



5 Milner Street,
Hindmarsh SA 5000

Phone: (08) 7127 4630

Fax: (08) 82319773

Email: ncssa@ncssa.asn.au

Website: www.ncssa.asn.au

Native Vegetation Branch
C/O Coordinator Governance and Policy
Department of Environment, Water & Natural Resources
GPO Box 1047
Adelaide SA 5001
nvc@sa.gov.au

September 15, 2017

Re: Consultation on interim NVC Guidelines for
1) Significant Environmental Benefit for the Clearance of Scattered Trees, and
2) Maintenance of Existing Agriculture, Forestry or Farming

Dear Coordinator Governance and Policy,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to comment on these two sets of interim guidelines that are being reviewed as part of the transition from the *Native Vegetation Regulations 2003* to the *Native Vegetation Regulations 2017* (NV Regulations) established under the *Native Vegetation Act 1991* (NV Act), as well as the extension to time for comment that was provided to us. 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 management of protected areas. Particularly, the NCSSA has had a long involvement with the protection and management of native vegetation in South Australia and was instrumental in the development of the original NV Act and the later amendments to the NV Act.

We would like to take this opportunity to reiterate that the primary objective of the NV Act is the conservation, protection and enhancement of native vegetation in South Australia, including remnant native vegetation. We acknowledge the role of the NV Regulations to provide exemptions for the clearance of native vegetation in certain situations, however, conservation, protection and enhancement of native vegetation should be the highest priority. We remain concerned that South Australia's precious native vegetation will not be effectively protected under the NV Act and revised NV Regulations given a number of concerns that we raised during the recent review of the NV Regulations have not been addressed. These include a move away from policies that avoid clearing toward policies that allow for clearing and offsetting, as well as concerns regarding adequate monitoring and compliance activity.

Please refer to the following page for our specific comments on these interim guidelines. If you would like to clarify or discuss any of the points raised please contact me on (08) 7127 4633 or via email at julia.peacock@ncssa.asn.au.

Yours sincerely,

Julia Peacock
Nature Advocate

NCSSA comments on interim guidelines for a Significant Environmental Benefit for the clearance of scattered trees

Although we understand that provision 29(4a) of the NV Act has existed since 2004 and that these interim guidelines (henceforth 'guidelines') are a revision of existing guidelines that pre-dated the recent review of the NV Regulations, we remain concerned that this provision is an example of the NV Act moving away from policies that avoid clearing toward policies that allow for clearing and offsetting. Why should the NV Council be asked to approve clearance that is 'seriously at variance' with the principles of the NV Act, given that the NV Act is meant to provide for the protection of vegetation? By definition, clearing that is 'seriously at variance' with the principles of the NV Act means that significant vegetation, likely to be important habitat for wildlife, is being destroyed. If the circumstances are that the clearance of a single tree is deemed to be 'seriously at variance', preventing a proposed activity from going ahead where all the other vegetation to be cleared would be deemed 'at variance' or 'not at variance', we would argue that this is an example of the NV Act working as it was intended, i.e. to prevent inappropriate and unsustainable vegetation clearance.

However, we understand that comment is not being sought on the provision but rather on these guidelines established under the provision. Therefore, our comments are that these guidelines should more strongly reflect that approval will only be granted in truly exceptional cases, given that the primary objective of the NV Act is the conservation, protection and enhancement of native vegetation. We strongly recommend that the guidelines include a definition of the terms "at variance" and "seriously at variance" with the NV Act as outlined in the Guide to Applicants for Clearance of Native Vegetation and refer applicants to this Guide through a hotlink. They should also more clearly explain what 'particular circumstances justify the giving of consent' – for example, do these circumstances relate only to the impact of the clearing on the environment (as suggested by the reference to the 'scale, nature and extent of clearance' on the first page) or do they include economic concerns or other circumstances (for example 'unreasonable reduction of potential income' as included in provision 29(4) of the NV Act)? We would argue that the NV Council should only consider the impact of the proposed clearance on the environment, rather than extend their considerations to include economic or other concerns, given that the primary objective of the NV Act is the conservation, protection and enhancement of native vegetation.

The NCSSA strongly supports the majority of Operating Principles as outlined on Page 2-4 of the guidelines, in particular:

- The application of the Precautionary Principle where uncertainty exists as to whether the significant environmental benefit (SEB) will outweigh the clearance
- The intent of achieving the highest possible biodiversity outcomes in terms of the quality, position in the landscape and need for ongoing management of native vegetation
- The aim of reducing fragmentation of habitat and protecting representatives of different native vegetation communities in each region, and
- Paying due regard to any recovery plans, publications and expert advice relating to the protection and management of threatened species where scattered trees may provide critical habitat

We support the addition of the new Operating Principle under Point 11 of the guidelines that outlines the circumstances where the NV Council will 'generally not give consent', however, the word 'generally' should be removed as the purpose of these guidelines is to reduce ambiguity: proponents should be able to determine if their activities are either consistent or inconsistent with them. We also strongly recommend that the number of trees proposed for clearance under 11d) should be reduced from 20 to 10.

These guidelines acknowledge 'the significance of the impact (*of clearing scattered trees*) and the difficulty to achieve a sufficient SEB', and the NCSSA also remains concerned about how a SEB will realistically be achieved, as we stated during the recent review to the NV Regulations. Whilst these guidelines provide useful information on the likely considerations of the NV Council and possible conditions that could be imposed following the clearance

of scattered trees, they do not address the fundamental issues of the practical implementation, resourcing and long-term ecological outcomes of this approach. We maintain that a rigorous and long-term monitoring and evaluation program, that is adequately resourced and implemented, is required and that SEB offsets should comprehensively address broader landscape scale habitat conservation issues rather than focus on individual project proposals, particularly in relation to threatened and regionally rare species and listed ecological communities.

We also note that the wording of provision 29(4a)(a) is ‘the Council has adopted guidelines under section 25 that apply in relation to the *region* where the native vegetation is situated’ (emphasis added). We suggest that the intention of this is to specify that the SEB has to be applied in the same region where the clearance occurs rather than in another region, and that these guidelines should reflect that requirement. For clarity, we would also suggest that point 6 be amended to reflect that an *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) referral (separate from NVC approval) would be required for any action likely to have significant impact on a listed species.

Finally, we see that this provision remains open for the development of other sets of guidelines covering different vegetation types. We would not support the development of further guidelines under this provision of the NV Act since it could become a ‘loophole’ that would allow for clearance under a broader range of circumstances.

NCSSA comments on interim guidelines for a clearance associated with the maintenance of existing agriculture, forestry or farming

The NCSSA generally supports the purpose of these guidelines to inform landowners and land managers about the information that should be considered and included in the preparation of a management plan for implementing and monitoring clearance of native vegetation aimed at maintaining existing land management practices. In terms of protecting native vegetation, however, Regulation 11(24) and these associated guidelines seem to rely on the landholder allowing native vegetation to regrow sufficiently between clearance events so as to prevent permanent degradation and loss, but this expectation is fundamentally at odds with why landholders want to clear, namely to graze, crop or farm more intensively than is the case with vegetation present. Therefore, in many cases, permitting vegetation clearance and then expecting landholders to allow sufficient regrowth of native vegetation communities such that they won’t be permanently degraded or lost is unrealistic.

As with the other set of guidelines, however, we understand that comment sought is on the guidelines rather than on the Regulation itself. Therefore we would offer the comment that key issues covered by these guidelines are not clearly defined enough and remain too open to interpretation. We suggest these guidelines should be strengthened by:

- including a definition or explanation of what would be considered as ‘existing use of the land’ and also the phrase ‘consistently used’ – for example, is it enough to crop once every 5 or 10 years?
- providing an explanation of the benchmark or point in time against which the ‘permanent degradation or loss of native vegetation’ will be measured (noting that, as we highlighted in the recent review of the NV Regulations, we still believe there should be a requirement for Management Plans to demonstrate environmental gain, using a rigorous metric that is comparable to the SEB metric, rather than simply avoiding permanent degradation or loss. This approach would acknowledge the significant degree of loss of native vegetation, both in extent and condition, particularly in the Mount Lofty Ranges, mid-north and south-east of the state.)
- clarifying the requirement regarding allowing vegetation to regrow and re-establish outlined in the last sentence on the first page of the guidelines – does this mean the revegetation must be allowed to regrow

and re-establish or is it sufficient for there to be the capacity for it to regrow and re-establish at some unspecified future time?

- reconsidering some of the case studies and examples presented: the *Acacia victoriae* clearance example suggests aiming to permanently reduce the *Acacia victoriae* present, which would be more in line with Regulation 16 (native vegetation causing natural resource problems) than Regulation 11(24), and the reference to *Gahnia* species amongst the 'monoculture' example is concerning since *Gahnia filum* and *Gahnia trifida*, which usually occur naturally as a monoculture, are rare communities in some areas

With regard to Management Plan requirements, we make the following comments:

- a) Background information

We suggest re-writing the second open-circled dot point under land use history that specifies information must be provided on 'the vegetation (*that*) has regrown over a period of time since the land was lawfully cleared since the introduction of the *Native Vegetation Act 1991*' as this could be misread to mean regrowth of up to 28 years old could be cleared.

- c) Proposed management, including risk management

We strongly recommend that the 'identification of native vegetation to be retained' (we understand this to mean mapping the area of, as well as identifying the type of, vegetation to be retained) on the property is a mandatory component of the management plan rather than optional as currently noted in the guidelines.

- d) Other legislation

We recommend that the EPBC Act is referred to first in this section and that the need to refer to existing Recovery Plans and relevant Conservation Advices for species and ecological communities with conservation significance is acknowledged.

- e) Natural Resources Management Board consultation

The NCSSA recommend that this section of the guidelines also acknowledge and refer applicants to relevant Regional NRM Plans, Biodiversity Plans or Strategies. A link to the Natural Resources Home Page should also be provided: <http://www.naturalresources.sa.gov.au/home>

As we highlighted in the recent review of the NV Regulations, we remain concerned that effective monitoring of the requirement to have, and assess compliance with, an approved Management Plan for this type of clearance would be difficult to achieve within current resourcing. An independent and adequately resourced monitoring and compliance program is the only way to ensure that there is no long-term loss or degradation of native vegetation as a result of this 'approval pathway'. As a minimum, the Department of Environment, Water and Natural Resources should commit to a 12-month review of all applications submitted under Regulation 11(24), including field checks, to ensure Management Plans are being adhered to.

Two minor editorial suggestions would be to make the font larger for this second set of guidelines and for both sets of guidelines to amend 'Environmental' to 'Environment' in *Environment Protection and Biodiversity Conservation Act 1999*.