



Conservation Council of South Australia Inc

Response to the Draft Guidelines for a Native Vegetation Significant Environmental Benefit Policy for the clearance of scattered paddock trees

Submission by
The Conservation Council
of South Australia Inc.
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Introduction

The Conservation Council of South Australia (CCSA) is South Australia's peak non-government community environment organisation. Formed in 1971, it is an umbrella group for around 55 of the state's diverse environment groups, who represent some 60,000 individuals.

The CCSA is pleased to make a submission on the Draft Guidelines for the clearance of scattered paddock trees pursuant to Section 29(4a) of the Native Vegetation Act 1991 but note that the Draft Guidelines on which we have been invited to comment do not address fully the operation of this section of the Act and have a broader scope and application than this section of the Act alone.

Given the significance of the vegetation for which clearance is considered under S.29(4a), CCSA's main concern, in this submission, is to ensure that adequate guidance is provided to ensure that any consent to clear scattered paddock trees in

contravention of S.29(1b) of the Act is limited to the rare occasions envisaged at the time the various parties agreed to support this amendment to the Act.

The CCSA has reached its current position in relation to the Draft Guidelines after a period of negotiations with the South Australian Farmers Federation (SAFF). CCSA entered into discussions with SAFF in good faith and they have been conducted in an atmosphere of mutual respect with a reasonable amount of agreement being reached on some of the issues that were under discussion. Those recommendations that have been commonly agreed are attached in the appendices, together with an explanation of why other areas of discussion were unable to be agreed to. Two papers have had considerable influence on the CCSA's consideration of the Draft Guidelines and whether or not the new method proposed of determining significant environmental benefit should be adopted. These papers are: the recently published paper by Sandy Carruthers and David Paton on *The Conservation Value of Paddock Trees*, and the DEH/DWLBC *Scattered Tree Clearance Assessment In South Australia: Streamlining, Guidelines For Assessment And Rural Industry Extension* (Cutten and Hodder 2002).

The CCSA has also referred closely to the Confidential Discussion Notes prepared by the DWLBC as background to discussing the 2004 amendments to the Native Vegetation Act 1991¹. Unfortunately, the process that had been agreed upon during these discussions has not been followed and the Guidelines have been prepared without our involvement and, it appears, without consideration of the limitations that were to be applied. The Guidelines were subsequently presented to us during the period of public consultation after they had been brought into use as Interim Guidelines. Instead of providing guidance in the operation of S.29(4a) of the Act, the Guidelines propose a new process for determining SEB's in respect of scattered paddock tree clearance

When CCSA learned that the Guidelines were being used under delegated authority we wrote to the Native Vegetation Council to inform them of the situation and the need for 'a stay' on further applications being considered under the Guidelines. We have not received a response. We have also applied to the Minister for 'a stay'. We are still awaiting advice of the outcome regarding this.

CCSA believes there are adequate reasons outlined in this submission to warrant the withdrawal of the guidelines in their current form, and hence, a stay on considering applications for consent pursuant to S.29(4a).

Recommendations

PURPOSE & BACKGROUND

- 1. That for clarity and transparency, the guidelines be amended to clearly state that the purpose of the guidelines is to provide guidance for the operation of S.29(4a) of the Native Vegetation Act 1991.**
- 2. That assessment of applications made for clearance pursuant to S.29(4a) be disallowed until such time as adequate consideration has been given to the 'limitations' of its application.**

¹ Because these Notes were marked 'Confidential' CCSA has not included them as appendices

3. That guidelines for the operation of S.29(4a) **NOT** include the determination of SEB requirements (for clearance of scattered paddock trees) in accordance with provisions in the Native Vegetation Regulations 2003 or where clearance is not seriously at variance with the Principles of Clearance.
4. That any consent to clear based on the interim guidelines **NOT** include any consent conditions that involve payment into a Native Vegetation Fund.
5. That for the purposes of clarity and transparency the guidelines be amended to more accurately reflect the Native Vegetation Act 1991 and, to that effect: 'enhancement' be inserted in the first sentence of the Background section and '**to support positive biodiversity outcomes**' be replaced with '**preserve, enhance and properly manage the native vegetation**'.
6. That for the purposes of clarity and transparency the guidelines provide the rationale for the 2004 amendment ie S.29(4a).
7. That the Guidelines reflect the intention that S.29(4a) apply to a limited range of tree values and under limited circumstances.
8. That for the purposes of clarity and transparency the Background be amended to more accurately reflect the Native Vegetation Act 1991 and, to that effect:
 - include the full conditions of clearance as they apply to S.29(4a) i.e. '**must be conditional on the achievement, after allowing for the loss of the vegetation to be cleared, a significant environmental benefit**'
 - add that the NV Act provides clearance must not be seriously at variance with the Principles of Clearance, except under the particular conditions provided for in S.29(4) and (4a) of the Act;
 - add that these guidelines are prepared **ONLY** for the operation of S.29(4a), which relates to clearance that contravenes S.29(1b);
 - add that while the range of options for achieving an SEB provided by the 2002 amendments may apply to any clearance that is not seriously at variance with the Principles of Clearance, S.29(1b), there is no implied or explicit provision in the Act that an SEB may be achieved via each of the 4 options, when clearance is seriously at variance.
9. That for the purposes of clarity and transparency the background makes it clear that the 2004 amendment also requires that the particular circumstances justify the clearance and that the NVC determines these in accordance with the guidelines.

DRAFT GUIDELINES

10. That the guidelines limit the application of S.29(4a) to scattered paddock trees of mid range habitat value (i.e. not above 50 on the PSS) and not consider scattered paddock tree/s that:
 - contain rare plant species or associations
 - form part of a wetland
 - are significant as a remnant of vegetation in an area which has been extensively cleared
 - assists in preventing land degradation or dryland soil salinity

- **have high wildlife habitat value*** on grounds other than the PSS (refer: Cutten and Hodder 2002)
 - Is listed under the SA National Parks and Wildlife Act 1972 as rare, vulnerable or endangered or provides habitat for such species.
 - Comprises the whole, or a part of a plant community that is rare, vulnerable or endangered
 - Is listed under the Commonwealth EPBC Legislation as: habitat for threatened or endangered species; a threatened Ecological communities; a vulnerable, threatened or endangered species.
11. That assessment of applications made for clearance pursuant to S.29(4a) be disallowed until until there has been appropriate consultation with respect to the operation of S.29(4a)(bii)
 12. That the guidelines for the operation of S.29(4a) state that the circumstances justifying consent relate to the environmental gain expected to result from the clearance of the tree/s that relate to regional environmental issues and not to the size or value of the SEB, which remains a condition to consent.
 13. That the approach, outlined in these guidelines, for determining what constitutes a significant environmental benefit, NOT be adopted. There is no justification in the guidelines for ignoring the large body of advice and consideration that has already been invested in the question as to what might constitute an environmental gain in respect of scattered tree clearance. Should such a fundamental change of approach be considered for adoption the NVC should require that its basis be adequately supported by a thorough analysis and subject to comment.
 14. That the guidelines be amended to include guidance on determining whether the particular circumstances justify clearance in contravention of S.29(1b).
 15. The aim of the guidelines be amended to provide a transparent and consistent process for the operation of the whole of S.29(4a), not just one component.

GUIDING PRINCIPLES

16. That Guiding Principle 1 be amended to separate the principles informing the decision making process from the principles informing the determination of the SEB.
17. That the Guidelines include principles for determining whether the particular circumstances justify clearance.
18. That, to promote transparency of process, Guiding Principle 2 clearly state both of the conditions that need to be satisfied for the NVC to consent to clearance in contravention of S.29(1b).
19. That Guiding Principle 3 be amended for greater clarity eg: ***For the purposes of S.29(4a)(bi), the greater the value of retaining the native vegetation proposed to be cleared, the greater the factor by which the SEB must outweigh the value of retaining that vegetation.***
20. That Guiding Principle 4 be amended to recognise that the achievement of the highest possible biodiversity outcomes should guide all decision making and

landscape and the need for ongoing management of native vegetation must be considered as well as reducing fragmentation of habitat and protecting representatives of different native vegetation communities in each region (as per Cutten and Hodder 2002). The landowner/applicant's capacity for ongoing management should also be a consideration.

21. That Guiding Principles 5 be amended so that significant native vegetation will only be considered pursuant to 29(4a) if it has been established there is no practical alternative that would involve no clearance, or the clearance of less native vegetation, or the clearance of native vegetation that is less significant, or the clearance of native vegetation that has been degraded to a greater extent than the native vegetation proposed to be cleared.

22. That Guiding Principle 6 be amended so that no SEB option be recognised as outweighing the value of retaining native vegetation that meet any of the following criteria:

- have a tree score (i.e. the PSS) above 50
- contain rare plant species or associations
- form part of a wetland
- are significant as a remnant of vegetation in an area which has been extensively cleared
- assists in preventing land degradation or dryland soil salinity
- are of high amenity value
- have high wildlife habitat value* on grounds other than the PSS (refer: Cutten and Hodder 2002)

Is listed under the SA National Parks and Wildlife Act 1972 as rare, vulnerable or endangered or provides habitat for such species.

Comprises the whole, or a part of a plant community that is rare, vulnerable or endangered

Is listed under the Commonwealth EPBC Legislation as: habitat for threatened or endangered species; a threatened Ecological communities; a vulnerable, threatened or endangered species.

23. That Guiding Principle 7 reflect the priorities of the Ecological Steering Committee (Cutten and Hodder 2002) for determining SEB's listed below i.e.

- re-establishing vegetation around intact habitat is to be preferred (where re-establishing refers to natural regeneration or revegetation, with natural regeneration to be given priority)
- re-establishing vegetation in degraded habitat (i.e.. fencing and allowing natural regeneration)
- re-establishing vegetation around scattered trees

24. That the Guiding Principles state that when the whole or part of the SEB proposal is to be achieved via a revegetation option, a condition of consent should be the establishment of the same kind of vegetation community on the same type of soil AND replacement of the value of that vegetation in the landscape.

(Note: the following two dot points are likely already addressed since trees of high remnancy value, endangered etc should not be considered in S.29(4a).)

25. That the Guiding Principles state that as it is not always possible to re-establish the same kind of vegetation (e.g. low seed stock, uncertainty of or record of

poor revegetation success) or replace landscape values, the precautionary principle should be employed when considering whether the SEB outweighs the value of retaining the native vegetation.

26. That the Guiding Principles state that as the revegetation option is based on the assumption that revegetation can replace native vegetation and this is yet to be demonstrated, the precautionary principle should be employed and the option only apply to native vegetation of low to mid range value.
27. That the Guiding Principles require the application of the Precautionary Principle in all situations where there is a lack of scientific certainty as to the impacts of clearance actions or lack of certainty as to the benefits to be achieved.

OPERATING PRINCIPLES

28. That the Operating Principles clearly state that in relation to the operation of S.29(4a)(bi), a payment into a NVF will not be seen as satisfying the requirement for a SEB that outweighs the value of retaining the vegetation proposed to be cleared.
29. That the Operating Principles clearly state that demonstration by the proponent that an SEB will be achieved that outweighs the value of retaining the vegetation is not sufficient in itself to satisfy the requirements of the Act in relation to clearance that is in contravention of S.29(1b).
30. That the Operating Principles provide clear guidance as to whose responsibility it is to demonstrate the circumstances justify the clearance and guidance as to what these circumstances may be and how it needs to be demonstrated.
31. That the Operating Principles state that revegetation only be included as an SEB option for S.29(4a)(bi) if the NVC has adopted principles for revegetation that will ensure an SEB will be achieved.
32. That the Operating Principles require that all SEB offsets be subject to a management plan agreed to by the NVC and the proponent/land manager and that these management plans must be:
- a legal document giving certainty to both the NVC and the land manager and the community.
 - registered on the certificate of title
 - developed using a standard approach or template which can accommodate individual situations, including consideration of the applicant's ability to meet the ongoing implementation of the management plan.
33. That Operating Principle 5 not be applied in the operation of S.29(4a).
34. That the guidelines specify a process for regular review of the guidelines, both in terms of process and effects, and include:
- a plan to address issues identified in such a review
 - a timeframe or date for the first review of the Guidelines, for example in 2 years time
 - that CCSA and SAFF are involved in any review of the Guidelines in conjunction with the NVC.

- that this review process includes an audit of NVC decisions made pursuant to the Guidelines, the results of which should be publicly available.
 - that there is a mechanism built into the Guidelines allowing them to be updated as new information to improve them becomes available and such an update be done in consultation with the bodies as listed in S.25 of the act, including SAFF and CCSA.
35. The Operating Principles should require that there be adequate resourcing and staff to enable consistent follow-up of decisions and offset conditions.
36. The Operating Principles must require that SEB offsets be additional to other revegetation schemes (including for example 'revegetation'/carbon sequestration 'services' purchased by a greenhouse gas emitter eg industry, where the landowner receives financial or other gain in return) or Greenhouse offset schemes (no double dipping).
37. The Operating Principles must require that SEB's not be achieved by using 'make good' sites, or 'set aside' areas from previous agreements as these will not deliver a SEB beyond what is already required.
38. The Operating Principles must ensure that vegetation on land covered by an exemption under the Regulations may not be used as part of a proposed SEB package (eg fence lines, roadsides, around farm buildings, fire breaks) UNLESS Crown Law can show that an agreement reached for a SEB on Native Vegetation covered by an exemption can be permanently protected by an agreement reached under this Guideline.
39. The Operating Principles must require sufficient delays in clearance taking place to allow for SEB's to at least replace the habitat and landscape values of the native vegetation that is to be cleared.
40. The Operating Principles must require that the impact of a clearance on climate change be considered when reaching a decision about whether the application provides an adequate SEB.
41. The Operating Principles must require that there be a minimum area (based on long term viability) for any SEB (refer Cutten and Hodder 2002).

OPTIONS FOR MEETING SEB'S

42. That the acceptable options for meeting an SEB be included as Operating Principles and each tied to the requirement that they *'be maintained and managed in accordance with a native vegetation management plan approved by the NVC'*.
43. That revegetation only be an option if principles of best practice revegetation for biodiversity outcomes have been developed and adopted by the NVC and it is a condition of consent that these be strictly adhered to with adequate monitoring to ensure required outcomes are achieved.
44. That only new Heritage Agreements signed as a part of achieving a SEB can apply, unless an agreement is signed for the existing Heritage Agreement that achieves an environmental benefit considerably beyond what is required under the existing HA

and binds the applicant to future actions within the HA that are over and above what is required under the HA.

45. That there be no offset option to make payments into a Native Vegetation Fund for clearance pursuant to S.29(4a).

General Comments

The Guidelines do not provide adequate guidance on the operation of S.29(4a) of the Act. In failing to address the particular circumstances that justify clearance, it is arguable whether the Guidelines can give sufficient guidance for delegated decision making that satisfy the provisions of S.29(4a).

The Guidelines have as their aim the introduction of a new system for determining SEB's for the clearance of scattered paddock trees that can be applied in any situation where such clearance is provided for in the NV Act 1991 and the Regulations. In spreading its scope so wide it has failed to adequately address the standards set by S.29(4a) or to give sufficient regard to the important biodiversity conservation role that is signified by clearance of scattered paddock trees seriously at variance with the Principles of Clearance.

The Guidelines have failed to establish how the new system for determining SEB's meets the requirements for a significant environmental benefit as defined in the Native Vegetation Council literature.

CCSA is aware of the need to halt the decline in quality and extent of native vegetation and that 'private landholders must be encouraged to protect remnant vegetation from further decline, invest in revegetation and to actively manage their local resource' (DWLBC 2005). However, driving this through clearance of significant native vegetation can never be an acceptable, or very effective, means to achieve these changes. CCSA supports and is eager to work on the development of such initiatives but cannot support the system of determining SEB's proposed in the Guidelines to achieve this.

Because of their value and our lack of adequate scientific understanding of how significant their role is in the landscape (Carruthers and Paton 2005) a precautionary approach must be applied to any clearance. S.29(4a) was only intended to apply to rare occasions when the habitat value of scattered paddock trees was marginally above the cut off point and it was clear that there would be environmental benefits associated with their clearance (via changed land use or management practices) through addressing regional environmental issues.

The Guidelines have not included these limitations and have not provided a clear and transparent process for how decision making under S.29(4a) will be applied.

Specific Comments

PURPOSE

These draft guidelines have been developed for public consultation purposes in accordance with Section 25 of the Native Vegetation Act (see http://www.dwlbc.sa.gov.au/files/nv_nativevegact.pdf). Subject to this section of the Act, draft guidelines are submitted for comment to designated bodies, and by public advertisement, invitations are extended to any member of the public to comment on the guidelines. While there is a minimum statutory period of two months for this consultation process, it is anticipated that this timeframe may be extended to allow detailed consideration and dialogue with and between interest groups, in particular, the South Australian Farmers Federation and the Conservation Council of South Australia. Any variation in the timeframe initially set for the consultation process will be posted at http://www.dwlbc.sa.gov.au/biodiversity/vegetation/nv_seb_draft_guidelines.html.

- The purpose of the guidelines is to provide guidance for the operation of S.29(4a) of the NV Act i.e. the assessment of applications to clear scattered paddock trees where such clearance would be in contravention of S.29(1b) of the Native Vegetation Act.
- In providing guidance in the operation of 29(4a) the guidelines are required to address:
 - the determination of an SEB that outweighs the value of retaining the native vegetation proposed to be cleared
 - the determination of whether the particular circumstances justify the clearance.

RECOMMENDATION

- That the draft guidelines be amended to clearly state the purpose of the guidelines to provide guidance for the operation of S.29(4a) of the Native Vegetation Act 1991.

DRAFT GUIDELINES ADOPTED AS INTERIM GUIDELINES

Accordingly, subject to Section 25(5b) of the Act, the draft guidelines have been adopted by the Native Vegetation Council as Interim Guidelines for immediate use.

The Native Vegetation Council has:

- *endorsed that landholders who chose to process a clearance application while the Interim Guidelines are in place, will be awarded a credit if the guidelines are amended following the consultation process resulting in a smaller required area, and*
- *endorsed that landholders will not be expected to provide a larger offset if the guidelines are amended requiring larger required area. This is considered to be reasonable on the basis that the landholder may have chosen not to proceed with clearance if the higher area requirement was in place.*

- CCSA notes the reference in Hansard during the reading of the bill that CCSA and SAFF would be involved in the preparation of the guidelines. There appears no legislative reason that disallows this involvement in the preparation of the guidelines, yet the guidelines were prepared without CCSA's involvement.
- CCSA notes that there are written commitments from DWLBC that the guidelines would not be adopted unless CCSA and SAFF came to an agreement on their content. The guidelines were adopted prior to their being put out for comment. While the NV Act provides for guidelines to be adopted as interim where a longer

as to whether a longer consultation period would be required, despite CCSA and SAFF being cited as the reasons why this might be necessary. The adoption of the guidelines as interim has caused delays in CCSA and SAFF addressing the guidelines and worked against the process of both parties coming to agreement on the guidelines content. Given the clear undertakings made prior to the adoption of amendment S.294(a) it is difficult to understand what imperatives led the DWLBC to recommend to the NVC that the Guidelines be adopted as Interim prior to their being put out for public comment.

- A number of 'limitations' were to form the basis of discussion in the preparation of the guidelines. These have not been addressed in the guidelines.

RECOMMENDATION

- **That assessment of applications made for clearance pursuant to S.29(4a) be disallowed until such time as adequate consideration has been given to the 'limitations' of its application.**

HOW TO PROVIDE COMMENT

The guidelines are designed to provide a transparent and consistent process for determining the significant environmental benefit (SEB) requirements to offset clearance of native vegetation (scattered trees) in accordance with provisions of the Native Vegetation Act 1991 and Native Vegetation Regulations 2003.

- The main purpose of the guidelines must be to address the operation of S.29(4a) of the Native Vegetation Act 1999 ie clearance of scattered paddock trees that is seriously at variance with the Principle of Clearance and consequently the guidelines must ALSO address the particular circumstances under which clearance may be justified.
- There is no objection, in principle, to these guidelines being applied more broadly if the more serious nature of the clearance under S.29(4a) is given appropriate consideration and guidance in its operation is not compromised in the pursuit of the appearance of 'consistency'.
- CCSA has confined its comments to the operation of S.29(4a).

RECOMMENDATION

- **That the Guidelines for the operation of S.29(4a) NOT include the determination of SEB requirements (for clearance of scattered paddock trees) in accordance with provisions in the Native Vegetation Regulations 2003 or where clearance is not seriously at variance with the Principles of Clearance.**

Your comment on the draft guidelines will assist the Native Vegetation Council in finalising the guidelines for publication and general use by the Council.
Note that the draft guidelines have not included options for calculating payments into the Native Vegetation Fund to achieve an SEB. These are expected to be developed through and following the consultation process.
The guidelines included below relate to the proposed clearance of scattered native trees. Separate guidelines to meet SEB requirements under specific exemptions of the Act will be developed, see Part 2, Native Vegetation Regulations 2003 (<http://www.dwlbc.sa.gov.au/files/NativeVegetationRegulations2003.htm>). For example, separate guidelines have been prepared for the Minerals and petroleum resources industry to meet the requirement of exemption 5(1) (zc), (zd), and (ze).

RECOMMENDATION

- That the guidelines state that any consent to clear based on the interim guidelines cannot include any consent conditions that involve payment into a Native Vegetation Fund.

BACKGROUND

The Native Vegetation Act 1991, provides for the protection and management of native vegetation in South Australia.

- This does not accurately represent the object of the Native Vegetation Act, and overlooks 'enhancement' of remnants via natural regeneration and revegetation.

RECOMMENDATION

- That the wording of the guidelines accurately reflect the Native Vegetation Act 1991 and, to that effect, 'enhancement' be inserted in the first sentence of the background section.

Significant amendments to that Act in 2002 and 2004, and the introduction of the Native Vegetation Regulations 2003 have further strengthened the controls as well as supporting the objective of the Act to encourage landholders to support positive biodiversity outcomes on their properties.

- Only the amendments made to the Act in 2002 relate to this sentence.
- The wording does not accurately represent the relevant object of the Act.
- The Background should focus on the rationale for S.29(4a) ie the 2004 amendments.

RECOMMENDATION

- That for the purposes of clarity and transparency the guidelines be amended to more accurately reflect the Native Vegetation Act 1991 and, to that effect '**to support positive biodiversity outcomes**' be amended to '**preserve, enhance and properly manage the native vegetation**'.
- That for the purposes of clarity and transparency the guidelines provide the rationale for the 2004 amendment i.e. S.29(4a).

The Act provides that the clearance of native vegetation, unless exempt under the regulations, must be conditional on a significant environmental benefit to offset the clearance.

The Native Vegetation Act 1991 provides that a significant environmental benefit may be achieved by:

- *establishing and managing native vegetation*
- *protecting native vegetation*
- *entering into a heritage agreement, and/or*
- *payments into the Native Vegetation Fund*

- The language of the Act provides greater clarity and transparency than that used here and should be adopted when describing the conditions of clearance e.g. must be conditional on the achievement, after allowing for the loss of the vegetation to be cleared, a significant environmental benefit.
- The last dot point does not accurately reflect the act and should be amended. Having said that, CCSA does not believe this option should apply to S.29(4a) as discussed elsewhere.
- The Background does not clarify the distinction between clearance that is not in contravention of S.29(1b) and that which is in contravention of 29(1b).
- The importance of the 2002 amendment was the extension of the requirement to 'significantly' offset the effects of clearance that was not in contravention of S.29(1b). The greater range of offset options were in relation to low value significant vegetation. It is not necessarily the case that they all be available options for high value significant vegetation.

RECOMMENDATION

- **That for the purposes of clarity and transparency the guidelines be amended to more accurately reflect the Native Vegetation Act 1991 and, to that effect:**
 - **include the full conditions of clearance as they apply to S.29(4a) i.e. 'must be conditional on the achievement, after allowing for the loss of the vegetation to be cleared, a significant environmental benefit'**
 - **add that the Act provides clearance must not be seriously at variance with the Principles of Clearance, except under the particular conditions provided for in S.29(4) and (4a) of the Act;**
 - **add that these guidelines are prepared ONLY for the operation of S.29(4a), which relates to clearance that contravenes S.29(1b);**
 - **add that while the range of options for achieving an SEB provided by the 2002 amendments may apply to any clearance that is not seriously at variance with the Principles of Clearance, S.29(1b), there is no implied or explicit provision in the Act that an SEB may be achieved, under these circumstances, via each of the 4 options.**

What constitutes a significant environmental benefit is determined by the Native Vegetation Council in accordance with, these guidelines for the clearance of scattered trees. Guidelines will be developed for other situations.

- The NVC also determines what circumstances justify clearance: the purpose of the guidelines is to provide guidance on this and what constitutes a SEB.

- This paragraph relates to the 2004 amendments to the Act and does not add to the clarity of the guidelines at this point in the 'Background'.
- Reference to other guidelines does not add clarity.

RECOMMENDATION

- **That the Background clearly state that the NVC determines what circumstances justify clearance in accordance with the guidelines.**

Some of the exemptions are also conditional on, among other things, a significant environmental benefit being achieved.

- The exemptions do not relate to the purpose of the guidelines and their inclusion does not add to the clarity of the guidelines.

RECOMMENDATION

- **That for the purposes of clarity and transparency the guidelines establish clearly at the start that they are in relation to S.29(4a) and do not relate to exemptions or other purposes.**

The 2004 amendment to the Act includes new provisions enabling the NVC to consent to the clearance of native vegetation that is, in the opinion of the NVC, significantly at variance with the Principles of Clearance (previously not permitted) where, subject to guidelines, the NVC is satisfied that a significant environmental benefit (SEB) is to be achieved that outweighs the value of retaining the vegetation.

- This sentence lacks clarity and transparency by not clearly stating the requirement that the NVC be satisfied that the circumstances justify the clearance.

RECOMMENDATION

- **That for the purposes of clarity and transparency the background make it clear that the amendment also requires that the particular circumstances justify the clearance.**

This amendment was supported by the Native Vegetation Council, the South Australian Farmers Federation, the Conservation Council of South Australia, the Nature Conservation Society, and DWLBC as a means of supporting reasonable clearance of significant native vegetation, subject to an acceptable SEB. It was recognised that through this process that landholders would be encouraged to value and afford, through improved production, to achieve improved biodiversity outcomes.

- This paragraph misrepresents CCSA's position in supporting the 2004 amendment to the Act.

The amendment was supported by CCSA as a means of enabling conditional clearance (ie the requirement for a SEB to be achieved) of low habitat value 'significant' isolated/scattered trees on the rare occasions when the clearance would itself result in an environmental gain. DWLBC referred to this as vegetation in the 'mid range' (ie as assessed via the NVC adopted tree scoring system). Any tree that is assessed as being above the 'cut off point' (ie in the mid or high range) is seen as significant in terms of the Principles of

Clearance and, hence, prior to the 2004 amendment to the Act, the NVC could not consent to its clearance.

The CCSA agreed that it might be possible to justify clearance at the low end of this significant vegetation, in circumstances where the clearance itself would enable broader regional environmental gains, as long as such approval was also conditional on the achievement of an SEB that outweighed the value of retaining the native vegetation. The amount by which the value of retaining the native vegetation was outweighed, needed to be commensurate with the significance of the native vegetation that was to be cleared.

Clarifying (a) what circumstances justified clearance and (b) what constituted a suitable SEB for 'low value' *significant* vegetation was to be the subject of negotiation prior to the preparation of the guidelines.

The amendment was not recognised as a means of enabling landholders to improve production and thereby be able to afford to achieve improved biodiversity outcomes.

- CCSA does not support the idea that landholders should be encouraged to see clearance of native vegetation as an incentive to preserve, enhance and manage native vegetation on their land.

RECOMMENDATION

- **That the guidelines reflect the intention in amending the Native Vegetation Act to include S.29(4a) that it apply to a limited range of tree values and under limited circumstances.**

DRAFT GUIDELINES

Since there are existing processes for the determination of whether clearance would be seriously at variance with the Principles of Clearance (Cutten and Hodder 2002), the guidelines need to address:

- (a) establishing the limited range of significant scattered paddock trees to which S.29(4a) will apply
- (b) how SEB will be determined for that significant vegetation
- (c) what particular circumstances justify the clearance of that range of significant vegetation.

(a) establishing the limited range of significant scattered paddock trees to which S.29(4a) will apply

- There are strong arguments as to why significant scattered paddock trees should not be cleared 'regardless of the value of the offsetting environmental works' (Cutten and Hodder 2002; Carruthers and Paton 2005). However, the 2004 amendment recognises that some flexibility in the mid range of habitat values could be considered where particular circumstances justify the clearance. Consequently limitations as to the range of significant vegetation that could be considered under S.29(4a) should be given in order to assist in transparency and not encourage false expectations in landowners.
- Placing limitations is justified because it is not possible for the NVC to be satisfied that an SFR outweighing the value of retaining high value significant scattered

paddock trees will result, nor, that there are any circumstances that can justify clearance of high value significant native vegetation.

RECOMMENDATION

That the guidelines limit the application of S.29(4a) to scattered paddock trees of mid range habitat value (i.e. not above 50 under the PSS) and not consider scattered paddock tree/s that:

- contain rare plant species or associations
- form part of a wetland
- are significant as a remnant of vegetation in an area which has been extensively cleared
- assists in preventing land degradation or dryland soil salinity
- are of high amenity value
- have high wildlife habitat value* on grounds other than the PSS (refer: Cutten and Hodder 2002)

Is listed under the SA National Parks and Wildlife Act 1972 as rare, vulnerable or endangered or provides habitat for such species.

Comprises the whole, or a part of a plant community that is rare, vulnerable or endangered

Is listed under the Commonwealth EPBC Legislation as: habitat for threatened or endangered species; a threatened Ecological communities; a vulnerable, threatened or endangered species.

(b) how SEB will be determined for that significant vegetation

- The guidelines have provided a suggested means of achieving this and the submission responds to these below.

(c) what particular circumstances justify the clearance of that range of significant vegetation.

- The guidelines have not addressed this important aspect for the operation of S.29(4a).
- Justification is not to be based on the size or value of the SEB (which, however, remains a consent condition) but on the broader environmental gain expected to result from the clearance of the tree/s itself that relate to regional environmental issues.

RECOMMENDATION

- That the interim guidelines be withdrawn until there has been appropriate consultation with respect to the operation of S.29(4a)(bii)
- That the guidelines for the operation of S.29(4a) state that the circumstances justifying consent relate to the environmental gain expected to result from the clearance of the tree/s that relate to regional environmental issues and not to the size or value of the SEB, which remains a condition to consent.

These guidelines are based on a fundamental premise of encouraging SEB offsets that have higher biodiversity values.

- The system for determining SEB offsets described in Cutten and Hodder (2002) relate the set aside to the biological value of the vegetation proposed to be cleared, primarily with reference to the 'tree score' or 'point score' based on habitat value

The higher the point score the larger the minimum area to be set aside, with increases in that set aside related to other significance values. The fundamental premise that should underlie the determination of SEB's is that replacing a tree with a tree/s —i.e. putting aside existing native vegetation remnants for clearance — is not an environmental gain, but results in a loss of trees from the system (Cutten and Hodder)

- The draft guidelines propose that the biological value of the vegetation cleared be the basis for determining the overall SEB required but that the SEB not simply be equated to a minimum area of set aside. Rather the biological value of the set aside area is to be taken into consideration and set asides of higher biological value are to be encouraged by discounting the area of the set aside. Biological value is based on intactness which is equated with usefulness as habitat. Consequently, the 'setting aside' of a smaller area of an intact remnant is to be preferred over a larger area of a degraded remnant that is to be managed, since it will take longer for the latter to reach the same value as habitat.
- This is a fundamental change in approach and contradicts the premise that there is no net gain, but rather a net loss, from simply 'setting aside' existing native vegetation.

The Ecological Steering Committee recommendations in the 2002 report on scattered tree clearance, assert that the 're-establishment of vegetation' was seen as the 'best way to attempt to 'substitute' biological resources' and 'attempt to gain a net environmental benefit' (Cutten and Hodder 2005), where re-establishment included natural regeneration and revegetation. In order of priority the ESC favored:

- re-establishing vegetation around intact habitat
- re-establishing vegetation in degraded habitat (i.e.. fencing and allowing natural regeneration)
- re-establishing vegetation around scattered trees, and
- revegetation on cleared ground

RECOMMENDATION

- **That the approach, outlined in these guidelines, for determining what constitutes a significant environmental benefit, not be adopted. There is no justification in the guidelines for ignoring the large body of advice and consideration that has already been invested in the question as to what might constitute an environmental gain in respect of scattered tree clearance. Should such a fundamental change of approach be considered for adoption the NVC should require that its basis be adequately supported by a thorough analysis.**

These core areas are the building blocks upon which future biodiversity objectives will be met.

- Agree with this statement but not that setting them aside satisfies the requirement for a significant environmental benefit to be achieved.

Furthermore, the guidelines also encourage offsets that achieve a more significant landscape context.

- The meaning of this statement is not clear.

Linking or expanding core areas of habitat is encouraged.

- Agree this should be encouraged

The guidelines include (1) a number of guiding and operational principles; (2) options to meet SEB, and (3) a process for calculating the SEB requirements.

- The guidelines should also include guiding and operational principles, & processes for determining whether the particular circumstances justify clearance in contravention of S.20(1b). See introductory comments above.

RECOMMENDATION

- That the guidelines be amended to include guidance on determining whether the particular circumstances justify clearance in contravention of S.20(1b).

The aim of the guidelines is to provide for a transparent and consistent process for determining SEB requirements.

- The aim of the guidelines must be to provide a transparent and consistent process for the operation of S.29(4a) so that landowners can develop property plans with greater levels of certainty and feel process is accountable. The guidelines must, therefore, address both S.29(4a)(bi) and (bii).

RECOMMENDATION

- The aim of the guidelines be amended to provide a transparent and consistent process for the operation of the whole of S.29(4a), not just one component.

GUIDING PRINCIPLES

GUIDING PRINCIPLE 1. The guidelines focus on the habitat value of the trees proposed for clearance (Principles of Clearance 1b, Schedule 1 of the Act). A decision on whether to approve clearance, or to adjust the SEB required, also requires consideration of whether the proposed clearance is at variance with one or more of the other 'Principles of Clearance' provided in the Act (http://www.dwlbc.sa.gov.au/files/11_principles.pdf).

- The principle in its current form mixes the determination of a SEB with the decision making process for consenting to clearance. The decision making process should be addressed separately to the determination of an SEB and, when addressed, should include consideration of whether the particular circumstances justify the clearance, otherwise, could be misleading to landowners.
- The decision on whether to approve clearance does require consideration of whether the proposed clearance is at variance with one or more of the principles of clearance, but, not necessarily a decision whether to adjust the SEB required. Since clearance in contravention of S.29(1b) should not include vegetation that is significant in terms of any the other principles of clearance (see previous section) wildlife habitat value (i.e. PSS and other values as per Cutten and Hodder 2002) could be stated to be the basis for determining the SEB.

RECOMMENDATION

- That Guiding Principle 1 be amended to clearly state the principles informing the decision making process separately from the principles informing the determination of the SEB.

- That the Guiding Principles include principles for determining whether particular circumstances justify clearance.

GUIDING PRINCIPLE 2. *The SEB must result in a better outcome for the environment. Accordingly, there will be some circumstances where the Native Vegetation Council will not approve the clearance of native vegetation if the Council is of the opinion that the vegetation proposed to be cleared is of particular significance, and the SEB does not outweigh the value of retaining the vegetation.*

- The principle in its current form fails to provide clear guidance to decision making nor clearly reflect the intention of the Act. 'That the SEB to be achieved must outweigh the value of retaining the vegetation' is a clear statement of principle from the Act; 'the SEB must result in a better outcome', is not. The principles should help to determine what is to be considered 'a better outcome'.
- In stating there will be some circumstances where the NVC will not approve clearance suggests clearance is the norm and that the onus is on the NVC to demonstrate the SEB to be achieved does not outweigh the value of retaining the vegetation. Which should not be the case.
- The principle also fails to make clear that approval for clearance in contravention of S.29(1b) requires both that an SEB be achieved that outweighs the value of retaining the vegetation AND that the particular circumstances justify the clearance. Fulfilling one condition does not automatically fulfil the other.

RECOMMENDATION

- That, to promote transparency of process, Guiding Principle 2 clearly state both of the conditions that need to be satisfied for the NVC to consent to clearance in contravention of S.29(1b).

GUIDING PRINCIPLE 3. *The clearance of higher value native vegetation should be offset by a higher SEB.*

- This Guiding Principle is circular in its argument and requires clarification.

RECOMMENDATION

- That Guiding Principle 3 be amended for greater clarity as follows: 'For the purposes of S.29(4a)(bi), the greater the value of retaining the native vegetation proposed to be cleared, the greater the factor by which the SEB must outweigh the value of retaining that vegetation'.

GUIDING PRINCIPLE 4. *The SEB should support the highest possible biodiversity outcomes in terms of quality, position in the landscape, and ongoing management.*

- CCSA supports the Principle if applied to all decision making in relation to S.29(4a).
- CCSA strongly supports the inclusion of language that recognises the importance of "position in the landscape" and "ongoing management" of native vegetation in assessing biodiversity outcomes. Reducing fragmentation of habitat and protecting representatives of different vegetation communities in each region should also be

RECOMMENDATION

- That Guiding Principle 4 be amended to recognise that:
 - the achievement of the highest possible biodiversity outcomes should guide all decision making and consent conditions
 - in evaluating biodiversity outcomes, position in the landscape and the need for ongoing management of native vegetation must be considered as well as reducing fragmentation of habitat and protecting representatives of different native vegetation communities in each region (as per Cutten and Hodder 2002). The landowner's/applicant's capacity for ongoing management should also be a consideration.

GUIDING PRINCIPLE 5. The clearance of significant native vegetation should not be approved if there is another practical alternative that would involve no clearance, or the clearance of less native vegetation, or the clearance of native vegetation that is less significant, or the clearance of native vegetation that has been degraded to a greater extent than the native vegetation proposed to be cleared.

- The Act places the onus upon the NVC being satisfied the circumstances justify contravention of S.29(1b). In stating circumstances in which clearance will not be approved, this principle suggests both that clearance is the norm and that the onus is on justifying why clearance SHOULD NOT be approved. Rather significant native vegetation should only be considered pursuant to S.29(4a) if the above has been established.

RECOMMENDATION:

- That Guiding Principles 5 be amended such that:
Significant native vegetation will only be considered pursuant to 29(4a) if it has been established there is no practical alternative that would involve no clearance, or the clearance of less native vegetation, or the clearance of native vegetation that is less significant, or the clearance of native vegetation that has been degraded to a greater extent than the native vegetation proposed to be cleared.

GUIDING PRINCIPLE 6. The clearance of habitat for a nationally listed endangered species should not be approved in situations where the SEB is not recognised as supporting the recovery of the species.

- In the absence of scientific evidence to the contrary, no SEB option can be recognised as outweighing the value of retaining native vegetation that provides habitat for a nationally listed endangered species. This is the case for any native vegetation that has significance as wildlife habitat for species or communities listed at state or national level as rare, vulnerable or endangered or native vegetation; that itself is listed as rare, vulnerable or endangered; or is assessed as being highly significant as wildlife habitat using the tree scoring system.

RECOMMENDATION

- That Guiding Principle 6 be amended so that no SEB option should be recognised as outweighing the value of retaining native vegetation that meet any of the following

- have a tree score (i.e. the PSS) above 50
- contain rare plant species or associations
- form part of a wetland
- are significant as a remnant of vegetation in an area which has been extensively cleared
- assists in preventing land degradation or dryland soil salinity
- are of high amenity value
- have high wildlife habitat value* on grounds other than the PSS (refer: Cutten and Hodder 2002)

Is listed under the SA National Parks and Wildlife Act 1972 as rare, vulnerable or endangered or provides habitat for such species.

Comprises the whole, or a part of a plant community that is rare, vulnerable or endangered

Is listed under the Commonwealth EPBC Legislation as: habitat for threatened or endangered species; a threatened Ecological communities; a vulnerable, threatened or endangered species.

GUIDING PRINCIPLE 7. Preference will be given to SEB proposals that aim to establish or protect the same vegetation species/community as that proposed for clearance, unless, in the opinion of the NVC, the SEB results in the conservation of native vegetation that is of higher biodiversity value than the native vegetation proposed for clearance. This will ensure that vegetation species/community and, in particular, critical habitats are not systematically degraded or lost from the landscape.

- CCSA supports the principle that in order to achieve the highest biodiversity outcomes, the guidelines should prefer SEB options that promote natural regeneration and recruitment of scattered trees via the protection and enhancement of remnant native vegetation.
- The guidelines should ensure that when the whole or part of the SEB proposal can only be achieved via a revegetation option, it is a condition of consent that the same kind of vegetation community is established on the same type of soil and that it replace the ecological values of that vegetation in the landscape.
- The guidelines should recognise that as the establishment of the same kind of vegetation or the replacement of landscape values is not always possible, the NVC is required to apply the precautionary principle.
- CCSA notes that the revegetation option is based on the assumption that revegetation can replace native vegetation and that this is yet to be demonstrated. Given this uncertainty, the precautionary principle must be applied, hence, the limitation that S.29(4a) not apply to scattered trees of high habitat value.
- CCSA adopts the priorities of the Ecological Steering Committee (Cutten and Hodder 2002), however, do not consider it appropriate to include revegetation on cleared ground (ie not in association with intact, degraded or scattered paddock trees) as an option for significant scattered paddock trees.

RECOMMENDATIONS

- That Guiding Principle 7 reflect the priorities of the Ecological Steering Committee (Cutten and Hodder 2002) for determining SEB's: i.e.

- re-establishing vegetation around intact habitat is to be preferred (where re-establishing refers to natural regeneration or revegetation, with natural regeneration to be given priority)
- re-establishing vegetation in degraded habitat (i.e.. fencing and allowing natural regeneration)
 - re-establishing vegetation around scattered trees
- That the Guiding Principles include:
 - That when the whole or part of the SEB proposal is to be achieved via a revegetation option, a condition of consent should be the establishment of the same kind of vegetation community on the same type of soil AND replacement of the value of that vegetation in the landscape.

(Note: the following two dot points are likely already addressed since trees of high remnancy value, endangered etc should not be considered in S.29(4a).)

- Given that it is not always possible to re-establish the same kind of vegetation (e.g. low seed stock, uncertainty of or record of poor revegetation success) or replace landscape values, the precautionary principle should be employed when considering whether the SEB outweighs the value of retaining the native vegetation.
- Given the revegetation option is based on the assumption that revegetation can replace native vegetation and this is yet to be demonstrated, the precautionary principle should be employed and the option only apply to native vegetation of low to mid range value.
- That the Guiding Principles require the application of the Precautionary Principle in all situations where there is a lack of scientific certainty in the impacts of clearance actions or lack of certainty in the benefits to be achieved.

OPERATING PRINCIPLES

OPERATING PRINCIPLES 1. In situations where it is not practical for the proponent to achieve an SEB through revegetation, restoration or entering into a heritage agreement, the applicant may seek approval of the NVC to make a payment into a Native Vegetation Fund of an amount considered by the NVC to be sufficient to achieve a SEB elsewhere in the region.

- Refer CCSA's comments to Options for Meeting SEB's.
- CCSA objects to the principle in that it seeks to apply S.29(11d) where the clearance is in contravention of S.29(1b).
- The overriding provision of section 29 is that consent not be given in contravention of S. 29(1b).
- CCSA recognises that S.29(11d) provides for the NVC to attach as a condition of consent for clearance under S.29 the achievement of an SEB via a payment into a NVF, but only where S.28(4) applies.
- CCSA recognises that this provision was intended to apply in circumstances where clearance is not in contravention of S.29(1b). Prior to the amendment of the Act to include S. 29(4a) there was no provision for the NVC to consent to clearance in

via payment into a fund as a condition of consent to clearance, where the vegetation to be cleared was not significant (as per the Principles of Clearance).

- Payment into a vegetation fund, when clearance is of significant vegetation, cannot be seen to result in a SEB that outweighs the value of retaining significant vegetation. It is not possible for the NVC to be satisfied that such payment will result in a SEB that outweighs the value of retaining significant vegetation.
- The guidelines need to make this explicit otherwise proponents will be given an expectation that such a payment could satisfy S.29(4a)(bi).
- There is no requirement that S.29(11d) apply to S.29(4a).
- It was clearly stated in the discussions prior to the amendment of the act to include S.29(4a), that loss of native vegetation in contravention of S.29(1b) be conditional on the establishment or management of other native vegetation that in the opinion of the Council will result in a significant environmental benefit. Payment into a NVF was considered to be satisfactory.
- CCSA notes that the wording of the principle implies that a payment into a NVF would be an SEB option without having to demonstrate that none of the other options are practical and that this is not consistent with the Options for meeting SEBs stated elsewhere in the guidelines or the Act.

RECOMMENDATION

- **That the Operating Principles clearly state that in relation to the operation of S.29(4a)(bi), a payment into a NVF will not be seen as satisfying the requirement for a SEB that outweighs the value of retaining the vegetation proposed to be cleared.**

OPERATING PRINCIPLES 2. The proponent (seeking approval to clear native vegetation) must demonstrate that the SEB meets or exceeds the requirements of the guidelines.

- CCSA supports this principle but the guidelines also need to address whose responsibility it is to satisfy the NVC that the circumstances justify the clearance [S.29(4a)(bii)]. In correspondence from DWLBC and DWLBC's discussions with SAFF, CCSA and NCSSA regarding S.29(4a) prior to its adoption in 2004, it was proposed that the relevant NRM board must demonstrate to the satisfaction of the NVC that the environmental benefits of the proposed clearance justify clearance of the scattered paddock trees (where these are the 'particular circumstances' being proposed by the applicant to justify the clearance).
- Proponents need to understand that the ability to demonstrate an SEB will be achieved that outweighs the value of retaining the vegetation is not sufficient in itself to satisfy the requirements of the Act.

RECOMMENDATION

- **That the Operating Principles clearly state that demonstration by the proponent that an SEB will be achieved that outweighs the value of retaining the vegetation is not sufficient in itself to satisfy the requirements of the Act in relation to clearance that is in contravention of S.29(1b).**
- **That the Operating Principles provide clear guidance as to whose responsibility it is to demonstrate the circumstances justify the clearance and guidance as to what these circumstances may be and how it needs to be demonstrated.**

OPERATING PRINCIPLES 3. *Offsets should be maintained and managed in accordance with a native vegetation management plan approved by the NVC that seeks to establish, restore, or manage native vegetation to achieve an appropriate SEB. The management plan may stipulate among other things, species composition and numbers, spacings and distribution, weed and vermin control, and monitoring of outcomes.*

- CCSA supports the principle that offsets should be maintained and managed in accordance with a vegetation management plan approved by the NVC.
- Such plans should reflect a minimum of 10 years investment to ensure an SEB is secured
- CCSA does not support revegetation as an SEB option for clearance in contravention of S.29(1b) unless the NVC has developed or adopted clear principles of revegetation. This is critical if the NVC is to be satisfied that the SEB will be achieved via this option. These should provide best practice principles for undertaking revegetation to achieve biodiversity benefits and ecosystem services (eg A. Bennet’s work provides a useful foundation).

RECOMMENDATION:

- That the Operating Principles state that revegetation only be included as an SEB option for S.29(4a)(bi) if the NVC has adopted principles for revegetation that will ensure an SEB will be achieved.

OPERATING PRINCIPLES 4. *A proponent may seek approval of the NVC to establish an SEB on other land held by the landholder, or another landholder, in the locality. In such circumstances, the SEB must be subject to an ongoing management plan approved by the NVC that binds successors in title to the land. The NVC will be concerned about the SEB outcomes, not the financial arrangements (if any) between the respective landholders.*

- ALL SEB offsets must be subject to a management plan agreed to by the NVC and the proponent / land manager, not just in the instances where this might occur on other land held by the landholder, or another landholder, in the locality.

RECOMMENDATION

- That the Operating Principles require that all SEB offsets be subject to a management plan agreed to by the NVC and the proponent/land manager and that these management plans must be:
 - a legal document giving certainty to both the NVC and the land manager and the community.
 - registered on the certificate of title
 - developed using a standard approach or template which can accommodate individual situations, including consideration of the applicant’s ability to meet the ongoing implementation of the management plan.

OPERATING PRINCIPLES 5. *In situations where SEB proposals exceed the requirement of the guidelines (e.g. the offset encompasses a larger area than that required by the guidelines, or through time the offset exceeds the expectations of the SEB in terms of the quality of the expected outcomes) the applicant will receive an SEB credit that may be banked and used to offset future SEB requirements.*

- **CCSA does not support this principle.** CCSA agrees with the notion of rewarding proponents who have gone over and above what was required of them, however, the incentive mechanism needs to be practical to implement, not divisive and underpinned by the right message. The Principle as stated here appears to work as a perverse incentive. The reward for a clearance proponent following obligated conditions by the letter is to have the opportunity to clear more, while an adjacent landholder who has undertaken native vegetation management without applying to clear is not advantaged, unless they want to clear.

RECOMMENDATION

- That Operating Principle 5 not be applied in the operation of 29(4a).

ADDITIONAL OPERATING PRINCIPLES

- That the Operating Principles require that regular reviews of the effectiveness and evaluation of the process for the Guidelines are required and that action be taken to address any shortcomings identified in any such review and that the whole process be specified in the Guidelines and include:
 - A timeframe or date for the first review of the Guidelines, for example in 2 years time.
 - That CCSA and SAFF are involved in any review of the Guidelines in conjunction with the NVC.
 - That this review process includes an audit of NVC decisions made pursuant to the Guidelines, the results of which should be publicly available.
 - That there is a mechanism built into the Guidelines allowing them to be updated as new information to improve the guidelines becomes available.
- The Operating Principles should also require a process for monitoring the effectiveness of offsets efforts (could be included in NVMP) and a process for feeding knowledge back to State and regional NRM processes (there may be lots of opportunities through revegetation and land management undertaken through the program that should be learned from).
- The Operating Principles should require that there be adequate resourcing and staff to enable consistent follow-up of the decisions and offset conditions.
- The Operating Principles must require that SEB Offsets be additional to other revegetation schemes (including for example 'revegetation'/carbon sequestration 'services' purchased by a greenhouse gas emitter e.g. industry, where the landowner receives financial or other gain in return) or Greenhouse offset schemes (no double dipping).
- The Operating Principles must require that SEB may not be achieved by using previously required and established 'make good' sites, or 'set aside' areas from previous agreements as these will not deliver a SEB beyond what is required through the previous agreements/requirements.
- The Operating Principles must ensure that vegetation on land covered by an exemption under the Regulations may not be used as part of a proposed SEB package (e.g. fence lines, roadsides, around farm buildings, fire breaks) UNLESS

covered by an exemption can be permanently protected by an agreement reached under this Guideline.

- The Operating Principles must ensure the level of record keeping, specific documentation and photographic records are established to ensure that no additional clearance is masked and that effective processes can be demonstrated.
- The Operating Principles must require sufficient delays in clearance taking place to allow for SEB's to at least replace the habitat and landscape values of the native vegetation that is to be cleared.
- The Operating Principles must require consideration of the impact of a clearance on climate change must be included when reaching a decision about whether the application provides an adequate SEB.
- The Operating Principles must require that there be a minimum area for any SEB so as to ensure long term viability (refer Cutten and Hodder 2002).

OPTIONS FOR MEETING SEB

An SEB requirement can be met by any of the four SEB offset options:

- (i) establish and manage native vegetation on land (approved by the NVC), or*
- (ii) protect native vegetation growing or situated on land (approved by the NVC), or*
- (iii) enter into a heritage agreement with respect to specified native vegetation on land (approved by the Council and Minister), or*

- The above options are drawn from S.29(11) of the Act and previously applied in relation to consent to clear that was not in contravention of S.29(1b).
- It is already recognised in the draft Guidelines that in order to achieve an appropriate SEB offset under S.29(4a), where a consent to clear would be in contravention of S.29(1b) of the Act, the offsets should be maintained and managed in accordance with a native vegetation management plan approved by the NVC.
- However, the guidelines need to link the above offset options more clearly and explicitly to the requirement, under Operating Principle 3 of the Draft Guidelines, for native vegetation management plans (NVMP).

RECOMMENDATION

- That options for meeting an SEB be included as operating principles and each tied to the requirement that they 'be maintained and managed in accordance with a native vegetation management plan approved by the NVC'.

(i) establish and manage native vegetation on land (approved by the NVC)

- It must be recognised that S.29(4b) allows clearance in contravention of S.29(1b) of the Act and as such the risks associated with clearance are greater and, hence, to be acceptable offsets must have a greater degree of certainty to ensure benefits will be achieved. To achieve this, the NVC would need to first develop and adopt clear best practice principles for undertaking revegetation that achieves biodiversity benefits. Adherence to these principles and appropriate monitoring would be required conditions of consent

- In the absence of such guidelines and the uncertainty that a SEB would result, the establishment and management of native vegetation should not qualify at this time as an SEB option for S.29(4a).

RECOMMENDATION

- That revegetation only be an option if principles of best practice revegetation for biodiversity outcomes have been developed and adopted by the NVC and it is a condition of consent that these be strictly adhered to with adequate monitoring to ensure required outcomes are achieved².

(iii) enter into a heritage agreement with respect to specified native vegetation on land (approved by the Council and Minister)

RECOMMENDATION

- That only new Heritage Agreement signed as a part of achieving a SEB can apply, unless an agreement is signed for the existing Heritage Agreement that takes the environmental protection considerably beyond what is required under the existing HA and which binds the applicant to future actions within the HA that are over and above what is required under the HA e.g.. to allow for natural regeneration adjacent to intact land.

(iv) in the case where it is not possible for the applicant to achieve a SEB with one of the above options, the applicant may seek to make a payment into the Native Vegetation Fund of an amount considered by the NVC to be sufficient to achieve a SEB in a manner contemplated by the Act.

- CCSA objects to this being an option for clearance that is in contravention of S.29(1b).
- CCSA recognises that S.29(11d) provides for the NVC to attach as a condition of consent for clearance the achievement of an SEB via a payment into a NVC, in instances where S.28(4) applies. CCSA also recognises that S.29(11d) previously applied in circumstances where clearance was not in contravention of S.29(1b). It was reasonable to allow that an SEB could be achieved via payment into a fund as a condition of consent to clearance, where the vegetation to be cleared was not significant (as per the Principles of Clearance).
- When clearance is of significant vegetation, it is not possible for the NVC to be satisfied that such payment into a fund will result in a SEB that outweighs the value of retaining significant vegetation, particularly in the absence of any operating framework. Without this there is no way of assessing risks such as the potential for cash offsets to lead to increased fragmentation and cumulative losses of some vegetation communities in some regions. This view is consistent with statements made in discussions prior to the amendment of the act to include S.29(4a).

RECOMMENDATION

² These Revegetation Guidelines should be referred to relevant stakeholders for comment/review before being adopted as NVC Guidelines or Interim Guidelines. There should be no limit as to what the Revegetation Guidelines may contain, or the number of regional iterations of the Guidelines.

- **That there be no offset option to make payments into a Native Vegetation Fund for clearance pursuant to S.29(4a).**

References

Carruthers, S. and Paton, D.C.P., 2005, *The Conservation Value Of Paddock Trees. A Review*, prepared for Land & Water Australia and the South Australian Native Vegetation Council, Native Vegetation R&D Program, Land & Water Australia.

Cutten, J.L. & Hodder, M.W., 2002, *Scattered Tree Clearance Assessment In South Australia: Streamlining, Guidelines For Assessment And Rural Industry Extension*, prepared for Business Information Service, Office of AusIndustry, Commonwealth Department of Industry, Science and Tourism, Biodiversity Assessment Services, South Australian Government, SA.

Department of Water Land and Biodiversity Conservation, Corporate Plan 2005-2010, SA Government.

Appendices

Draft Guidelines for a Native Vegetation Significant Environmental Benefit Policy for the clearance of scattered paddock trees

In principle the Conservation Council SA (CCSA) and the South Australian Farmers Federation (SAFF) agreed to the following points, whilst acknowledging that some of these points needed further refinement.

Points of Agreement

1. Review of Guidelines

- That a process for the review of the Guidelines is specified in the Guidelines including a plan to address issues identified in a review.
- That a timeframe or date for the first review of the Guidelines be specified, for example in 2 years time.
- That CCSA and SAFF are involved in the review of the Guidelines in conjunction with the NVC.
- That this review process include an audit of NVC decisions made pursuant to the Guidelines, the results of which should be publicly available.
- That there be a mechanism built in to the Guidelines allowing them to be updated as new information to improve the guidelines becomes available and such update only be done in consultation with the bodies as listed in S.25 of the Act, including SAFF and CCSA.

2. That SEB offsets are subject to a management plan agreed to by the NVC and the proponent / land manager

- That the management plans must be a legal document giving certainty to both the NVC and the land manager and the community.
- That the management plan is registered on the certificate of title
- That the management plan is developed using a standard approach or template which can accommodate individual situations.

3. That the assessment of the value of native vegetation must:

- Be based on sound science
- Establish a framework and principles which are applicable State-wide
- Be informed by regionally specific information (eg Bioregion or ecological community)
- Consider the value of native vegetation (both trees under consideration for clearance and native vegetation being considered for an SEB) within the context of the landscape in which it is situated, at both the local scale and regional scale.
- Reflect the value of retaining existing native vegetation and recruiting and re-establishing new native vegetation.
- Consider its value in terms of its ecosystem functions (eg role as a seed source)
- Consider its relationship with other natural resources (eg water and soil)

4. That decision making should:

- Be transparent in process
- Take account of:
 - Regionally specific information (biological and landscape context)
 - Regional priorities and community values
- Assess the risk of actions with in their context
- Consider the science, values and risks

CCSA's Explanatory notes.

It is recognised that the role of the Significant Environmental Benefit (SEB) Guidelines is to allow one aspect of the Act to function and that the Guidelines are for a specific purpose.

CCSA is unable to support this, unless the 'aspect of the act' and the 'specific purpose' of the guidelines are defined and addressed. CCSA does not agree with the statements in the draft guidelines about the purpose of the amendment & the purpose of the draft guidelines.

CCSA's position is that:

1. While CCSA recognises that it is the role of the draft guidelines to allow one aspect of the Native Vegetation Act to function (ie 29 (4a)) CCSA does not recognise that the guidelines in their current form fulfil that role. The guidelines should address the whole decision making process in terms of the purpose for which the amendment was made.
2. While CCSA recognises that the guidelines are for a specific purpose, the guidelines do not accurately state that purpose and consequently fail to adequately address that purpose.
3. The restatement of the purpose of the amendment in the guidelines is not accurate & misrepresents what was supported by CCSA.

Having said that it is equally important that the SEB Guidelines are defined within the context of a broader native vegetation management system.

CCSA did not agree to the above. CCSA needs greater clarity in the meaning of the term 'native vegetation management system' and its relevance to S.29 (4a).

An SEB proposal must be of a significantly higher environmental value than that which would be provided by retaining the native vegetation that is the subject of the clearance application. Including consideration of both the current value and future value of the native vegetation proposed for clearance and the SEB offset.

CCSA did not agree to the use of 'environmental' in qualifying value. Based on the discussions prior to the amendment of the Native Veg Act, the 'Confidential Notes' to the Bill and the State Strategic Plan, CCSA's position is that

1. The SEB is to be significant in terms of biodiversity values. Broader environmental values or gains are to be considered in justifying clearance in terms of the regional issues, as identified by a regional NRM Board during the consultation process. These broader environmental gains are to be regarded as incidental to the biodiversity gains and should not unduly influence the NV Council in reaching a decision over the clearance.

2. Section 29(4a) can only relate to scattered trees that fall within the 'mid range' of tree scoring values: ie only the lower habitat value scattered trees for which clearance would be significantly at variance with the principles of clearance could be considered for an SEB.

That decision making in regards to native vegetation management should:

CCSA does not see that the term 'native vegetation management' adds any clarity to the decision making required under 29(4a).

That there is an opportunity to further enhance the SEB guidelines by reconsidering the current tree scoring system used by the NVC. That the review should consider the capability of the system to assess a range of vegetation types and contexts. That the system would incorporate the points covered in dot points 3 and 4. That the system could be built into the methodology discussed in dot point 6.

CCSA supports the retaining of the current scoring system for isolated trees but that the current tree scoring systems used by the NVC does not adequately reflect the recruitment value of young trees. Hence, CCSA agrees: There is a need to add a score for the recruitment value of young trees that can contribute to a healthy age range in the landscape

That overtime the SEB Guidelines would be improved by refining the scoring system for an area of native vegetation. This could be achieved by adopting the methodology ("BSI"³ and "SABAT"⁴) developed for assessing biodiversity value in the Upper South East Biodiversity Trading Scheme and extending its use to other regions. The roll out of this approach to additional regions could be undertaken in a staged process: To achieve this will require:

- Modifying the BSI to reflect the unique characteristics and priorities of the specific region***
- Completion of benchmarking of native vegetation condition indicators for the specific region***
- Refinement of the system to cater for scattered trees***

CCSA did not agree to the above.

³ "BSI" is Biodiversity Significance Index