fund for use by the Secretary in funding programs under the Act, including development of co-operative land management plans and making grants to assist in the conservation of native flora and fauna.	The fund is not used to support the co-operative land management plan and agreement program intended under the Act to be implemented as a key part of the TSPS.
Schedule 1	Specifies the objectives of the TSPS established by the Act, to be furthered in accordance with section 4 of the Act in support of the objectives of the Resource Management and Planning System of Tasmania (RMPS).	The mechanisms established by the Act, as outlined in this summary, are not applied. Objectives (d) and (e) of the TSPS are therefore not being achieved, presenting a major barrier to the effective achievement of most other objectives of the TSPS, specified at Schedule 1.

2. LANDHOLDER ASSISTANCE PROVISIONS OF TASMANIA'S THREATENED SPECIES PROTECTION ACT 1995

2.1 General

The Act requires the establishment of a *Threatened Species Protection System* (TSPS), with the following objectives, as specified at Part 2 of Schedule 1 of the Act in support of the Resource Management and Planning System of Tasmania (RMPS) –

- a) to ensure that all native flora and fauna in Tasmania can survive, flourish and retain their potential for evolutionary development in the wild; and*
- b) to ensure that the genetic diversity of native flora and fauna is maintained; and*
- c) to educate the community in the conservation of native flora and fauna; and*
- d) to encourage co-operative management of native flora and fauna including the making of co-operative agreements for land management under the Act; and*
- e) to assist landholders to enable native flora and fauna to be conserved; and*
- f) to encourage the conserving of native flora and fauna through co-operative community endeavours.*

All of these objectives are clearly interdependent – achieving each objective is dependent on achieving the other five objectives, and in achieving the overall objectives of the Act.

The agency's policy – key parts of the TSPS, objectives d) and e), are not implemented; instead the agency offers only its preferred Voluntary Conservation Covenanting Program under the *Nature Conservation Act 2002*, but then only to those landowners willing and able to voluntarily set aside their land as a formal conservation reserve, not to landowners needing similar support to facilitate a beneficial development affecting the particular habitat - access to that program is then denied and all habitat assessment, improvement, protection and on-going monitoring costs are left to the affected landholders, contrary to the Act and its TSPS.

The agency has advised (meeting with senior staff, May 2013) that it lacks the resources to implement these co-operative land management and agreement provisions of the Act. This submission argues however that this is a budget priority issue and that whilst the agency is responsible for numerous priority programs, protection of Tasmania's threatened flora and fauna clearly merits a sufficiently high priority to ensure the intent of this critical piece of environmental legislation is achieved. Indeed, the explicit intent of the Act as well as the Government policy instruments (the Threatened Species Strategy and the relevant Recovery Plans adopted under the Act) is that the necessary resources to effectively apply these instruments and to implement the TSPS are to be provided.

The agency's policy of not implementing key parts of the TSPS under the Act is clearly impairing progress with Tasmania's threatened species protection programs on privately owned land in the State. Given this land represents about one-third of the State's total land area, and contains a high proportion of the species listed under the Act, this in turn has a significant adverse effect on the Government's threatened species protection programs generally.

Several findings of the Auditor-General's Special Report No 78 (2009) *Management of Threatened Species* are relevant in this regard –

- On habitat strategies – *“At the species level, there was no structured approach to cataloguing important habitats and planning for their management and recovery. Consequently, despite protection of large areas of Tasmania, it was not possible to conclude as to the adequacy of protection of all important habitats”*.
- On program funding – *“- - - the existing funding model tended to promote substantial funding for a small number of high-profile programs and little or no funding for others”*.
- On the need for species specific plans and strategies – *“Listing under the Act provides legal protection for a species. However, that protection does not in itself guarantee survival. Accordingly plans are needed to determine conservation actions and strategies”*.

A direct impact of the policy is the detrimental effect on numerous small private development proposals throughout the State directly arising from confusing planning requirements and substantial investigation and implementation cost increases. This in turn adversely impacts on the otherwise beneficial social, economic and environmental outcomes of these developments.

2.2 Statutory functions and obligations under the Act, not performed and met under the current policy applied by the agency.

Section 4 - The Act at section 4 places a statutory obligation on persons with powers and functions under the Act to –

perform the function or to exercise the power in such a manner as to further the objectives specified in Schedule 1.

The agency’s policy – as two key objectives, d) and e), of the TSPS are not furthered under the agency’s policy, this statutory obligation is not being met.

Section 7 – Functions of the Secretary. A specific function of the Secretary under section 7 of the Act is –

e) to prepare and implement land management plans

The agency’s policy – as set out in the Auditor General’s Report of 2009 on the State’s threatened species programs, not one Land Management Plan and Agreement under sections 29 and 30 of the Act has been prepared and implemented, indicating that the agency’s policy has been not to perform this function, again in conflict with section 4 of the Act.

Section 9 - Community Review Committee (CRC). Under the Act this committee has 6 of its 9 members drawn from industry and community organisations. A major part of its statutory functions under the Act is to apply the extensive industry and community expertise and experience of its members in assisting the preparation of land management plans and agreements, consideration of social and economic impacts of these instruments and conciliating in any matters arising in their preparation.

The agency’s policy – in view of the non-application of the section 23 critical habitat and sections 29 and 30 land management and agreement mechanisms under the Act, a major part of the CRC’s required functions are not carried out and are therefore superfluous as a result of the agency’s applied policy; also the full benefits from the participation of the expert and experienced membership of the CRC, and the full returns from the Government’s annual

investment in its operation, in support of the objectives of the TSPS and the RMPS, are not achieved.

A recent press advertisement (4 April 2015) calling for expressions of interest for the position of Chair of the CRC unnecessarily and misleadingly listed these important functions, as they have not been required to be performed to date, under the applied policies.

Section 10 – Threatened Species Strategy for Tasmania. As required by this section, this Strategy was prepared by the Secretary in 2000, incorporating all provisions under that section to enable the objectives of the Act to be achieved in accordance with the TSPS; as required, the Strategy specifies the means to achieving those objectives with minimal social and economic impact and having regard to the rights and interests of landholders and the community.

The agency’s policy – As set out in this submission a number of the key elements of the Strategy have not been implemented by the agency, directly resulting in failure to achieve the objectives of the Act. These key elements include –

- the need for implementation actions to protect threatened species to be *shared equitably by the community, landowners and the Government*; to establish *joint agreements and co-operative mechanisms*; to include *landholder, community and industry concerns in planning processes*, ensuring *economic and social impacts of management agreements are fully considered*, and encouraging access to the Community Review Committee established by the Act for the purpose;
- the need for *land management plans and agreements* under the Act as a key process for cost-effective action to conserve priority threatened species in Tasmania.
- the need to integrate threatened species conservation with the activities of all landowners and industry, and to assist this through a range of incentive packages and options to assist landowners to conserve threatened species without disadvantage.
- ensuring landowners do not have to bear undue costs in conserving threatened species on their land is *fundamental to obtaining and encouraging support for conserving threatened species* in Tasmania.

Section 23 of the Act – Critical Habitats. Section 23 provides that –

Where the Secretary, after consultation with SAC, is satisfied that the whole or any part of the habitat of any listed taxon of native flora or fauna is critical to the survival of that taxon, the Secretary must determine the whole or the part of that habitat to be a critical habitat.

Under section 29(4) of the Act the Secretary must also prepare a land management plan for the purpose of protecting a taxon, within 90 days of a determination of a critical habitat for that taxon.

The agency’s policy – The *State of Environment Tasmania Report 2009* states that the critical habitat provisions of the Act are yet to be applied. This is still the case in 2015 and appears to be under a deliberate policy by the agency not to apply this section of the Act because of its stated “*difficulties in defining critical habitats in accordance with the requirements of the Act*”. However an equally imported reason appears to be the avoidance of the budgetary impacts arising from discharging the mandatory land management planning and associated responsibilities following critical habitat determinations – if so an invalid

reason given the statutory obligations to implement these mechanisms, the essential objectives of the TSPS that must be met and pursued under the Act, and the clearly high priority that should be applied to the State's threatened species protection programs – particularly critical habitats.

The stated habitat definition difficulties also appear quite puzzling given the Act's flexibility in that regard inherent in section 23(1). In the case of the Port Sorell project, defining the local habitat of the Central North Burrowing Crayfish (*Engaeus granulatus*) is very straightforward, and while the agency has recently advised in writing that every occupied habitat of this particular species needs to be protected – that all habitat sites are therefore critical to the species' long term survival - it nevertheless also advised that it is “*not pursuing critical habitats at the moment*”. In fact, as stated, not one critical habitat has been established since the Act was passed in 1995.

Again this policy acts against furthering the objectives of the TSPS and hence the Act and in turn the State's threatened species programs generally, and appears to be in direct conflict with the statutory requirements of section 23 in respect of the *E granulatus* local habitat at Port Sorell; this has prevented access by the Port Sorell proposal to the co-operative Government/landowner land management planning and agreement provisions of the Act.

Section 25 – Recovery plans. This section enables the Secretary, with the Minister's approval and after considering public comments on a draft plan, to make a Recovery Plan for any listed threatened species or group of species. Once in force under the Act, a Recovery Plan is binding on the Commonwealth and State Governments and the Tasmanian community (see *List of State and National Approved Recovery Plans* – DPIPWE website). It remains in force until the species is removed from the legislation.

The agency's policy - As with the State Strategy published under sections 10 and 11, Recovery Plans have been published with all necessary elements to fully implement the TSPS under the Act. However these essential elements of the Plans are not being applied to that effect, as is the case with the State Strategy.

The ‘*Burrowing Crayfish Group Recovery Plan 2001-2005*’ is a case in point. This Plan provided for specific allocations of Government funding for habitat improvement works and establishing formal habitat reserves on private land as follows -

- *Management Agreements for Improvement of Reservation Status of Habitats* – over \$70,000 per annum (year 2000 \$ values) of Government funding was allocated in the initial years of the Plan's implementation in 2001, for this action on affected land in northern Tasmania. This was to fund the *purchase, inducement, covenant, consideration or compensation for land involved; contract negotiations and preparation; and fencing and signposting.*
- *Habitat Improvement & Management on Agricultural, Urban and Other Land* in northern Tasmania - \$64,000 per annum of Government funding was allocated for *inducements for landholders and for habitat revegetation and rehabilitation works and trials* in the early stages of the Plan's implementation.

This assistance has not been made available to landholders under the Act and is specifically referred to only in the Commonwealth version of the Plan, not the State version. Other discrepancies exist between the two versions, together with conflicting stated processes as to

approval under the respective State and Commonwealth legislative provisions, but the reasons have not been clarified by the agency and it is unclear which if any version was approved in accordance with the Act and which is the legal version. As conceded by the agency, this is a significant source of confusion to users of the Recovery Plan given its binding nature on Governments and the Tasmanian community.

Sections 29 and 30 - Land Management Plans and Agreements

Under section 29 of the Act the Secretary may, after consultation with an affected landholder, make a land management plan for the purpose of protecting a listed threatened species.

Under section 30 of the Act land management plans under section 29 may be implemented through a land management agreement between the Secretary and the affected landholder. The agreement may provide for habitat protection works and their funding, and must contain provisions for conciliation by the CRC on any matter arising from the agreement.

As stated in the Auditor-General's Special Report No 78, Management of Threatened Species (2009)

“Although designed to provide a mechanism for reaching agreement with private land owners to preserve private land for the benefit of threatened species, not one land management plan had been developed or implemented.”

The agency's policy - The agency has not applied these co-operative land management provisions. Its preferred mechanism to preserve private land is through its Voluntary Conservation Covenanting Program under the Nature Conservation Act 2002. Under this program the agency provides support for land management planning and on-going management and monitoring of the covenanted area, but only to those landholders willing and able to voluntarily, and permanently if necessary, set aside their land as a formal reserve at little or no cost to the Government. Where the need for the formal reserve, habitat improvement and on-going management plan is part of some proposed beneficial development on private land, under the agency's current policy, access to this Government support is denied and all costs must be met by the affected landholders. In this way the landholder assistance objectives of the Threatened Species Protection Act 1995 are unfairly by-passed and the overall objectives and intent of that Act, and its TSPS, are failing to be achieved and implemented, with a range of detrimental impacts the direct consequence as summarised at section 3 of this submission.

Section 44 - resourcing the TSPS. A Threatened Species Fund was established by section 44 of the Act, to be resourced for use by the Secretary in funding programs under the Act, including grants to assist in the conservation of native flora and fauna.

The agency's policy – Contrary to the intent of the Act, the fund is not used to support the co-operative land management plan and agreement program required to be implemented as a key part of the TSPS.

3. SUMMARY AND CONCLUSIONS

The agency's policy of very limited and selective application only of Tasmania's threatened species protection legislation in favour of its Voluntary Conservation Covenanting Program clearly discriminates against those many affected private land owners denied access to the Government support services intended under the legislation.

It seems very clear that the primary purpose of the agency’s refusal to apply the co-operative land management provisions of the *Threatened Species Protection Act 1995* is to avoid the impact on its annual budget that would result from an appropriate policy in accordance with the agency’s statutory obligations under the Act, to achieve the purpose and intent of this important legislation for Tasmania.

Unless this situation is addressed numerous negative effects inherent in the current inadequate policy of selective application of the Act will continue, including –

- the clear public benefit of threatened species protection projects in Tasmania, specifically recognised in the framing of the legislation, will continue to be disregarded;
- affected private landholders will continue to be encumbered with unreasonable financial burdens in implementing development projects, and the costs of associated formal threatened species habitat protection and management plans – costs that are not imposed on landholders financially able to permanently set aside their land as a formal conservation reserve under the agency’s preferred voluntary program;
- beneficial development projects will continue to be significantly disadvantaged financially or totally lost by local and regional communities and by the Tasmanian economy in general;
- project proponents are left with very substantial bills for scientific investigations, but without a viable project to justify and recoup that expenditure;
- opportunities to significantly expand the number of formal threatened species protection reserves on private land throughout Tasmania will continue to be lost;
- individual habitats of high priority threatened species will continue to struggle for long term survival, without the benefit of improved protection through co-operative formal management plans and agreements between landholders and the Government;
- the relevant objectives of the Government policy instruments published in accordance with the Act and directly supporting the TSPS intended to be implemented under the Act will continue to be by-passed;
- overall progress with the Government’s threatened species protection programs will continue to be significantly less than satisfactory; a large list of threatened flora and fauna under the Act will continue to overshadow the Government’s efforts to address this high priority program, with little impression continuing to be made on the ultimate objective of down-listing and eventual de-listing of the State’s threatened flora and fauna.
