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Mr Jody Gates
Principal Policy Advisor
Conservation and Land Management
Department of Environment, Water & Natural Resources
GPO Box 1047
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August 15, 2016

Re: Draft *Native Vegetation Act Regulations 2016* and Guide.

Dear Jody,

The Nature Conservation Society of South Australia (NCSSA) welcomes the opportunity to comment on the draft *Native Vegetation Regulations 2016* (NV Regulations 2016) under the *Native Vegetation Act 1991* (NV Act). As South Australia's primary nature conservation advocacy organisation, NCSSA has a long involvement with protection and management of native vegetation in South Australia, being instrumental in the development of the NV Act and later amendments to the Act. Since 1962, 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.

Although we acknowledge that the current Regulations have become increasingly complex over time as new permitted activities were added, we do not support the draft NV Regulations 2016 or the Guide in their current form. We have outlined a number of key concerns below, many of these were raised in our previous submissions on the Discussion Papers released for consultation during Stage 1 and 2 of the Review but in some cases have been either overlooked or ignored.

The proposed changes in the draft NV Regulations support a shift from policies that avoid clearing toward policies that allow for clearing and offsetting. Overall, the changes proposed will be a significant watering down of regulations aimed at the protection of native vegetation. We challenge the assumption that there is a need to streamline the implementation of the NV Act. Under the existing process, there is a requirement for a full and comprehensive application that address all aspects of the need for clearance, the mitigation hierarchy, and consequences for biodiversity and ecosystem services. In contrast, the proposed pathways would make applications much easier with limited checks and balances to ensure that the self-assessment process is both a rigorous and transparent one. The apparent complexity in the NV Act was largely due to the need to counter the natural tendency of vested interests to find loopholes in interpretations of the NV Regulations. The proposed changes would represent an open opportunity for those intent on finding loopholes to undermine previous extensive efforts to strengthen this legislation.

Of particular concern is the proposed minor clearance activity under the risk assessment approval pathway that is primarily geared towards a 'hands-off' approach to environmental governance tailored to a

diminished public service and cost savings for business. Although this may achieve some degree of 'streamlining', the rationale behind this is based on unfounded assumptions with no evidence to demonstrate that adverse environmental outcomes will not occur as a result. Further validation of these assumptions is urgently needed before the risk-assessment pathway and minor clearance activity is adopted.

We strongly recommend that the current review needs to maintain a focus on the primary objective of the NV Act i.e. the conservation, protection and enhancement of native vegetation in South Australia (including remnant native vegetation) and guarantee that a robust system is in place that ensures remnant vegetation clearance occurs only when no other alternative exists. It is our strong belief that any changes to the NV Regulations or clearance assessment methodology should have a sound ecological basis, rather than being driven by the need to reduce 'regulatory burden' and streamline administrative processes.

We suggest a further meeting to progress a way forward with the draft NV Regulations and formulate a better outcome for South Australia's native vegetation and the biodiversity conservation and essential ecosystem services it supports. Please contact me on (08) 7127 4633 or via email at nicki.depreu@ncssa.asn.au to find a mutually convenient time for this to occur.

Yours sincerely,



Nicki de Preu

Conservation Ecologist

Nature Conservation Society of South Australia

NCSSA Comments on the draft *Native Vegetation Regulations 2016* and Guide to the draft *Native Vegetation Regulations 2016*.

Background

The first paragraph should clearly state that the primary objective of the *Native Vegetation Act 1991* (the Act) is the conservation, protection and enhancement of native vegetation in South Australia (including remnant native vegetation) with the Regulations allowing for exemptions of clearance controls in certain situations. Although we acknowledge that the current review is primarily focussed on opportunities for streamlining the implementation of the Regulations we strongly recommend the draft paper provide a broader context for the objects of the Act.

We also recommend that the Guide recognize the significant impact that clearance of native vegetation has had in terms of biodiversity decline, land degradation and loss of ecosystems in South Australia (SA). The review of the Regulations needs to be considered within the context that native vegetation clearance across the State has contributed to 25 percent of all recorded plants and animals being considered as threatened and about 65 percent (2.8 million hectares) of native vegetation in rural agricultural regions remains at risk.¹ A map or table showing the amount of native vegetation remaining in various parts of the State should also be presented in the Guide.

It is our strong belief that any changes to the NV Regulations or clearance assessment methodology should have a sound ecological basis, rather than being driven by the need to reduce 'regulatory burden' and streamline administrative processes. The data provided in Figure 1 is used to justify the addition of the Risk assessment approval pathway and a new 'minor clearance' activity to the draft NV Regulations 2016 that are designed to "streamline the approval process for applications that pose a low risk to biodiversity conservation". The rationale behind this is that approximately 70% of such applications are "low risk" and the Department's argument that resources should be diverted away from these matters to more high risk matters. Yet, it is noted on page 9 of the Guide that, the proportion of these "low risk" sites where threatened species (and presumably threatened ecological communities) were recorded is currently being assessed. For this reason, we do not support addition of the Risk-assessment pathway to the NV Regulations until the outcomes of this assessment are made available and the implications for biodiversity conservation can be more reliably evaluated.

The proposed changes

The Guide summarises the main changes to the draft NV Regulations and we have a number of concerns regarding the following points:

Dot Point 1 - Inclusion of the mitigation hierarchy as a guiding principle for all clearance activities, which encourages proponents to consider all options for avoiding or minimising clearance, thereby reducing the impact (and where appropriate the required subsequent Significant Environmental Benefit)

We support the inclusion of the mitigation hierarchy in the NV Regulations 2016 however strongly recommend that Clause 5(a) and 7(2) are strengthened so that there is a requirement for applicants to demonstrate that they have addressed the first mitigation principle of Avoidance. The terms "should" and "wherever possible" should be removed from Clause 5(a) and "endeavour to give effect" removed from Clause 7(2) to provide greater force in relation to implementation.

Dot Point 2 - Increased clarity on permitted activities:

Although we support the need for increased clarity on permitted clearance activities the draft NV Regulations need to ensure that there is no weakening of existing exempt activities through changes to the wording of key qualifying clauses that are intended to prevent loopholes. One such example is the permitted activity of maintaining a 10m clearance around buildings (Schedule 1, Part 1). The existing NV Regulations state that they need to be "prescribed" buildings - i.e. approved under the Development Act 1993.

Dot Point 3 - New risk assessment pathway, combined with the addition of the minor clearance activity, ensures the level of in the clearance approval process is commensurate with the level of potential impact of the clearance.

This proposed new pathway and addition of the minor clearance permitted activity are of the greatest concern to NCSSA. The guide states that “This pathway has been designed to identify the clearance applications that pose a *low risk* to biodiversity conservation (that is, the likelihood of impacting on the conservation of species or vegetation community is minimal.” There is only limited information provided in the draft NV Regulations and Guide in relation to the criteria to be used to assess minor clearance and definitions of low, medium and high risk clearance. We have been advised that the criteria, assessment process and SEB for minor clearance, low risk and medium/high risk are still under development and rather than being included in the draft NV Regulations will be incorporated in to a policy or Guidelines under the NV Act. We strongly oppose the inclusion of such a pathway in the draft NV Regulations without further clarification of the criteria and definitions to be applied. We recently obtained a draft Explanation of Pathway 4 that included some detail about the criteria to be applied and assessment process for minor and low-risk clearance that raise even further concerns regarding this new pathway and permitted activity. The draft Explanation states that two considerations for assessing the risk to conservation of biodiversity are the size of the clearance or number of trees to be cleared, and the presence of threatened species or communities.

These considerations make the following unfounded assumptions:

1. Only the removal of listed threatened species or communities will impact on the biodiversity conservation values of a site;
2. Sufficient knowledge of the location and presence of threatened species or communities exists for accurate assessments to be made (particularly on private land);
3. Small size of patch (i.e. less than 0.03h for the Agricultural areas and less than 3ha for the Pastoral areas) is an adequate measure of ecological value; and
4. Incremental cumulative loss of vegetation and trees will not occur and will not increase under the new pathway.

Further validation of these assumptions is urgently needed before the risk-assessment pathway and minor clearance activity is adopted.

The draft Explanation document also outlines a process for Assessing the Risk that proposes that provision of site photographs with applications for minor clearance combined with existing records and expert knowledge will be adequate to determine the likelihood of the presence of threatened species or communities. The proposed process is inherently flawed and does not provide adequate safeguards to ensure that there will be no adverse impacts from ‘minor clearance’ applications.

Although the Guide and draft Explanation document provide an explanation of how cumulative impacts of minor clearance applications will be assessed, they only consider such applications for the previous five years on the same property and fail to address the cumulative impacts of minor clearance across the landscape on adjacent landholdings. We do not support this approach that will inevitably lead to further declines in biodiversity.

Reference

- ¹ Native Vegetation Change Detection Program. Native Vegetation Council Information Sheet No.25 Updated April 2013.