



Conservation Council
of South Australia Inc

120 Wakefield Street
Adelaide
South Australia 5000
Ph: (08) 8223 5155
Fax: (08) 8232 4782
general@ccsa.asn.au
www.ccsa.asn.au

24 April 2007

Tim Dendy
Department of Water, Land and Biodiversity Conservation
GPO Box 2834
ADELAIDE SA 5001

Dear Mr Dendy,

Re: Review of Native Vegetation Act, 1991

Please find attached the comments of the Conservation Council of SA towards the review of the administrative and governance arrangements of the Native Vegetation Act, 1991 (NV Act) and the interaction of this Act with the Natural Resources Management Act, 2004 and the Development Act, 1993.

As you will be aware, the Conservation Council of SA, is the state's peak community conservation body and that the SA conservation community has a long and strong association with the Native Vegetation Act. It is a source of community pride that SA is the first state in Australia to have introduced laws preventing broad scale clearance of native vegetation for agriculture.

We are, therefore, pleased to contribute to this review of the Act and look forward to the strengthening of and improved administration of this very important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Corin', written over a white background.

Jane Corin
President

Native Vegetation Act Review

Contents

General Comments

- Interaction with Other Acts

 - NRM Act, 2004

 - Development Act, 1993

 - Native Vegetation Act, 1991

 - Offsets

 - Summary

Administration and Governance Arrangements

- Governance Arrangements

- Powers

- Membership of the Native Vegetation Council

- Staff

General Comments

The CCSA strongly supports the retention of the Native Vegetation Act as one of only a few Acts that have powers to protect biodiversity conservation in this state, and the only one that has powers of protection that extend outside the state's formal protected area system. The need for strong legislation in this regard is highlighted in the State's biodiversity strategy, No Species Loss (2006).

The CCSA also supports the retention of the Native Vegetation Council as the body charged with the administration of the Native Vegetation Act.

Interaction with Other Acts

NRM Act, 2004

The CCSA supports sustainability as a key goal of our State's strategic focus (SA State Strategic Plan Target 3). Ecologically sustainable development recognises the interdependencies of social, economic and ecological well-being and that given the complexity of these interdependencies it is necessary that our undertakings seek to have positive effects on all fronts over the long term. The Natural Resources Management (NRM) Act, 2004 assists in progressing towards sustainability through establishing an integrated scheme through which to promote the use and management of natural resources in a sustainable manner.

A key aspect of sustainability is recognising the reality of biophysical limits. Goal 2 of the State Natural Resources Management Plan gives recognition to this and seeks to ensure that our natural resources are used within sustainable limits. This means that any strategy that results in further losses of ecosystem integrity is not considered viable because it ad-

versely affects the context on which we depend. The proclamation of the Native Vegetation Act, 1991 is recognition that 'sustainable limits' have been reached, if not exceeded in some areas, in the state's mediterranean biome through the loss and fragmentation of native vegetation. The Act seeks to protect the state's biodiversity through controlling the clearance of native vegetation and, therefore, is a fundamental instrument in the achievement of ecologically sustainable development.

Development Act, 1993

While the focus of the NRM Act is on using and managing our natural resources in a sustainable manner, the Development Act, 1993 provides the framework for allocating the uses to which land can be put. Present arrangements, however, do not adequately integrate the Development Act and the Native Vegetation Act when these allocations are made, i.e. when amending Development Plans or in strategic planning stages when areas for urban growth are identified.

While the Native Vegetation Council is given powers of consent over clearance this is only after decisions about land use have been made. This, and a growing list of exemptions, compromise the objects of both the Native Vegetation Act and the NRM Act, promoting conflict and tradeoffs between the social and economic objectives of development on the one hand and the social and ecological/biophysical on the other. These could be minimised if decisions about land use allocation and development were made within a sustainability decision-making framework — that is one that recognises that sustainability outcomes must constrain our undertakings — at the early stages of development planning. Turning this on its head, exemptions in the Regulations of the Native Vegetation Act instead constrain the powers of the Native Vegetation Council so that certain undertakings are taken outside of the sustainability decision making framework and the social and, more generally, the economic objects or constraints trump all other consideration of the significance of the biodiversity impacts. Areas of significant vegetation are cleared for development when identification at the Development Planning stage would avoid this.

Native Vegetation Act, 1991

An ESD framework recognises that there will be 'no go' areas so that circumstances where the impacts of clearance would be significant must not be allowed. The identification of 'no go' areas does not forego the need for clearance consent outside of these areas. The loss of any biodiversity is inconsistent with progress towards sustainability. Clearance of native vegetation increases the likelihood of loss, therefore, it is essential that the basis of the Native Vegetation Act be retained. That is, any clearance is undesirable and so undertakings should seek to avoid clearance. When it is considered necessary for other economic or social needs to clear native vegetation and that clearance would not be seriously at variance with the principles of clearance, undertakings should minimise the loss and any residual offset.

Offsets

It is essential, if we are to progress towards sustainability, to ensure the impact of any loss is offset and results in positive improvements in biodiversity conservation as well as in the economic and social conditions for which benefit clearance is sought. However, any legitimate offset framework must recognise there are limits so that no significant compromises or tradeoffs are permitted. The current system of offsets, when applied to undertakings exempt under the Regulations, does not recognise these limits.

Summary

- The CCSA supports the identification of ‘no go’ areas — areas of significance that need to be protected and buffered and have their connectivity enhanced — at the point when land is allocated for future development.
- The CCSA supports amendments, if necessary, to ensure such areas are not subject to clearance applications through exemptions in the Regulations of the Native Vegetation Act.
- The CCSA supports the use of an independent body, not subject to development or local pressures to determine ‘no go’ areas.
- The CCSA supports the retention of the provisions of the Native Vegetation Act to ensure that undertakings seek in the first instance to avoid clearance; if it is necessary for other economic or social needs to clear and that clearance is not significantly at variance with the principles of clearance, to minimise the loss and offset any residual.

The value of biodiversity and the serious threats facing our biodiversity need to be recognised by all sectors of our society and such recognition requires that we explicitly acknowledge the need to protect and conserve remnant vegetation in our decision making processes. The objects of the Native Vegetation Act need to be given recognition at the stage of allocating land use and powers of direction over decisions about the significance of native vegetation at the early stages of planning given to the Native Vegetation Council

Administration and Governance Arrangements

Governance Arrangements

- The CCSA supports the retention of an independent body to administer the Act.
- The CCSA supports the retention of the Native Vegetation Council in this role.
- The continued independence of the Native Vegetation Council is essential to the proper administration of the Native Vegetation Act. The review should not seek to derogate from this independence.
- The current arrangements make adequate provision for the Native Vegetation Council to delegate powers and functions to other bodies and persons as necessary to ensure the efficient administration of the Act.

Powers

- There is a need for a body to have powers of direction at the development planning stage to ensure ‘no go’ areas are adequately identified at this stage in the planning process. The CCSA, therefore, supports the amendment of the Act and/or the Regulations, as appropriate, to provide the Native Vegetation Council with powers of direction in relation to Development Plan Amendments and subdivisions.
- Power of direction at the PAR stage will ensure the planning framework avoids conflicts between conservation and the protection of the State’s native vegetation and biodiversity

and future development and changes of land use. This will provide greater certainty for development and developers and remove inefficiencies in the administration of the Act. Development plans are approved by the Minister, however, unless there are strong provisions that require creative solutions to be pursued, the protection of native vegetation generally loses out.

- Power of direction for subdivisions will address legacy issues associated with current Development Plans and enable the design of allotments and infrastructure to better conform with the provisions of the amendment. This is particularly important if the recent amendment of the regulations — 5(1)(ab) — is to achieve the desired balance of protection with development.

Membership of the Native Vegetation Council

- The CCSA is supportive of the current composition of the Native Vegetation Council membership, which comprises a mixture of representativeness and skills.
- The decision of the Commonwealth Government to withdraw its membership has left a vacancy that must be filled.
- The CCSA is supportive of a review of this section of the Act to ensure an appropriate mix of representation and skills.
- The CCSA has written previously to the Minister for Environment and Conservation recommending the addition of skills in water dependent ecosystems.

Staff

- The CCSA supports the retention of a secretary to Council and staff to assist Council. However, the Council does not have any powers to ensure the level of assistance is adequate to its needs. This is impacting on the efficiency with which the Act is administered.
- The CCSA supports a review of resourcing the NVC and incorporating measures to ensure the NVC is adequately resourced to implement the requirements of the Act with the efficiency desired by the community.