Legislative Assembly

31/05/2002

Threatened Species Conservation Amendment Bill Hansard Extract

Second Reading

Mr STEWART (Bankstown—Parliamentary Secretary), on behalf of Mr Debus [10.16 a.m.]: I move:

That this bill be now read a second time.

The enactment of the Threatened Species Conservation Act in 1995 was a milestone for biodiversity conservation in New South Wales. Prior to this landmark legislation, threatened species protection was confined to endangered fauna and focused on licensing rather than longer-term protection and recovery strategies. Forward-planning mechanisms, such as threat abatement and recovery planning, had no legislative force and were not pursued in a strategic manner. Lack of integration with the State's environmental planning and development control systems were also considered to be a major weakness of the threatened species conservation process.

The Carr Government's Threatened Species Conservation Act was therefore a major step forward in regulatory reform, streamlining procedures and integrating threatened species conservation with the mainstream planning and development control system. When the Act was introduced it was agreed that a review should be conducted within 18 months to determine whether the policy objectives of the Act remained valid and whether the provisions of the legislation remained appropriate for securing those objectives. The parliamentary joint select committee which was established to review the Threatened Species Conservation Act tabled its findings in December 1997.

The committee found that the policy objectives of the Act were valid, both in terms of biodiversity conservation and ecologically sustainable development. The committee also endorsed the strategic approach that the National Parks and Wildlife Service was taking in implementing its responsibilities under the Act. Since the committee reported, the Commonwealth Government has also overhauled its threatened species laws, enacting the Environment Protection and Biodiversity Conservation Act 1999, which commenced operation in late 2000. The bill before the House therefore responds to the Parliamentary Committee recommendations and ensures that the New South Wales Act is consistent with the relevant Commonwealth Act.

Before I turn to the substantive provisions in the bill, let me respond to an issue that I expect will be raised in the debate. It has been alleged that the Threatened Species Conservation Act and the processes it sets up are impeding, and in some cases preventing, sensible development proposals from being approved. This is not so. The evidence does not support such a proposition. More than 100,000 development applications are submitted to councils every year. That means that since the Threatened Species Conservation Act commenced, there have been around 700,000 development applications. Of these, only a very small proportion require any more than a preliminary assessment due to the likely presence of threatened species on the affected land.

I am advised that only 212 development applications required the Director-General of National Parks and Wildlife to issue director-general's requirements for species impact statements. Of these, only 45 required formal concurrence by National Parks and all but five of those were granted. And of those five, three were subsequently approved with amendments—that is out of 700,000 development applications. This proves that the consultative approach adopted by National Parks is working very well. Almost every concurrence request is approved, but, importantly, only after the proponent has modified the development to ensure that threatened species are properly protected. That is the focus of this bill. This is ecologically sustainable development in action.

The joint select committee made special mention of the service's positive efforts to ensure that threatened species issues are considered as early as possible in the project planning process so that potential impacts on threatened species can be dealt with and resolved at that stage. The committee did, however, recommend a number of amendments to the Act to clarify and strengthen the legislation in certain areas. These amendments are contained in the bill that is before the House today. A new listing category is to be created to allow the Scientific Committee to list vulnerable ecological communities. Importantly, listing in this category will not trigger threatened species assessment or approval processes under the Threatened Species Conservation Act or the Environmental Planning and Assessment Act; it will improve long-term prospects for retention and alert the community to the declining status of certain communities before they become endangered.

Provision may also be made for vulnerable ecological communities in environmental planning instruments. This means that the likely impacts of a development on a vulnerable ecological community can be taken into account at the development application stage. The eligibility criteria for listing an ecological community as vulnerable will mirror the criteria for vulnerable species. Communities will be eligible for listing if, in the opinion of the Scientific Committee, they are likely to become endangered in New South Wales unless the circumstances and factors threatening their survival cease to operate. Minor amendments to the criteria for listing threatened species

will ensure, amongst other things, that isolated populations of limited conservation value are not listed. Most importantly, the amendments will resolve the vexed jurisdictional question as to which agency should be responsible for a species which spends part of its life cycle in water.

Under the new arrangements, the Ministers responsible for the administration of the Threatened Species Conservation Act and the Fisheries Management Act will decide whether aquatic plants or invertebrates should be dealt with under the threatened species legislation or the Fisheries Management Act. The bill also contains new provisions governing the listing of threatening processes. In future, the chair of the Scientific Committee will be able to refer a nomination of a key threatening process to the Fisheries Scientific Committee if the threatening process to which the nomination relates is likely to have an impact on both terrestrial and aquatic environments. If both chairs agree, the nomination will be treated as a nomination under both Acts. Fisheries and National Parks will also be given the ability to prepare joint threat-abatement plans in these circumstances.

To strengthen processes already in place for nominating additions to the threatened species schedules, the bill commits the National Parks and Wildlife Service and the Scientific Committee to producing nomination guidelines in consultation with relevant agencies. The draft guidelines will also be the subject of broad community consultation before being finally adopted. Members of the community will be able to participate throughout this process. The opportunity has also been taken to streamline a number of procedural issues relating to the Scientific Committee listing process.

Accordingly, the bill gives the Scientific Committee the power to amend scientific names to reflect changes in the classification of species; to amend nominations, with the agreement of the nominee, if new information comes to light; and to request any additional information it may need to make a listing decision. In addition, the committee will no longer be required to publish detailed reasons for its determinations as a matter of course. However, the committee must publicise the fact that copies of the final determination and the reasons for it are to be made available to members of the public, free of charge, on the National Parks and Wildlife Service web site, from designated NPWS contact officers, and from specified service offices.

As recommended by the parliamentary joint select committee, the bill makes provision for the preparation of multispecies recovery plans and threat-abatement plans. The bill also allows the Director-General of National Parks and Wildlife and the Director of Fisheries to make joint threat-abatement plans and joint recovery plans if this is the most appropriate way of addressing complex threats or co-ordinating recovery actions. The National Parks and Wildlife Service will have the discretion to prepare threat-abatement plans for processes impacting on non-threatened species, populations and ecological communities should it wish to do so.

For the first time the Director-General of National Parks and Wildlife will be required to have regard to the special role that indigenous people can play in the making of recovery plans and threat-abatement plans. Consultation with Aboriginal communities will be undertaken to ensure that the social, cultural and economic consequences of plan making are taken into account. In addition, the National Parks and Wildlife Service will be required to report on the implementation of its recovery planning and threat-abatement planning programs in its annual report.

At present there are two separate licensing regimes, one under the National Parks and Wildlife Act and the other under the Threatened Species Conservation Act, for undertaking scientific research or carrying out conservation activities in relation to threatened species. Activities affecting threatened plants and invertebrates and endangered populations and endangered ecological communities currently require licensing under the Threatened Species Conservation Act. Activities relating to threatened fauna are licensed under the National Parks and Wildlife Act, as are activities that affect protected fauna and protected native plants.

The bill will streamline licensing procedures by allowing for the issuing of a single licence for scientific, educational and conservation activities, including flora and fauna surveys, affecting protected and threatened plants and fauna species, endangered populations and endangered ecological communities. To encourage the take-up of conservation agreements with private land-holders and government agencies, exemptions from licensing will be introduced when actions are carried out in accordance with approved joint management agreements and voluntary conservation agreements. These exemptions will not affect any requirements to obtain consents or approvals under the Environmental Planning and Assessment Act.

Significantly, the bill also makes it clear that threatened species may be picked or taken by Aboriginal people for cultural purposes if a licence has been issued for this purpose or the action is carried out in accordance with an approved property management plan. Evidence to the parliamentary joint select committee was unanimous in its view that the existing eight-part check list of factors that have to be taken into account when determining whether an action is likely to have a significant effect on threatened species is difficult to apply in its present form. It was also pointed out that the test is not readily applicable to endangered ecological communities. Following extensive consultation with State and local government agencies, industry and environment groups, the Government is proposing that the test be clarified and simplified, or made user friendly.

The new test, which will involve amendments to the Fisheries Management Act and the Environmental Planning and Assessment Act, brings the scale of assessment down to the local level, reflecting the fact that long-term loss of biodiversity arises primarily from the accumulation of losses and depletions at a local level. That is welcome news for local government in particular. Strathfield council has in its current jurisdiction Cox's Creek reserve, which is located in the middle of the Belfield and Strathfield area—a highly developed area that requires special attention. This sort of application will enable Strathfield council, which has worked hard to ensure the preservation of Cox's Creek reserve—to formulate more effective proposals.

The formulation also imposes a clearer and more comprehensive test for endangered ecological communities and the assessment of impact on habitat. Anyone applying the test will now also need to refer to any relevant threat-abatement plans and recovery plans. While the test is considerably clearer than the previous version, comprehensive guidelines will be prepared to further assist with the process of interpretation. The guidelines will be drafted in conjunction with key agencies and will be placed on public exhibition to allow all interested parties to comment. Prior to their adoption, the guidelines will require the concurrence of the Minister for Planning. Parallel provisions have also been included under the Fisheries Management Act.

The planning legislation will also be amended to make it clear that where the impact of an action is on threatened species or critical habitat only, a full environmental impact statement is not required, just a species impact statement. As pointed out by the joint select committee, the lack of savings provisions can cause difficulties for consent and determining authorities. Currently, authorities must consider the schedules as they stand—both when a development application is submitted and when making a decision. Should a species, population or ecological community be listed the day before a decision is made, the consent or determining authority must consider these additional matters, regardless of the assessment already undertaken. This situation also applies to the licensing of actions under the Threatened Species Conservation Act.

Amendments will be made to introduce savings provisions which will have the effect of freezing the list for vulnerable species for a period of 12 months from the time a valid application is lodged. However, to ensure maximum protection for those species which face the highest risk of extinction, the savings provisions will not apply to endangered species, endangered populations, endangered ecological communities or provisional or emergency listings. The amendments contained in the bill will enhance the biodiversity conservation objectives of the Threatened Species Conservation Act and safeguard the independence of the Scientific Committee. I commend the bill to the House.