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Native Vegetation Council

Submitted via: nvc@sa.gov.au

Wednesday 21 December 2022

Re: Draft Heritage Agreement Policy

Dear Native Vegetation Council,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to comment on the draft Heritage Agreement policy (the draft Policy) and the extension in time to do so. Since 1962, the NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and the management of protected areas.

The NCSSA understands that comment is only being sought on the draft Policy and associated guidelines for applications for financial assistance, however, as the 'internal' review undertaken informed the policy, the NCSSA has also provided comment on the review.

In summary, the NCSSA is of the view that:

- The draft Policy generally provides useful guidance regarding how Heritage Agreements will be established and managed, however, there are some points that must be tightened to ensure enduring nature conservation outcomes, and
- The associated guidelines for applications for financial assistance are factually correct, however, are not very useful to current or prospective Heritage Agreement holders since they provide no sense of the quantum of availability of funding nor a sense of timing of provision.
- In relation to the review that underpinned the draft Policy, the NCSSA believes it was too narrow in scope, focussed too exclusively on current legislative and policy settings and that an 'internal' process was inadequate.

Key challenges for supporting more than 2800 current Heritage Agreement holders to steward the more than 1.8 million hectares of conservation estate under their care, including a transparent, at-scale funding model to support their critical conservation work, remain unresolved. The future options and opportunities for expanding private land conservation in South Australia also remain unexplored.

Further detailed comments are provided in the attached pages. If you would like to clarify or discuss this submission please contact Julia Peacock on 0400 277 423 or via email at julia.peacock@ncssa.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kirsty Bevan'.

Kirsty Bevan
CEO, NCSSA

NCSSA comments on draft Heritage Agreement policy

General comment

The draft Policy generally provides useful guidance regarding how Heritage Agreements will be established and managed, however, there are some points that must be tightened to ensure enduring nature conservation outcomes.

Specific comments

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The area figures under points (1) and (2) of *Establishing a Heritage Agreement* are somewhat arbitrary. Although the NCSSA concurs that larger areas will generally provide better conservation outcomes than small areas, and that the vast majority of any new Heritage Agreement would ideally be high quality native vegetation, the draft Policy would benefit from the addition of words to the effect of 'as a guide' or 'generally', so as to give the NVC more flexibility to consider applications that don't strictly fit those criteria but would be of conservation benefit to protect.

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The NCSSA supports the draft Policy acknowledging the role for planting seed or cuttings from drier climates in any revegetation activities to support climate change adapted plantings.

The NCSSA understands that Heritage Agreements are aimed at protecting existing, high quality native vegetation and that revegetation can be 'protected' under the *Native Vegetation Act 1991* by applying to have it declared 'native vegetation', however, consideration should be given to other instruments that better match the aspirations of landholders for protecting a revegetated property through acknowledgement on the property title (see comments on the review process).

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In relation to point (3) bee keeping, the NCSSA wishes to highlight research on the impact of feral bees on native vegetation, particularly that feral bees do not pollinate, or pollinate inefficiently, native plants, rather they pollinate invasive weeds, such as gorse, lantana and scotch broom.¹ Therefore, the draft Policy should encourage Heritage Agreement holders to phase out any pre-existing bee keeping activities, and should explicitly prevent any new bee keeping activities from being established.

In relation to point (5), although it is helpful to specifically clarify that activities related to carbon farming and biodiversity markets are permitted, a more fulsome exploration of current and emerging carbon and biodiversity market opportunities, and how they may interact with new or existing Heritage Agreements, should be undertaken (see comments on the review process).

In relation to permitted activities generally, the NCSSA does not support the draft Policy position that 'greater flexibility will generally be provided in relation to Heritage Agreements that were established voluntarily (i.e. not associated with a condition of consent, court order, funding arrangements or SEB offset arrangement)'.

This is a confusing and inconsistent policy position and should be removed from the draft Policy. If a Heritage Agreement has been established, it should be protected regardless of the process that led to its establishment, since it is protected in perpetuity, even when ownership changes. If a different instrument is needed for non-voluntarily established Heritage Agreements, this should be explored as part of any future legislative reform (see comments on the review process).

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The NCSSA does not support point 3 that 'moving an exclusion zone may be supported if it provides a positive or neutral impact on the ecological values of the Heritage Agreement'.

This is based on the NCSSA's experience with a rocket launching facility at Whalers Way on the Eyre Peninsula, which is proposed for inside a Heritage Agreement by a private company called Southern Launch. There were exclusion zones purportedly specified in the original Heritage Agreement making process back in the early 1980s, and now:

¹ <https://theconversation.com/buzz-off-honey-industry-our-national-parks-shouldnt-be-milked-for-money-131891>

‘Southern Launch has an in-principle agreement with the Native Vegetation Council, should the proposal be granted Development Approval, to reconfigure the existing Heritage Agreement such that the excluded areas match those areas of the site where the development sites are located’.²

These ‘reconfigurations’ will involve cutting areas of high-quality native vegetation that is critical habitat for threatened species out of the Heritage Agreement, and including some of the areas currently ‘excluded’.

The NCSSA’s view is that this result in a negative impact on ecological values, however, it is likely that Southern Launch would argue that the additional areas ‘protected’ would mean the impact was ‘neutral’.

For consistency and clarity, the draft Policy should be amended so that moving an exclusion zone is subject to the same conditions as seeking an exclusion zone after the Heritage Agreement is established as specified in point 2, i.e. ‘Moving an exclusion zone would only be supported where the new exclusion zone would meet the requirements of an exclusion zone set out in relation to the establishment of a Heritage Agreement’.

Incentivising Heritage Agreements and Applications for financial assistance

The NCSSA acknowledges that establishing a sustained funding model that is of the scale needed to support current and potential future Heritage Agreement holders is a challenge. However, whilst the information provided in these documents is legally accurate, it is not useful to prospective applicants as it provides no indication of quantum of funding available or the timing of its provision.

For example, stating ‘the amount of information provided should be proportional to the scale of assistance being applied for’ is not useful from an applicant’s perspective.

Further, the NCSSA acknowledges that the *Native Vegetation Act 1991* stipulates that the amount of funding provided must not exceed the decrease in land value from entering the agreement (as determined by the Valuer-General) but suggests this requirement may relate to the period when Heritage Agreements were imposed in ‘exchange’ for refused clearance applications and may no longer provide useful guidance.

The NCSSA acknowledges that the \$6m in funding promised for Heritage Agreements by the Malinauskas Government is still in the process of being rolled out, so uncertainties remain. However, a more comprehensive review process could have explored options for possible funding model(s) and could have identified any legislative reform that might have been required (see comments on the review process).

² Southern Launch’s Response Document to submissions to the Environmental Impact Statement available at: https://plan.sa.gov.au/development_applications/state_development/impact-assessed-development/majors/major_projects/majors/sleaford_southern_launch

NCSSA comments on review of Heritage Agreements

In relation to the review that underpinned the draft Policy, the NCSSA believes it was too narrow in scope, focussed too exclusively on current legislative and policy settings with minimal consideration of alternate options for achieving enduring conservation outcomes on private land and that the 'internal' process was inadequate.

Private land conservation is critical to achieving a comprehensive, adequate, and representative protected area estate, and will become more important as the South Australian and Australian Governments seek to meet an ambitious new protected area target of 30% of Australia's land mass by 2030.³

Stewarding goodwill and nurturing aspirations

The review should have been an opportunity to consider the various motivations for, and barriers to, private land conservation in South Australia.

The most often reported motivator for current Heritage Agreement holders, as identified in the Revitalising Private Land Conservation (RPCSA) pilot program⁴, was 'leaving behind a conservation legacy'. Therefore, if voluntarily entered into, a Heritage Agreement is the start of a relationship between the State Government and a landowner, where stewarding their goodwill and nurturing their aspirations should be seen as central.

The NCSSA believes this type of arrangement should be distinguished from any compliance requirements that might be imposed on landholders and acknowledges that legislative reform may be required to achieve this.

The draft Policy precludes revegetation, particularly immature vegetation, from protection through Heritage Agreements but lists other options, including under alternate legislation. This suggests an appetite in the community to ensure the significant investments of time and money that are being made into revegetation are legally protected on a property title, and that these aspirations should be met with legislative reform, if needed, to capture the goodwill and protect both the financial investments being made into restoration and resulting natural asset.

A sustainable funding model

This review should have been an opportunity to think more widely and creatively about the place of Heritage Agreements amongst the range of current and future potential options for private landholders to protect nature in South Australia, and specifically it could have tackled key challenges in supporting the more than 2800 current Heritage Agreement holders to steward the more than 1.8 million hectares of conservation estate under their care.

Central to this is a **transparent, at-scale funding model** to support private landholders' critical conservation work. The review provides some insight into how funds are collected and distributed, and how tax and rates relief is applied, but it is not in a manner that would be useful to current or prospective Heritage Agreement holders.

The RPCSA pilot program identified that support with managing feral animals, fire management, biodiversity loss and weed management were the four main issues identified by current Heritage Agreement holders, with fencing, overabundant native fauna, access to financial support and a lack of technical knowledge regarding their natural assets also regularly reported.

The review could have explored whether tax incentives remain an important lever for landholders, and how funds available through the Native Vegetation Fund (and through the Malinauskas Government's \$6m commitment) could be provided in a way that supports ongoing goodwill as well as strong conservation outcomes, focusing on the issues of most concern to current Heritage Agreement landowners.

³ <https://www.dcceew.gov.au/sites/default/files/documents/emm-communicue-21-oct-2022.pdf>

⁴ https://www.conservation.sa.gov.au/revitalising_private_conservation#:~:text=Revitalising%20Private%20Conservation%20in%20South,Agreement%20land%20managers%20and%20resources

A transparent review process was needed, including a range of views

The review should have been undertaken in a manner that included the development of a Terms of Reference and inclusion of the views held by the full range of stakeholders on Heritage Agreements, such as current Heritage Agreement landholders, as well as not-for-profit organisations engaged in delivering the recent RPCSA pilot program.

The NCCSA understands that current Heritage Agreement holders were not specifically notified of this consultation process, which is also a missed opportunity to garner first-hand feedback regarding the draft Policy and associated guidelines.

First Nations perspective should have been sought

Specific consultation and consideration should have been given to the aspirations of South Australia's First Nations people to see whether current Heritage Agreement settings are appropriate, particularly in the context of the development of a treaty and voice to Parliament.⁵

Options in other states and territories

The section of the review dedicated to practices in other states and territories is very short. A more comprehensive exploration of how Heritage Agreements compare with instruments used elsewhere is required, specifically exploring whether the establishment of Special Wildlife Reserves would be beneficial, as has been done in Queensland.⁶

Carbon and biodiversity markets

The exploration of the current and future potential interaction of Heritage Agreements with carbon and biodiversity markets, which are emerging and evolving instruments that can incentivise the protection of native vegetation on private property, is too short and does not assess where these tools would or could be complimentary, potentially in conflict or unrelated to each other.

At a minimum, a matrix of comparison regarding current opportunities for carbon⁷ and biodiversity⁸ market opportunities, including funding available and what is considered best practice, would have helped place Heritage Agreements in a more contemporary setting and provided a useful tool for landholders considering their options in relation to private land conservation.

Acknowledging and working with change

The review discussed the long history of the Heritage Agreement program in South Australia but did not explicitly consider how this history impacts on its present day operation, and if any changes are needed. Options that could have been explored include whether a change of name for 'Heritage Agreement' to one that better reflects their purpose in protecting bushland would help raise their profile and improve community acceptance, for example to 'nature reserve'.

Similarly, given the long history of the Heritage Agreement program and its association at one time with refusals of clearance applications, consideration could have been given to whether a re-launching of the program in a manner that better reflects the contemporary desire of government to work with willing landholders to achieve conservation outcomes is required.

The age of Heritage Agreement program also means that acknowledging and working with inter-generational change is needed. This is relevant for Whalers Way, as the property has transferred from the owner who established

⁵ <https://yoursay.sa.gov.au/first-nations-voice-to-sa-parliament>

⁶ <https://www.qld.gov.au/environment/parks/protected-areas/private/special-wildlife-reserves>

⁷ <https://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector>

⁸ <https://www.dcceew.gov.au/environment/environmental-markets/biodiversity-market>

the Heritage Agreement to their son. A proactive program to address this change, which re-prosecutes the benefit of protecting nature to any new Heritage Agreement owner, is clearly required.