REVIEW OF THE NATURE CONSERVATION ACT 1980: DISCUSSION PAPER COMMENTS BY FRANKIE SEYMOUR

Thank you for the opportunity to comment on this Discussion Paper. My comments draw on my expertise in both environmental science and animal welfare.

I have been involved in animal welfare and animal rights in Australia for over thirty years, serving as president and/or a committee member of Animal Liberation ACT for much of that time, as ACT representative on the Executive Committee of Animals Australia for many years, including ten years as Introduced Wild Animals Campaign Representative (researching the impacts and campaigning for the rights of mislocated and naturalised animals, often mistakenly referred to as “feral”), and I have served on the ACT Animal Welfare Advisory Committee (AWAC) for 15 years.

As an environmental analyst in the Australian Government Department of the Environment, I spent most of the last decade compiling, analysing and evaluating data and developing indicators for ecologically sustainable development, and later for state of the environment reporting.

My comments therefore address both issues relating to the welfare of animals as individual sentient beings and issues relating to the health and resilience of ecosystems, especially rapidly changing ecosystems.

INTRODUCTION

The introduction to the Discussion Paper makes two assertions about weeds and “feral” animals with which I will take issue. Firstly, it it asserts that weed and “feral” animal invasion are causing “further loss or degradation of lowland vegetation”. Secondly, it asserts that climate change might cause weeds and “feral” animals to flourish, thus increasing “threats to native species”. These statements appear ecologically naïve. The success of weeds or “feral animals” seems to be regarded as a cause of damage (ie a threat) whereas, in fact, it is merely symptomatic of environmental damage which has resulted from the actual threat (ie anthropogenic habitat modification compounded by climate change).

As the climate changes, many plants and animals, both from other parts of Australia and from other parts of the world, will move into new environments because those environments have become increasingly suitable for them; at the same time, many other species will move out, and become locally extinct, because the conditions in their old environment are no longer endurable for them.

Human adaptation to climate change requires us to work with nature’s own mechanisms for adaptation, accepting changes in the species composition of ecosystems rather than automatically regarding newly arrived, naturalised species as “threats”.

The Discussion Paper asks:

What do you consider are the key issues for future nature conservation in the ACT?

In my view there are two key issues. Firstly, the ACT needs to pull its weight globally - in terms of not clearing any more vegetation than has already been cleared, revegetating land already cleared, and not exterminating any more species than have already been exterminated.

Secondly, the ACT has the responsibility to maintain the "bush capital" values that are so important to all long-term residents of the Territory and its surrounding region.

How do you think conservation concerns can be balanced with social and economic interests?

It is nonsensical to speak of balancing environmental (including conservation) issues with social and economic issues. Any social or economic outcome which can be obtained only by undermining the life support systems on which all life depends is ultimately lethal to humanity (and everyone else); therefore avoiding it is non-negotiable. It is not a matter of "balancing" social, economic and environmental outcomes. It is a matter of making social and economic outcomes ecologically sustainable.

This principle was agreed in *the National Strategy for Ecologically Sustainable Development* which was signed by all Australian jurisdictions in 1992 and has never been superseded by any other national agreement.

Related legislation

This section refers to the various pieces of ACT legislation which impact on nature conservation. The Animal Welfare Act (AW Act) is not mentioned even though the overlap between welfare issues and environment issues is substantial. Harm to an animal can and frequently does impact on the natural environment where an ecosystem is harmed by the reduction in population of the animal species; while harm to the environment invariably impacts on animals through its impact on the ecological processes on which all animals (all living things) depend.

Current practices that are permitted for allegedly conservation related purposes frequently involve *prima facie* violations of the the AW Act. For example, under Section 8 of the AW Act, it is unlawful to kill an animal in a manner that causes it unnecessary pain. Most of the methods used for controlling "pest" and "feral" animals (eg 1080 poison, pindone poison) cause the animals extreme pain. Causing this pain might prove defensible under the AW Act if the person causing the pain could demonstrate that causing the pain was "necessary" - but this has never been tested in a court of law.

Furthermore, there is currently no requirement, under any laws or guidelines, for a person killing a "pest" or "feral" animal to demonstrate (a) that the "pest" or "feral" animals being painfully killed are having an impact that is contrary to nature conservation objectives (b) that killing the animals will reduce that impact and (c) that killing the animals will not itself have

consequences that are contrary to nature conservation objectives. In view of this, it seems unlikely that a defence of *necessity* could ever be proven.

This ambiguous legal situation also applies to the culling of kangaroos in the ACT; on every occasion where the shooter fails to achieve a clean kill or where a pouch young is not killed instantly by the first blow to the head, the AW Act has, *prima facie*, been breached. Similarly, kangaroos that survive the cull but die later of capture myopathy have been killed in a manner that causes pain. Even causing kangaroos to panic before killing them is a breach of the AW Act because "pain", as it defined in the AW Act, includes suffering and distress. However, there is no requirement under any law or guideline for the killer to demonstrate (a) that the kangaroos being painfully killed are having an impact that is contrary to nature conservation objectives (b) that killing the animals will reduce that impact and (c) that killing the animals will not itself have consequences that are contrary to nature conservation objectives.

I urge the reviewers to consider synergies and contradictions between the NC Act and the AW Act in the course of this review.

PART ONE: MAJOR CONSERVATION ISSUES

Connectivity and landscape functioning

I strongly support any changes to the NC Act that will help to preserve and restore ecological connectivity, especially across the urbanised area of the ACT.

The large-scale clearing of vegetation for pasturing domestic herbivores and for urban development has devastated Australia's native vegetation and the animals for whom it provided habitat. Preserving fragmented and isolated "islands" of remnant vegetation and wildlife is little more than prolonging the agony of extinction. The only hope for saving the plants, animals and ecosystems represented in these fragments is to reconnect them to each other, to the large reserves in the south and west of the ACT, and to reserves in surrounding NSW.

In 1.1 of this chapter, there is an assertion that "feral animal invasion" (*inter alia*) is "causing further loss or degradation of the grassland and woodland communities". Given the lack of scientific evidence supporting this assertion, I would urge the reviewers to be more careful of their phrasing. "Feral" (a word which means merely "wild") is frequently misused to refer to introduced animals that have become naturalised into the environment and are now maintaining stable or expanding wild populations. Such animals might have the potential, in certain circumstances, to cause loss or degradation to vegetation communities but, unlike the other pressures mentioned (fire management and recreation pressure) and other pressures not mentioned in this context (eg ongoing urban development and the legacy of long-term grazing of domestic herbivores), there is little or no evidence that "feral" animals are actually causing any loss or damage.

Given that "feral" animals are sentient beings with the same physiological and psychological needs and the same capacity for suffering as any other animal, it is very important that anyone dealing with these issues take special care to avoid assertions that might result in potentially unlawful and always unethical cruelty to animals.

The Discussion Paper asks:

How do you think connectivity and ecological sustainability across the ACT can be best protected and enhanced?

The first and most important thing that needs to happen is to ensure that ongoing development in the ACT does not encroach further on surviving corridors. The second is to identify potential corridors that can be restored. The third is to ensure no further development occurs along those restorable corridors. The fourth is to restore those corridors.

I am concerned that the chapter does not appear to mention the impact of <u>human</u> connectivity (ie roads) on ecological connectivity. For corridors, especially narrow ones, to be effective, animals moving through them must be prevented from straying or falling onto roads where they are at risk of being hit by traffic. This could be readily accomplished by placing tunnel fencing around roads that border ecological corridors. Tunnel fenced roads could even, if necessary, bisect ecological corridors, as long as there were sufficient arboreal overpasses, as well as tunnels and underpasses, to enable animals to cross without risk.

Ensuring the protection of corridors should be a joint function of the both the NC Act and the Planning Management Act (PM Act). The two Acts need to provide back-up for each other so that loopholes are less easily exploited.

The prohibition on encroachment on corridors must be absolute; it must not be a decision "considered within the triple bottom line of social, environmental and economic perspectives". The ACT is a signatory to *the National Strategy for Ecologically Sustainable Development*. Social and/or economic development that is not ecologically sustainable is unsupportable under the objectives of that Strategy. Social and/or economic development that impedes the preservation and restoration of ecological corridors will impede the survival of sustainable ecosystems, and should not feature in the decision-making process.

2. Habitat vegetation and habitat decline

The Discussion Paper asks:

What are your views on no net loss of significant biodiversity and its applicability to the ACT?

I do not support the concept of "no net loss of significant biodiversity values", except in relation to adaptation to climate change and other anthropogenic change. There are two reasons for this, one ecological, the other animal welfare.

Firstly, biodiversity is not just a large number of different species; it is the infinitely complex interactions of those different species. Biodiversity health therefore remains virtually unmeasurable. It is impossible on the basis of current understanding and knowledge to determine whether you have achieved "no net loss of significant biodiversity".

Secondly, the concept of "no net biodiversity loss" fails to protect the welfare of animals that live in the particular habitat that is to be lost. Even if, for example, a developer plants a new

tree somewhere else for every tree cut down, and establishes a corridor to a reserve to ensure that the replanted area is repopulated with similar species of animals to those destroyed by the development, the suffering of the individual animals harmed by the development cannot be undone. It must always be born in mind that biodiversity is not just a community of different species and their interactions. Biodiversity also includes animals – ie sentient beings - who suffer if they are harmed or if their habitat is destroyed. Ethically, sacrificing some animals because the number of other animals is set to increase elsewhere is like saying it is okay to murder the baby who is living next door to you because you are having one of your own.

I strongly support an extension of focus of the NC Act to increase protection for landscapes, habitats and ecosystems as well as maintaining protection for single animal and plant species. I do not support a shift of focus from single species conservation to conservation of landscapes, habitats and ecosystems. I do not support any withdrawal of protection from native animal and plant species, nor any substitution of ecosystem protection for species protection. Ecosystems are comprised of species. If individual species that could be saved are not adequately protected they can be eroded one species at a time, ultimately (but insidiously) undermining entire ecosystems.

"No net loss of biodiversity" is, however, a concept critical to human interventions in ecosystems that are changing irreversibly, for example, because a range of species have become locally extinct or unviable, or because a number of new species have been naturalised. These changes may be due to climate change or other anthropogenic influences. In any dynamic ecosystem, natural evolutionary processes are constantly at work to restore diversity and complexity, as new species evolve or are naturalised to fill emptied niches. These natural processes need to be monitored, respected and encouraged. On a precautionary basis, further introductions of new species to existing ecological communities should be avoided, at least until we have a clearer idea of what components of the existing community are no longer present or viable, and of the role of any recently naturalised species. Beyond that, human intervention in natural adaptation processes should be minimal.

Section 5: Measures to help compliance with the NC Act

The Discussion Paper asks:

Are the enforcement options and penalties within the NC Act adequate. If not, what could improve them?
and
Is it appropriate for the NC Act to contain civil penalties similar to those used in other jurisdictions? If so, to which matters under the NC Act could these most usefully apply?

Either the penalties or the enforcement regime under the NC Act, or both, are currently inadequate to the task of conserving the natural environment in the ACT. The proliferation of new residential and commercial developments in kangaroo and other wildlife habitat in the ACT clearly demonstrates this.

The use of civil penalties to exact restitution (rather than retribution) from offenders might increase the deterrent at the same time as helping to repair the damage done by offenders. However, criminal penalties must also remain in place to ensure that damaging native plants,

animals and ecosystems remains culturally recognised as a crime against the community (rather than something that you are permitted to do as long as you are prepared to pay for it).

The Discussion Paper asks:

Are there further reforms required to better integrate Commonwealth and ACT nature conservation law?

In my view the Commonwealth, when it is taking action which impacts on landscapes or species that, in bio-geographical terms, form part of the ACT, should be bound by ACT law, including the NC Act, the PM Act and the AW Act. However, this would require changes in Commonwealth rather than ACT law, and is therefore presumably beyond the scope of the current Review.

6 Consistent management of public lands

The Discussion Paper asks:

Should the provisions that control public activities in reserved areas be extended to public activities in open space and unleased lands generally?

I would support the extension of some of the provisions that control public activities in reserves, to public activities in other open space and unleased lands. For example, since killing a native animal without a licence is an offence wherever it occurs (not just in reserves), carrying weapons should be prohibited on all public and unleased lands. Similarly, the penalties for clearing vegetation (as per the example given on page 29) should be dependent on the quality and quantity of the vegetation cleared, not on the status of the land on which it was growing.

However, the prohibitions on taking domestic animals into reserves should obviously not apply to other public land or unleased land; much of this land is currently designated as dog on leash and off leash areas, and must remain so. For welfare reasons, domestic animals must continue to have access to suitable public land. Obviously land of high conservation value can and should be protected from domestic animals (as well as from urban development, industry, motorised vehicles etc) but a blanket extension of reserve prohibitions to all public land would be unacceptable.

Under no circumstances should commercial harvesting or recreational hunting of native animals be permitted in the ACT, on or off reserves. In relation to 6.2 (*Non-conservation uses and activity in reserves, national parks and wilderness*), I would support development of a strict Code or Practice that could be used to determine the precise conditions under which an application for a licence to “cull” kangaroos might be granted.

At the moment there is a Code of Practice, developed by AWAC under the AW Act, for the humane killing of kangaroos. The focus of this Code is this: if they are to be killed, this is how they are to be killed to minimise their suffering. This welfare code has no bearing on the issue of whether kangaroos should be killed. A recent detailed study of ACT Government documents obtained under the *Freedom of Information Act 1989* established that there appears to be no formal process in place for determining whether, when or where a kangaroo cull should be conducted. No ecological studies are required, no formal assessment process

is conducted, and no experts are consulted. No post-cull review is conducted to determine whether the objectives of the cull were met, because no objectives were ever articulated. A code which establishes steps that must be followed, and criteria that must be met (eg full impact assessments) before a licence to kill kangaroos is issued could save a great deal of unnecessary animal suffering and death and a commensurate component of community anger.

On the other hand, a loosely worded Code that does nothing to reduce the current level of Government sanctioned violence against kangaroos would be of no use whatsoever.

PART TWO: SPECIFIC ISSUES – THOSE THAT RELATE TO A PART OF THE NC ACT

7. Objects of the Act

The Discussion Paper asks:

Should objects be incorporated in an objects section in the NC Act? What do you consider would be appropriate objects?

Every Act of Parliament should have objects. I support the objectives suggested on p 31, with one addition: "no further reduction within any plant or animal species".

8. Part 2 of the Act – the conservator and the flora and fauna committee

Under no circumstances should changes to the NC Act remove the requirement for a developer to apply for an individual licence to take or kill native plants or animals. Rather, this requirement should be enforced (the Discussion Paper mentions that it is not currently enforced). Ongoing approval of a management plan under the PM Act should be subject to withdrawal if the number of native animals and plants being killed exceeds those estimated in the original assessment of the impacts under the plan, or if the killing fails to comply with the conditions of the licence, or with any other legislation.

The Discussion Paper asks:

What would be an appropriate model by which Indigenous groups were engaged under the Act?

I would not presume to suggest a model for the consultation of Indigenous groups on nature conservation issues, but I would suggest a good start might be not to have Indigenous people arrested and charged with trespass for protesting against the large-scale slaughter of native animals on their own land (as occurred at the Belconnen Naval Transmission Station in 2008).

9. Part 3 of the Act – Nature conservation and declarations

The declaration of an ecological community, as discussed in the Paper, is highly desirable but problematic. The problem is that ecological communities – at any time, let alone at a time when human activities are constantly modifying the surrounding environment, and when the climate itself is changing – are dynamic entities. Species are constantly being lost and other species are constantly being naturalised. New niches form around the absence of species that

can no longer survive in the environment and the new species that have recently been naturalised into the community. Trying to protect an ecological community as if it were a museum piece is a mistake. Rather, the objective must be to keep the ecosystem biodiverse, healthy and resilient.

It is therefore most important that the role of introduced weeds and "feral" animals in any modified ecosystem be fully understood, before resources are poured into removing them. Otherwise, our actions may be operating to impoverish the ecosystem even as it attempts to adapt and heal itself.

I do not support management plans for the re-introduction of species "provided the plans demonstrate that the introduction has a reasonable chance of success – for example , that there is ... protection from predators" (final paragraph of 9.3.3). Every species on Earth has reproductive rates which have evolved so that most of the young end up feeding predators. We might not like this - and, in the case of own species and our companion animals, we seek to address the problem through birth control – but, in the natural world, it is a fact of life and we interfere with it at our (and every other species') peril. If a species cannot be reintroduced to an area without having to be artificially protected from predators, it should not be re-introduced.

The Discussion Paper asks:

Should the NC Act allow for some policy documents to be given statutory force. If so which and why?

Under no circumstances should mere policy documents be given statutory force. This is not the role of policy documents. For example, it would be outrageous for an ill-informed, scientifically impoverished and highly politicised policy document such as *the Kangaroo Management Plan* to be incorporated in any long-term Nature Conservation Strategy, or given anything remotely resembling statutory force.

The Discussion Paper asks:

Should the NC Act include the requirement for action plans to have formal monitoring and review provisions?

I would strongly support formal monitoring and review provisions for action plans under the NC Act.

10. Parts 4 and 5 of the Act – plant and animal offences

The Discussion Paper asks:

How do you think the protection of plants and animals in the ACT should be regulated?

As already mentioned, I would not support any changes to the Act that remove protection for single plant or animal species. Not only should the protection of single species (and individual representatives of those species) continue but no licence to take and kill individuals of those species should be issued without identification of the objectives of the licence. These objectives must be consistent with nature conservation objectives. Licences

should include strict reporting requirements in relation to both compliance with the conditions of the licence (and any other relevant laws or codes) and performance against the objectives. This reported information should be tested for accuracy and veracity by the Conservator or his/her delegates, rather than accepted on the word of the licencee.

The Discussion Paper asks:

Is there a greater role for self-reporting by licencees on compliance?

Self-reporting on compliance might be useful as long as the matters reported are fully documented and routinely checked by the Conservator or his/her delegates, rather than accepted on the word of the licencee.

11. Part 4 of the Act – Protection of animals and fish

The Discussion Paper asks:

Should the definition of animals and native animal under the NC Act, or specific uses of those terms, be amended and how?

I would support amendment of the definition of "animal" in the Act to include fish and invertebrates since these are, in fact, animals. As the Discussion Paper suggests, particular types of animals could then be singled out for particular provisions.

In a dynamic ecosystem (and species poor ecosystems, ecosystems that have been modified by human intervention or human proximity, and ecosystems that are undergoing climatic change are particularly volatile), every species will at some time see-saw between being an ecological asset and a "pest". However, ecosystems have had nearly four billion years to get the hang of dynamic stability and are pretty good at it. Ham-fisted attempts by humans to determine whether a particular species is an asset or a "pest" are doomed to make a bad situation (of which we are already the cause) even worse.

For this reason, it should be unlawful to kill any wild animal, native or introduced, without a licence under the NC Act – and licencing under the NC Act should not be a rubber stamp of every application to kill "feral" animals or "pests". In every case, the applicant should be able to demonstrate that:

- the animal to be killed is a cause (rather than a symptom) of some alleged impact;
- killing the animal will reduce the impact, rather than, for example, simply killing off older, less fit animals, emptying niches for younger, healthier more fertile animals of the same species to inherit and thus increasing the population of allegedly problem animals in a very short period of time; and
- killing the animals will have no adverse nature conservation impacts. (For example killing rabbits might have an adverse impact by removing the primary food supply of native raptors, or killing Indian mynas might have an adverse impact by removing a primary predator on insects during a year of unusually high rainfall.)

Similarly, and for the same reason, the definition of native plants should not be changed to encompass only species indigenous to the ACT. As the climate changes some species currently indigenous to the Act might not be able to survive here any longer, while species

from other parts of NSW might be readily naturalised into ecosystems to maintain overall biodiversity.

The Discussion Paper asks:

How can the origin of a captive wild animal be verified?

In relation to taking and keeping an animal, the simplest way to approach the verification of the origin of an animal is to publicise a decision to crack-down on keeping of wild-born native animals and have an amnesty for people to register native animals already in their care.

It will be impossible to determine whether these existing animals are wild or captive born, but the crack-down would operate prospectively. Similarly people moving into the ACT with native animal pets or specimens should be alerted (for example on drivers licences, car registration renewal forms and rates notices) to their obligation to inform the Conservator of the fact that they have such an animal in their care. It might, once again, be impossible to determine whether the animal in their care is wild-born or bred in captivity but the purpose of registering its existence with the Conservator would be to establish that it has not been captured in the ACT since commencement of the crack-down.

The Discussion Paper asks:

Should damage or destruction of known habitat (or identified critical habitat) be sufficient evidence for prosecution of an offence?

I must again emphasise the importance of <u>extending</u> the focus to habitat, rather <u>changing</u> the focus to habitat. Destruction of known or critical habitat should be an offence under the NC Act, but the offence should be in addition to the offence of taking or killing any animal or plant without a licence.

The Discussion Paper asks:

Should a provision be included that the taking of native animals and native invertebrates from reserved land requires a licence?

The intentional taking of animals, including invertebrates, from reserved land should certainly require a licence. For example, the capturing of a butterfly for a collection should require a licence (which I hope would never be granted).

However, in the case of some invertebrates, especially insects and arachnids, taking them might be entirely accidental. Flying insects might fly into cars, crawling insects might crawl into clothes. Including invertebrates is important, but the clause would have to operate sensibly.

The Discussion Paper asks:

Should the removal of native timber incur the issuing of an infringement notice?

The removal of timber, standing or fallen, should require a licence, and the unlicenced removal of timber, standing or fallen, should incur an infringement notice, and/or civil or criminal prosecution in the courts.

However, it might be useful if the Conservator had the power to advertise the availability of licences for the free public collection of fallen timber in areas scheduled fire management burn-offs of undergrowth and fallen timber, or removal of flood debris.

The Discussion Paper asks:

Should the definition of native plant be changed to encompass only species indigenous to the ACT?

No. See above discussion of the definition of animals and native animals (my comments dealing with Section 11, Part 4 of the Act).

13. Part 6 of the Act – Prohibited and controlled organisms

Does the NC Act need to retain provisions relating to pest organisms?

"Pest" and "weed" are emotive terms which are meaningless in an ecological context (as discussed above). "Prohibited" and "controlled" organisms are preferable terms because they relate to legal facts rather than emotional perceptions.

The Pest Plants and Animals Act, 2005 is in serious need of review for the same reason.

14. Part 7 of the Act – Conservation directions

The Discussion Paper asks:

In what circumstances do you think it would be appropriate for the Conservator to issue conservation directions? What power should the Conservator be allowed to exercise? Should the Conservator's directions be tied to land title rather than to the landowner? Should the leaseholder be compensated for any loss of amenity or commercial value that results from directions?

The Conservator should have the power to issue conservation directions to ensure that land occupiers and landowners protect animals, plants, habitats and ecological communities on their properties, and undertake restorative actions where necessary and possible. The difficulty identifying the particular species comprising an ecological community (and therefore warranting protection) at any given time needs to be born in mind.

I would support the Conservator's directions being tied to land title rather than a particular landowner or land occupier.

If a direction prevents a land occupier from using his or her land for the purpose for which s/he purchased or leased it, compensation at taxpayers' expense would seem no more than natural justice. However, to prevent rorting, any entitlement to compensation for compliance with directions should be considered on a case by case basis. Compensation should not be automatic.

15. Part 8 of the Act – reserved areas

The Discussion Paper asks:

Should the owner of a vehicle be held liable for the misdeeds of the driver, within a reserve area? Should the NC Act allow for the restriction of non-motorised vehicles to certain suitable areas?

The owner of a vehicle should be held liable for the misdeeds of the driver within a reserve area, unless the vehicle was stolen. If the driver is identified, the liability should be joint.

Although not normally as dangerous to animals and vegetation as motorised vehicles, non-motorised vehicles can sometimes be quite heavy, fast-moving and potentially damaging. They should be restricted to suitable areas.

The Discussion Paper asks:

Should hunting without a licence be specifically listed as an offence?

Hunting should be prohibited and listed as an offence under both the NC Act and the AW Act. It should not be licenced. Recreational cruelty to animals should never be licenced.

The Discussion Paper asks:

Should there be a licencing provision for the taking of non-native animals and pest plants into a reserved area? Should the NC Act be amended so that it is clear that it is legal to take animals into a reserve area in a way that is allowed by a management plan?

Taking non-native animals and plants into a reserved area should generally be prohibited rather than requiring a licence and, with few exceptions, should not be permitted under management plans.

There may be some situations in which it might be acceptable because it is entirely harmless or risk-free - the plant or animal has no chance of escaping, or no chance of surviving if it does. For example, I would strongly support a provision allowing the walking of leashed dogs on approved trails in reserve areas, on the same basis that it is currently permitted for horses. Any such exceptions would have to be set out in the Act, rather than permitted under licence.

At some point it might even be necessary to introduce plants and animals from other nearby environments into ACT reserves. As the climate changes, the number of species that were ACT natives at the time of European settlement will continue to decline, and different species might need to be introduced to see if they can replace the declining species; this will assist natural processes in adapting to climatic and other anthropogenic change.

Licences issued for such a purpose should articulate the objective, and should include conditions that must be adhered to. One such condition should be a reporting requirement on how effectively the action permitted under the licence achieved its objective.

It should be noted that animals and plants will also take themselves into reserve areas without any human assistance. With systematic effort, these can often be removed before they become established and naturalised. However, once a species is naturalised in the reserve, the Conservator needs to have some idea of the ecological consequences of removing it before declaring the species a “pest” (or a “prohibited” or “controlled organism”) or authorising its ongoing removal.

The Discussion Paper asks:

Should the NC Act provide guidance on the issuing of commercial concessions on reserved or possibly other public land and provide for the regulation of such activity as it affects biodiversity values, nature conservation objectives and general public enjoyment? Do you support the provision of clauses in the NC Act that would allow regulation of private or community organisation use of reserved land?

I would not support commercial concessions in the use of reserves unless their express purpose is to enhance or promote nature conservation values. The acceptability of non-commercial uses would depend entirely on the likely impacts of the activity. For example, concerts which use amplification would be unacceptable because of the impact of the noise on animals, but concerts which do not require amplification might be acceptable, as long as the activity and its parking were restricted to a set area.

The NC Act could also provide guidance for the use of other public land and unleased land, where commercial and community activities might be more environmentally acceptable. Such guidance should preclude potentially damaging activities from areas of non-reserved public land where significant species, habitat or ecological communities are present.

The Discussion Paper asks:

Should the NC Act be amended to allow for the requirement of a restoration plan and/or performance based bond?
and
What wilderness protection or restoration provisions do you think should be included under the NC Act?

I do not support allowing damage to be done to natural assets on the basis of a plan or bond to restore the damage later. For one thing, individual animals (ie sentient beings) harmed by the damage will not be in a position to benefit from the restoration. For another, it is never possible (because of the complexity of interactions) to know if the restoration has an equal biodiversity value to the damage. If the damage is going to occur anyway, under a licence or a management plan, a restoration plan or a bond would be better than no restoration plan or bond, but it would be infinitely better to simply prohibit damage in wilderness and reserve areas in the first place.

The Discussion Paper asks:

How should damage capable of causing serious or material damage be defined? What thresholds should be used to distinguish between different levels of harm?

"Damage" under the NC Act should include any killing or taking of a native animal or plant (or fungus, for that matter) or the disruption of an ecological community or habitat. The severity of the offence should depend on the number of individuals taken, the number of different species taken, the rareness of the species taken, the area of land affected, and the volume and quality of vegetation, habitat and ecological communities affected.

18. Part 11 of the Act – Licences

Licences, including for commercial purposes, should not be issued for actions/activities in reserves or on other public land of high conservation value, other than for purposes that are consistent with nature conservation objectives. Licence conditions should also be consistent with animal welfare and other laws.

Failure to comply with licence conditions should be an offence under the NC Act, and cause for cancellation of an approved development under the PM Act.

Activity reports should be provided by the licencee, but the Conservator will need to have the means and the political will to check their accuracy and veracity.