



## CONSERVATION COMMISSION OF WESTERN AUSTRALIA

### Position Statement No. 2

March 2011

## IMPLEMENTATION OF CONSERVATION RESERVE PROPOSALS

### Background

Conservation reserve systems allow for the management of land to achieve an outcome that is otherwise not achievable under other land management systems. The objectives of management range from the provision of tourism and recreation opportunities centred on attractive scenic values, to the protection of species and their habitats threatened by development activities.

The historic development of the conservation reserve system in Western Australia, like most other countries, has been undertaken on an *ad hoc*, unscientific basis, often focussed on land that was not required for agricultural development due to its inherent low productivity or isolation. The existing system of conservation reserves in Western Australia is far from being fully representative of the diversity of land surfaces, habitats and species. It is now a National and State priority to address the inadequacy of the current conservation reserve system.

The primary objective of a systematic conservation reserve system is that it should be comprehensive, adequate and representative. Despite the more recent policy objectives of governments, our reserve system remains far from achieving this objective.

There is also recognition that the State's conservation reserve system is insufficiently resourced to manage the extensive range of management issues such as feral animal and weed control, fire, access and safety alongside biodiversity conservation. The reality is that effective management activities require a great deal of resources including well trained staff, equipment, and supporting infrastructure.

### Role of the Conservation Commission of Western Australia

The Conservation Commission of Western Australia (the Commission), established under section 18 of the *Conservation and Land Management Act 1984* (the CALM Act), is a statutory authority in which terrestrial conservation reserves, including national parks, nature reserves, conservation parks and a range of other reserves are vested. The Commission has policy advisory functions in relation to vested land and water, and broader biodiversity conservation matters. It also is responsible for assessing and auditing the activities of the

Department of Environment and Conservation (DEC) in respect of its management activities related to the implementation of management plans where they have been developed.

## **Conservation Reserve System Proposals and Acquisitions**

A significant number of land acquisitions and proposals aimed at increasing the area of the conservation reserve system, and which address the objective of achieving a comprehensive, adequate and representative system in this State, have come from a range of sources including the Environmental Protection Authority, the Department of Conservation and Land Management (now DEC) through its management planning process and biological surveys, Government sponsored strategies such as the Gascoyne-Murchison Strategy, and through land administration processes such as the pastoral lease renewal process.

Many of these acquisitions and proposals remain as unallocated Crown land or unmanaged reserves without formal management programs.

## **Impediments to Formalising the Status of Proposals and Acquisitions**

Conservation reserves are created under the *Land Administration Act 1997* which is administered by the Minister for Lands through the Department of Regional Development and Lands (RDL). In line with reservation procedures adopted by RDL, support for reservation proposals is required from a range of stakeholders including the Department of Mines and Petroleum (DMP), local government authorities and water management agencies.

Many of the outstanding reserve acquisitions and proposals are for the creation of national parks, conservation parks, and nature reserves. DMP has, over a number of years, generally not supported the creation of reserves with these tenure categories, or has insisted on depth limits being imposed. This stance has led to lengthy delays in creating reserves, which at times has required resolution through Cabinet processes. In general, under the *Mining Act 1978*, exploration and mining are able to occur in these reserve categories subject to appropriate environmental, Ministerial and Parliamentary approvals.

Where proposals involve land under the control of another Government agency or local government authority, the relevant body is required to relinquish that control to enable implementation of the proposal. For example, there remains a number of proposals for land to be managed for conservation outcomes originating from the Forest Management Plan 2004-2013 for land that was originally acquired by the former Water and Rivers Commission to prevent inappropriate land uses that may have affected water quality. The inclusion of this land in the conservation reserve system would be consistent with the objectives of maintaining water quality, but the proposals remain the subject of agreement by the managing body to relinquish the freehold titles. To date, no agreement for their unencumbered transfer has been forthcoming.

Native title rights and interests are extinguished over freehold land which has been acquired for addition to the conservation reserve system, and this land can be reserved without reference to the *Native Title Act 1993* (Cwth) (subject to support from stakeholders as above).

However, on land where native title has not been wholly extinguished, the creation of reserves will constitute future acts and the provisions of the *Native Title Act 1993* need to be followed. These provisions will apply to land previously held under a pastoral lease acquired for inclusion in the reserve system, and many of the reservation proposals provided by the Environmental Protection Authority and under the CALM Act which are currently unallocated Crown land or unmanaged reserves. The future act provisions will also apply to land surrendered from pastoral leases as part of the *Land Administration Act 1997* pastoral lease renewal process.

The preferred course of action for meeting the future act provisions for the creation of reserves over land where native title exists is through the negotiation of Indigenous Land Use Agreements (ILUAs) with relevant native title holders or claimants and their legal representatives. The development of these agreements is a voluntary process, therefore there is no provision for the Native Title Tribunal to arbitrate where agreements cannot be reached or negotiations become protracted. Thus, an agreement outcome is not assured, nor the degree to which a benefit or incentive is required by the native title party, which is difficult to quantify, and the duration of the negotiations will be variable. These factors are compounded by the State's lack of experience and resources in preparing and negotiating these agreements for conservation reserve system establishment, which has resulted in the need to address complex legal issues.

### **Progress with the Implementation Process**

DEC has been working with a range of stakeholders including RDL, the Office of Native Title and the State Solicitor's Office to progress the creation of the conservation reserve system. Work on developing ILUAs has been slow and limited progress has been made. It is anticipated that each agreement could take up to two years to resolve, and there are likely to be hundreds of these. It is acknowledged that the process will become more refined as experience is gained, but that given the anticipated number of claims affected, and based on current proposals and resources, it is likely that the development of the necessary agreements will take many years to conclude.

### **The Commission's Position**

The Commission notes the Government's response to a previous inquiry conducted by the Economics and Industry Standing Committee into DEC's management of former pastoral leases.

Of particular relevance is the recognition and support by Government of the land acquisition program and the need to ensure that the land acquired should be reserved under an appropriate CALM Act tenure.

Accordingly, in rangeland areas, where mineral exploration and mining remain important enterprises, the Commission holds the view that when acquired pastoral leases are converted to conservation estate, the reserve created should be a conservation park, and the use of the CALM Act s. 5 (1)(h) category only be considered for exceptional circumstances. The levels

of approval for tenements that allow mineral exploration and mining in both reserve categories are identical.

While Government supported the Committee's recommendation to expedite the process for all former pastoral lease properties managed by DEC to be reserved under the *Land Administration Act 1997*, there remains an urgent need for additional resources to do so, and which are necessary to satisfactorily meet its broader operational management obligations once the land is formally reserved.

The Commission supports the effort by DEC in progressing with the process of establishing relevant conservation tenure over the very large number of proposals and land acquisitions, many of which have languished for many years. The Commission recognises the legal and administrative difficulties facing the agency in this task and that insufficient resources to expedite the process remain.