Local Government
Association of NSW

Shires Association of NSW

LGSA draft submission to the Draft Native Vegetation Regulation 2012	
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Opening:

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils, the special-purpose county councils and the regions of the NSW Aboriginal Land Council. The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community and the media.

The Associations thank the NSW Office of Environment and Heritage for the invitation to make a submission concerning the proposed Native Vegetation Regulation 2012.

Please note that in order to meet the consultation deadline, this submission is provided in draft form, in anticipation of LGSA Executive sign off in October 2010. The Associations will advise OEH of any amendments to the submission at that time.

Executive Summary:

The Associations welcome the opportunity to comment on the proposed *Native Vegetation Regulation 2012*. This submission focuses on the implementation aspects of the new Regulation, and their relationship to Local Government activities and operations.

Issues of interest for Local Government include:

- Clarification on the application of the proposed new rural infrastructure definition to:
  - the intensification of farming activities;
  - relevant environmental planning instruments;
  - 'new' farming activities.
- Clarification on the proposed rural infrastructure Routine Agricultural Management Activity (RAMA), including:
  - the different wording applying to different regions of the state;
  - the application of Planning for Bushfire Protection (PBP) guidelines for older buildings;
  - the uncertainty surrounding the long term future of PBP 2006.
- Changes to *Clause 30 Public Infrastructure* (RAMA) including:
  - recognising the role of Local Government in public land management;
  - investigating opportunities to remove regulatory burden on Local Government;
  - consulting with councils on implementation of the 'clearing of very small areas' provisions.
- An investigation into a RAMA for community benefit infrastructure.
- Improvements in the alignment between Private Native Forestry and Koala protection:
  - prohibiting logging in Core Koala Habitat areas identified under an approved Comprehensive Koala Plan of Management prepared under SEPP 44, and/or within areas identified the Environment Protection and Biodiversity Conservation (EPBC) Act;
  - allowing access to land for government staff who are undertaking koala habitat monitoring for the purposes of KPoMs or recovery planning under the EPBC Act;
  - changes to the definition of *critical environmental area* to include core koala habitat and significant populations as defined by SEPP 44 and the EPBC Act;
  - continued consultation with the Associations and relevant councils prior to the final amendment of the Regulations and PNF Code.
- The recognition of the importance of socio-economic considerations in the assessment of native vegetation regulation;
- The inclusion of RE1 Public Recreation in the list of zonings exempt from the Act.

Purpose:

This submission will outline the Associations' position on the proposed *Native Vegetation Regulation 2012*. The key areas of priority for the Associations are the implementation aspects of the Regulation, and their relationship to Local Government activities and operations. The more scientific and technical matters of the Environmental Outcomes Assessment Methodology have not been addressed in detail.

Introduction:

The Associations welcome the opportunity to comment on the *Native Vegetation Regulation 2012*. Since the native vegetation reform package was originally developed, Local Government has expressed considerable interest in the implementation of the legislation and methodology. Local Government is committed to working with the state government and other stakeholders to achieve a workable framework for the management of native vegetation in NSW.

The submission has been developed to reflect Local Government's policy positions as developed by resolutions of the Associations' Executive Committees and annual conferences. The Associations have actively supported the review and encouraged councils to make individual submissions, or provide input to these overall comments.

The Associations acknowledge their involvement in the stakeholder reference group, and express their appreciation to the Government for including Local Government in that more detailed consultation process.

Issues of Concern:

While the *Native Vegetation Act 2003* and the proposed *Native Vegetation Regulation 2012* are primarily focussed on the management of native vegetation on private agricultural land, the legislation does have an impact on the operations and functions of Local Government. Whether it be Local Government's role in strategic land use planning and development control, or its activities as a public land manager, the legislative framework for native vegetation management has an influence on Local Government's decision making processes and on-ground outcomes.

The complex nature of the legislative framework, plus the complex interaction with other pieces of legislation (i.e. *Environmental Planning & Assessment Act 1979*), is a concern for many councils. While it is acknowledged that the government is attempting to reduce the complexity of the system, there is still a range of opportunities for improvement.

Routine Agricultural Management Activities (Part 6)

Division 1 Preliminary

The Associations acknowledge the government's attempt to clarify the definition of '*rural infrastructure*' within the legislative framework in Clause 24 of the proposed Regulation:

> *A building, structure or work on a landholding is rural infrastructure for the purposes of section 11 (1) (a) of the Act and this Part only if the building, structure or work is used for the purposes of, or in connection with, agricultural or farming activities that are being carried out on the landholding.*

However the Associations seek clarification about how this definition deals with potential intensification of farming or agricultural activities, such as grazing to cropping, or market gardening to intensive poultry farming. Clarification is also sought as to how this relates to definitions of farming and/or agriculture in relevant environmental planning instruments, and 'new' farming activities such as biodiversity or carbon farming.

The Associations seek:

- Clarification on application of the definition of '*rural infrastructure*' to intensification of farming activities,

- Clarification on relationship of the definition of '*rural infrastructure*' to relevant environmental planning instruments,
- Clarification on application of the definition of '*rural infrastructure*' to 'new' farming activities.

Division 2 Infrastructure

Subdivision 1 Rural infrastructure

While the Associations acknowledge the need for different Routine Agricultural Management Activities (RAMA) frameworks for different parts of the state (as structured in *Clause 26 Infrastructure buffer distances*), clarification is sought as to why there is different preliminary wording for the Coastal Region (than that for Western Division, Central Region and Small Holdings). This different wording has the potential to confuse and complicate the interpretation of the Regulations, and it is recommended that it be aligned.

Likewise, clarification is sought regarding the bushfire asset protection zone (APZ) exemptions that have been amended from the 2005 Regulation. Clauses 26 (3)(f) and (4)(g) refer to APZ surrounding 'existing habitable buildings' as '*determined in accordance with the document entitled Planning for Bushfire Protection published by the Rural Fire Service in 2006*.' While these clauses apply to the Coastal Region and Small Holdings, there are no corresponding clauses for the Western Division and the Central Region.

Also, the *Planning for Bushfire Protection* (PBP) document applies to all new development that requires development approval under the Environmental Protection and Assessment Act 1979. It is not retrospective to building build before it came into force. This means that there are many building, especially older rural houses that have not been assessed according to the PBP guidelines. How is the government planning on managing and/or supervising the assessment of all these older properties to comply with the new regulation?

The PBP is currently being reviewed by the NSW Rural Fire Service. The Associations have been advised that this review will not be finalised until the current broader review of the whole land use planning system is completed. This may not be until late in 2013, well after the *Native Vegetation Regulation 2012* will be enacted. It seems illogical for the Native Vegetation Regulation to be amended to reference a document (PBP 2006) that will soon be superseded.

The Associations seek:

- Clarification on different RAMA wording applying to different regions of the state,
- Clarification on application of Planning for Bushfire Protection guidelines for older buildings,
- Clarification of uncertainty surrounding long term future of PBP 2006.

Subdivision 3 Public infrastructure

The proposed Regulation (2012) includes a clause (*cl 30 Crown land management infrastructure*) allowing for the construction, operation and maintenance of infrastructure on Crown land to be exempt from approval under a RAMA. This RAMA is open to '*an instrumentality of the Crown or a reserve trust in the exercise of its land management activities, including roads, tracks, viewing platforms, signs and recreational facilities (such as picnic and barbecue facilities)'*.

The Associations seek explanation from the Government as to why Local Government is not included under this RAMA. It has been argued that the *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) covers most public infrastructure activities that councils would wish to carry out on public reserves, and this provides exemption for councils from approval under the *Native Vegetation Act 2003*. However, the Associations are concerned that some inconsistencies within ISEPP mean that this is not the case.

Under Clause 65 (3) of ISEPP there are a range of development activities that councils can carry out on public reserves that are 'permitted without consent'. This includes such development as roads, cycleways, playing fields, amenity facilities and landscaping. However under Clause 66 (1) there are other development activities that are deemed as 'exempt development', including walking tracks, seats, barbecues, shelters, goal posts and play equipment.

An overriding constraint within Clause 66 is that all of these 'exempt development' activities must comply with Clause 20 (General Requirements for Exempt Development) within ISEPP. Of particular interest is Clause 20(2)(g) which states that to be exempt development, the development:

> *must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.*

The note attached to this clause specifically mentions development consent under the *NV Act 2003*.

This all seems to imply that some activities undertaken by councils on public reserves (under ISEPP) would not require approval NV Act 2003, but others would.

Councils manage significant areas of public land for the benefit of the whole community and make considerable investment in access and recreational infrastructure. This is all undertaken within a comprehensive legislative and policy framework of Plans of Management for Community Land. The Associations would argue that this is a significantly more robust governance regime than applies to crown reserve trusts and various state authorities, and therefore should be recognised in legislation. Due to the uncertainty surrounding the future of all SEPPs within the NSW planning system, the Associations recommend that the issue be resolved within the Native Vegetation Regulation, and that that the proposed clause be amended as follows:

30 Crown and public land management infrastructure

> *(1) The construction, operation and maintenance of infrastructure by an instrumentality of the Crown, ~~or a~~ reserve trust, or local government authority, in the exercise of its land management activities, including roads, tracks, viewing platforms, signs, facilities and recreational areas* (as defined in the *Standard Instrument (Local Environmental Plans) Order 2006*)*, are routine agricultural management activities.*

While the Associations appreciate the uncertainty around the long term future of the *Standard Instrument (Local Environmental Plans) Order 2006,* it is currently the best option for determining the appropriate definition in these circumstances:

> ***recreation area*** *means a place used for outdoor recreation that is normally open to the public, and includes:*
>
> *(a) a children's playground, or*
>
> *(b) an area used for community sporting activities, or*
>
> *(c) a public park, reserve or garden or the like,*
>
> *and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).*

Habitat for Threatened Species

It is acknowledged that Clause 30(2)(a) protects vegetation that is a listed as threatened or an endangered ecological community, however, it does not seem to protect vegetation that is known to provide important habitat for threatened fauna. This could be rectified by changing the clause by inserting the words "*...is likely to comprise important habitat features for a threatened species*" after "*a threatened species, or a component of a threatened population or threatened ecological community, under the Threatened Species Conservation Act 1995…* ". A definition of '*important habitat features'* would also need to be provided.

Local Government RAMA

The previous Regulation (2005) included a RAMA specifically for Local Government infrastructure works (Clause 18A). This RAMA covered such works as sewerage treatment works, waste disposal landfill operations, waste management facilities, water supply works, gravel pits, cemeteries, and outdoor recreation areas or facilities. The proposed Regulation does not include this clause under the justification that the majority of these activities will be covered by the ISEPP.

The Associations support the removal of this RAMA due to its overall complexity and the subsequent implementation of ISEPP. However, as outlined above, ISEPP does not solve all the issues. Once again, while many infrastructure activities are 'permitted without consent', many others are 'exempt development', and thereby subject to Clause 20 (which invokes the *Native Vegetation [NV] Act 2003*).

While the Associations recognise that councils need to play their part in achieving the outcomes of the legislation, and therefore be subject to similar development controls and regulations as other landholders, the role of Local Government to deliver infrastructure and services for the benefit of the community must not be forgotten. Councils do not clear vegetation or develop land to gain personal profit, they do it to provide for their local communities. They are bound by a vast array of legislation and regulations that ensure that all economic, social and environmental issues are taken into consideration during the delivery of their functions. Opportunities for reducing the burden of regulation and red-tape on councils must be investigated by the government, and there are a range of opportunities available within these regulations.

The Associations have been advised by OEH that infrastructure activities that still require approval under the NV Act 2003 will most likely be assessed under the new 'clearing of very small areas' provisions in the proposed new Environmental Outcomes Assessment Methodology. The Associations request that the Government consults widely with councils across the state to determine the practical application of this process.

The Associations seek:
- Changes to Clause 30 to recognise the role of Local Government in public land management,
- Investigation of opportunities to remove the regulatory burden on Local Government,
- Consultation with councils on the implementation of the 'clearing of very small areas' provisions.

Division 5 Other activities

The need for some form of exemption for infrastructure of significant community benefit has been raised with the Associations. Currently, the development of some community-related facilities is assessed in the same way as private-benefit developments. While it is appropriate that all developments are assessed to minimise and mitigate their environmental impact, the broader social benefit of some developments may outweigh the potential environmental damage. The government should investigate the possibility of incorporating a RAMA for community benefit infrastructure into the Regulation. Examples of Community Benefit Infrastructure could include a community facility, child care centre, educational establishment, hospital, information and education facility, medical centre, or public utility undertaking (within the meaning of the *Standard Instrument*).

The Associations seek:
- An investigation into a RAMA for community benefit infrastructure

Private Native Forestry and Koala Protection

A number of councils, especially on the north coast of NSW, have raised some serious concerns over the conflict between the legislation and policy governing Private Native Forestry (PNF) and that protecting Koalas and their habitat.

State Environmental Planning Policy 44 (SEPP 44) operates within the legislative framework of the *Environmental Planning and Assessment Act 1979*. The aim of SEPP 44 is 'to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.' To achieve this aim, councils are required to develop comprehensive Koala plans of management (KPoMs) to guide strategic planning and development control.

To date three councils (Coffs Harbour, Kempsey, and Port Stephens) have approved KPoMs, with another awaiting approval and four more currently developing them. All of these councils have allocated significant resources to the development of these important plans, and it is vital that other government policies and legislation do not compromise their objectives. These councils have advised the Associations that they consider that the current PNF framework directly conflicts with their SEPP44 KPoMs, and that this needs to be resolved.

Councils are calling for logging to be prohibited in any Core Koala Habitat areas identified under the auspices of an approved Comprehensive Koala Plan of Management prepared in accord with SEPP 44 methodology. They have also called for logging to be prohibited within areas identified as supporting an important Koala population for purposes of the Australian *Environmental Protection and Biodiversity Conservation Act 2003*.

Councils have also requested that a condition be placed on all PNF licence holders to allow access to land for government staff (or their contractors) who are undertaking koala habitat monitoring for the purposes of KPoMs or recovery planning under the EPBC Act.

Specifically relating to the wording in the draft Native Vegetation Act Regulations 2012, it is recommended that *Part 5 Clause 22 (4)* should include core koala habitat and significant populations as defined by SEPP 44 and the EPBC Act in the definition of '*critical environmental area'*. This would clarify many of the inconsistencies within the current framework.

The Associations seek the following:

- The prohibition of logging in any Core Koala Habitat areas identified under the auspices of an approved Comprehensive Koala Plan of Management prepared in accord with SEPP 44 methodology, and/or within areas identified as supporting an important population for purposes of the EPBC Act.
- A condition to be placed on all PNF licence holders to allow access to land for government staff or their contractors who are undertaking koala habitat monitoring for the purposes of KPoMs or recovery planning under the EPBC Act.
- Part 5 Clause 22 (4) of the draft Native Vegetation Act Regulations 2012 should include core koala habitat and significant populations as defined by SEPP 44 and the EPBC Act respectively in the definition of critical environmental area.
- Continued consultation with the Associations and relevant councils prior to the final amendment of the Regulations and PNF Code.

Social and Economic Impacts

The Associations are concerned that the draft Regulation does not consider social and economic factors related to the clearing of native vegetation. The *Native Vegetation Act 2003* should not override other Acts, it should complement them to achieve overall state targets. The Standing Committee on State Development in central western NSW's recommended (Recommendation 24) that the NV Act "*incorporate within it a requirement that local socio-economic impacts be part of any assessment considerations"*. This view on the inclusion of socio-economic considerations aligns with Associations' long standing policy positions on a range of NRM issues.

The Associations seek:

- The recognition of the importance of socio-economic considerations in the assessment of native vegetation regulation

Land Excluded from Operation of Act (Schedule 2)

The draft Regulation also proposes a change to the Native Vegetation Act 2003, in relation to the land that is excluded from the operation of the Act. It includes a list of the zones (within an environmental planning instrument) that are exempt from the Act. While the Associations support this clarification of the applicability of the Act, it does not support the omission of RE1 Public Recreation from this list.

Many parcels of land zoned RE1 Public Recreation are located within broader areas zoned for residential, commercial or other urban zone uses. It is illogical for public land surrounded by housing to be subject to the Act while the surrounding houses are not. It also seems to represent a distrust of Local Government, implying that public land zoned RE1 and managed by a council is in danger of broad scale land clearing. As stated earlier, all public land management by councils is governed by a comprehensive legislative and policy framework that ensures that environmental protection is at the forefront of council actions.

The Associations seek:

- The inclusion of RE1 Public Recreation in the list of zonings exempt from the Act.

Conclusion

Local Government is committed to working with the State Government and other stakeholders to achieve a workable framework for the management of native vegetation in NSW. It is hoped that this submission has identified practical solutions to improve the implementation of the Regulation and help achieve the desired outcomes on the ground. The Associations would be happy to discuss any of the issues raised in this submission and clarify any of its policy positions outlined if required.