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30 November 2015

Agriculture and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000
By email only: aec@parliament.qld.gov.au

Dear Sir/Madam,

**SUBMISSION ON THE NATURE CONSERVATION AND OTHER LEGISLATION
AMENDMENT BILL 2015**

We welcome the opportunity to make a submission on the *Nature Conservation and Other Legislation Amendment Bill 2015 (Bill)*.

The Environmental Defenders Office Queensland (**EDO Qld**) is not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also use our experience to deliver community legal education and inform law reform.

We have provided detailed submissions and suggested solutions in the **Appendix** to this letter. In summary, we make the following **key points** in relation to the Bill:

1. We support the reinstatement of the conservation of nature as the sole object of the NC Act and the other proposed amendments that take measures to restore the protection previously afforded in the legislation for protected areas.

We recommend that further amendments are undertaken to fully restore the cardinal principle to the NC Act and effectuate it through the appropriate management of Queensland's National Park estate. These further amendments are provided in points 4 and 5 here.

2. We recommend that the principles of ecologically sustainable development, as enshrined in the Commonwealth Government's *National Strategy for Ecologically Sustainable Development (1992)*, should be properly reflected in the NC Act.
3. We support the amendments to improve public participation in the management of our protected areas.

We recommend that further amendments are required to greatly improve public participation overall in decision making in the NC Act and thereby improve transparency and accountability in the management of our protected areas.

4. Special management areas (controlled action) should be removed from the NC Act. The allowance of manipulation of national park tenure areas confuses and detracts from the cardinal principle. Existing special management areas (controlled action) could be removed from national park tenure and instead become conservation parks or national park (recovery). At very least

special management areas (controlled action) should be clarified so that this designation can only be used for managing threats to areas that appropriately qualify as national park tenure and not for development, inappropriate activities or to improve an area that does not yet qualify as national park.

5. We recommend the removal of reference to ecotourism facility from section 35 of the NC Act, and that no avenue for tourist resorts to be established within national parks is provided.
6. We recommend the alignment of the classes of protected areas to the IUCN protected area management categories, or at least the reintroduction of wilderness areas, World Heritage management areas and international agreement areas.
7. We recommend keeping the definition of 'national park' in the Land Act 1994 (Land Act) the same as the NC Act, for consistency between legislation. National parks (scientific) could be inserted within the provisions of the Land Act itself or the definition could be renamed to retain consistency in definitions between the legislation.

We would be happy to present and answer questions on our submissions at the Committee's hearing on this Bill.

In the meantime, we would also be happy to clarify or provide further information as needed. Please don't hesitate to contact us on [REDACTED]

Yours faithfully

Environmental Defenders Office (Qld) Inc.

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APPENDIX

1. Fully reinstating the cardinal principle

We support the amendments to the object to the act, to return it to simply being the conservation of nature. This upholds the cardinal principle.

We recommend two key amendments that would further reinstate the integrity of the cardinal principle for national parks under the NC Act which are discussed further under the headings at point 3 and 4 below:

- remove special management areas (controlled action) from the NC Act; and
- remove reference to ecotourism facility from section 35 of the NC Act.

As stated in the first reading speech of the Bill on 27 October 2015, the current “government made an election commitment to ensure the protected area estate is managed in accordance with the cardinal principle to preserve and protect natural conditions, cultural resources and values to the greatest extent possible”.

The cardinal principle is stated under section 17 of the NC Act as follows:

“a national park is to be managed to provide, to the greatest possible extent, for the permanent preservation of the area’s natural condition and the protection of the area’s cultural resources and values”.

The amendments proposed in the Bill are an important step in implementing this commitment and reinstating the cardinal principle but it is only the first step. Further amendments are required, ideally in this Bill, to reinstate the cardinal principle to the NC Act and ensure the preservation and protection of protected areas to the greatest extent possible.

When the NC Act was first introduced, the Government of the day stated:

“Much of the legislation entering this House deals with protection of the rights of individual people and private property, and it is a pleasure for me to introduce this Bill guaranteeing the future of all aspects of nature ...”¹

Previous amendments to the NC Act introduced by the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013* and the *Nature Conservation and Other Legislation Amendment Act 2013 (2013 amendments)* exposed Queensland’s vulnerable protected areas, which cover less than 5% of the State² to ‘uses’ which are not required to be ecologically sustainable and were not in accordance with the cardinal principle.

The 2013 amendments were a distinct move away from ecological sustainability. The amendments confused the concept of the cardinal principle and failed to acknowledge that the NC Act has always

¹ Hon. P. Comben (Minister for Environment and Heritage), Second Reading Speech in Legislative Assembly (28 April 1992) Record of Proceedings (Hansard), at 4576 of transcript.

² National Parks Association of Qld, Annual Report 2011/12 p 3.

allowed ecologically sustainable use of protected areas within the very objects of the Act.³ The NC Act needs to be amended further than the amendments proposed in the Bill to uphold the cardinal principle and ensure that any use within protected areas is in accordance with the principles of ecological sustainability.

2. The principles of ecologically sustainable development should be enshrined in the NC Act

We recommend that the principles of ecologically sustainable development, as enshrined in the Commonwealth Government's *National Strategy for Ecologically Sustainable Development (1992)*, should be properly reflected in the NC Act. This could be done by extending the definition in section 11 to incorporate all of the formal principles of ecologically sustainable development.

We note that section 11 of the NC Act currently refers only vaguely to a principle of ecologically sustainable development in the definition of 'ecologically sustainable use'. We recommend that this be extended to incorporate all the formal principles of ecologically sustainable development.

3. Remove special management areas (controlled action) from the NC Act

We support the reinstatement of national park (scientific) and removal of special management areas (scientific).

However, we submit that the Bill should also remove special management areas (controlled action). The declaration of special management areas over national park tenures detracts from the cardinal principle that national parks are areas that are not to be manipulated. If an area is not suitable to be left without active rehabilitation, it should be provided with a different tenure until it has recovered sufficiently to be included in the national park tenure.

At very least special management areas (controlled action) should be clarified so that this designation can only be used for managing threats to areas that appropriately qualify as national park tenure and not for development, inappropriate activities or to improve an area that does not yet qualify as national park.

The Bill proposes to amend Part 4, division 3A in relation to special management areas.⁴ Previously the *Nature Conservation and Other Legislation Amendment Act 2013* reduced the number of tenure classes under the NC Act, for example by transferring the following previous tenures into 'national park' tenure:

- national park (scientific) areas, with a special management area (scientific) declared over the area;
- national park (recovery) areas, with a special management area (controlled action) declared over the area.

Where a special management area (controlled action) is declared, either or both of the following activities can occur:

- (i) the manipulation of the area's natural and cultural resources to protect or restore the area's natural or cultural values; and/or

³ See definition of conservation in section 9 of the NC Act - "is the protection and maintenance of nature while allowing for its ecologically sustainable use".

⁴ Bill clause 16-18.

- (ii) the continuation of an existing use of the area consistent with maintaining the area's natural and cultural values.⁵

The transfer of national park (recovery) areas into the national park tenure, with a special management area (controlled action) categorisation, undermines the level of protection that is afforded to national parks. National park (recovery) was intended to allow for the rehabilitation of areas that were not yet in a state to be considered national parks. It is not suitable for these areas to fall within the national park category until they have been sufficiently restored, because activities that can occur on these areas are contrary to the cardinal principle.

Special management areas (controlled action) should be removed from the NC Act. National parks should be a clear category that is not confused with areas of different purposes, which would allow the cardinal principle for national parks to be appropriately reflected and upheld under the NC Act.

Existing special management areas (controlled action) could become conservation parks or the previous category of national park (recovery) could be reintroduced into the NC Act to accommodate these areas.

4. Remove reference to ecotourism facility from section 35 of the NC Act

'Ecotourism facilities' should be removed from section 35 of the NC Act to properly reinstate the cardinal principle. The NC Act would still allow appropriate development to assist tourist use of the park. The provision of 'ecotourism facilities' opens the possibility that tourist resorts will be developed.

If ecotourism facilities are to be retained, at the very least, they should go through an impact assessable public consultation process.

The NC Act currently allows for the Chief Executive to authorise an ecotourism facility over land in a national park in certain circumstances,⁶ which could include a tourist resort. There are currently no tourist resorts in mainland national parks and we strongly support this remaining the case and that the legislation is amended to stop the possibility of this occurring. Tourist resorts within a national park create not just the initial environmental impact but an ongoing environmental degradation through access, waste pollution, increased disturbance and the increased risk of fire, weeds and feral animals.

Tourist resorts can be established close to or adjacent to the national park without undermining the cardinal principle that should be applied to managing our protected areas. This has been occurring until now and has worked sufficiently to ensure the public can enjoy national parks without impacting significantly on the protected environment they have come to appreciate.

Section 35(2) specifically overrides section 15(1) of the NC Act⁷ which prescribes that: "*each protected area is to be managed in accordance with ... the management principles prescribed by this division for the class of protected area*". Therefore, currently ecotourism facilities can operate contrary to the management principles of national parks, including the cardinal principle.

⁵ NC Act section 17.

⁶ NC Act section 35(1)(c).

⁷ NC Act section 35(2).

If ecotourism facilities are to be retained, at the very least, they should go through an impact assessable public consultation process. Proposals must be publicly notified. This creates a double standard as significant urban development must generally be advertised for public submission and appeal, but construction in and around national parks and other protected areas does not provide similar legal rights.

5. Public participation – more opportunities for public participation should be inserted into the NC Act

We support proposed amendments that improve public participation and support transparency and accountability in the management of Queensland’s protected areas.

However further amendments are required to provide opportunities for public participation in decision making under the NC Act.

The Bill proposes to repeal s120A(2)(a)(iii) of the NC Act⁸ to require a draft management plan and public submissions even if the change is consistent with government policy, however, the Bill does not propose changes to the management statement process or management plan public submission exemptions.

For example, management statements should be subject to public submissions that must be considered (NC Act, Part 7, Division 3). Also, management plans are not subject to public submissions in certain circumstances outlined in s115A(5) including if the “Minister considers there has already been adequate other public consultation about the matters the subject of the plan”.

Section 6 of the NCA has always provided that public participation should be a key part of the operation of the NCA framework. It reads:

“Community participation in administration of Act

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, landholders and interested groups and persons, including Aborigines and Torres Strait Islanders.”

The Bill should include amendments that provide opportunities for interested members of the public to be involved in the administration and management of protected areas. The explanatory notes for NCOLA 2013 state:

“The process for preparing management plans is “extremely resource intensive...by contrast...management statements will provide greater management flexibility and deliver on the Governments commitments to reduce legislative complexity and red tape.”⁹

The public is not even invited under the NC Act to partake in considering what developments in protected areas might be in the ‘public interest’ in terms of service facilities (CSG pipelines, communication towers etc.) or the ecotourism facilities’.¹⁰

⁸ Bill clause 27.

⁹ Explanatory Notes to NCOLA 2013 Bill at pages 4-5.

The only ‘community participation’ rights in addition to the minor amendments proposed in the NC Act are being permitted to view the register¹¹ and for concerned members of the public to apply to the Planning and Environment Court as a last resort if the Department fails to take action for a limited number of nominated offences.¹² However, the previous Government made this ‘participation’ all the more difficult with recent changes to the costs provisions in the Planning and Environment Court.¹³

Management statements should be subject to public review and submissions. This is in keeping with section 6 of the NC Act and allows concerned community groups to have a say on how our parks should be appropriately managed.

Also, management plans should be subject to public submissions even if the Minister considers there has already been adequate other public consultation about the matters the subject of the plan.

As outlined above, if ecotourism facilities are to be retained in the NC Act, at the very least, they should go through an impact assessable public consultation process.

6. Classes of protected areas – align with IUCN protected area management categories

We support the proposed amendment to section 14 of the NC Act to include conservation parks and resources reserves in the classes of protected areas and also the deletion of regional parks.¹⁴

However, the classes can be improved further to align with the International Union for the Conservation of Nature (IUCN) protected area management categories.

If the categories cannot be aligned to the IUCN protected area management categories, at very least, the list of protected areas as provided prior to 2013 amendments should be reinstated, including:

- World Heritage management areas;
- international agreement areas; and
- wilderness areas.

The IUCN have published the Guidelines for Applying Protected Area Management Categories.¹⁵ Reinstating national parks (scientific) aligns with the IUCN category Ia. Reinstating wilderness areas (which was removed with the 2013 amendments) would align with IUCN category Ib and we suggest that the Bill should include this amendment.

However, if the classes of protected areas are not going to be aligned to the IUCN protected area management categories, World Heritage management areas, international agreement areas and wilderness areas should be inserted to reinstate the list that existed prior to the 2013 amendments. There was no reason to remove these categories in the first place; the only justification given was that

¹⁰ NC Act section 35.

¹¹ NC Act section 133.

¹² NC Act section 173B and Section 173D.

¹³ *Sustainable Planning Act 2009* (Qld) section 457. The changes were introduced by the *Sustainable Planning and Other Legislation Amendment Act 2012*. EDO Qld, made a submission to the relevant Committee at the time.

¹⁴ Bill clause 6.

¹⁵ The IUCN Guidelines can be viewed here:

http://www.iucn.org/about/work/programmes/gpap_home/gpap_capacity2/gpap_bpg/?13959/Guidelines-for-applying-protected-area-management-categories.

none of these classes of protected area had been declared. The reason for the inclusion of these categories in the legislation is to allow for their declaration, if appropriate, in the future.

7. **Land Act definition of ‘national park’ should be the same as the NC Act and any addition of national park (scientific) should occur in the provisions of the Land Act itself**

We recommend keeping the definition of ‘national park’ in the *Land Act 1994* (Land Act) the same as the NC Act, for consistency between legislation. National parks (scientific) could be inserted within the provisions of the Land Act itself or the definition could be renamed to retain consistency in definitions between the legislation.

We note that the consequential amendments to the Land Act¹⁶ propose to define ‘national park’ as ‘a national park (scientific) or national park under the *Nature Conservation Act 1992*’.

We suggest that it would be more appropriate to add national parks (scientific) within the provisions of the Land Act itself rather than through the definition of national park which, for clarity and consistency, should remain the same as the definition in the NC Act. Alternatively, the definition could be renamed, like has been done for ‘specified national parks’ under the Land Act which includes national parks (Aboriginal land), national parks (Torres Strait Islander land), national parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas.

¹⁶ Bill, Schedule 1, *Land Act 1994* (Qld), s3.