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THE GREENS NSW

Native Vegetation Regulation Review
Conservation Policy and Strategy Section
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Submission on the review of the Native Vegetation Regulation and Private Native Forestry

As the environment spokesperson for the NSW Greens I welcome the opportunity to comment on the significant changes proposed to the operating framework that underpins the landmark *NSW Native Vegetation Act 2003* (NV Act)¹.

The Greens NSW believe in encouraging landholders and managers on all land tenures, through a mix of regulatory controls and incentives, to protect the biological diversity of their lands. In this review process we are being asked to comment on the regulatory controls.

This submission comments on the following items on exhibition:

- Draft Native Vegetation Regulation 2012
- Regulatory Impact Statement
- Amendments to the Environmental Outcomes Assessment Methodology (EOAM);
- Code of Practice for Private Native Forestry (PNF) and other associated documents, including a discussion paper relating to koalas.

Native vegetation loss is a causal factor of many environmental problems in Australia including dryland salinity, soil erosion, weed invasion, poor water quality, loss of wildlife habitats and species endangerment. It is a vital public resource that underpins the very survival of humans through the environmental services it provides and must be cared for. Since 1788, at least 61% of the original native vegetation of NSW has been cleared, thinned or significantly disturbed (State of the Environment Report 2006).



The *Native Vegetation (NV) Act 2003* is the key legislative tool in NSW to prevent broad scale clearing and protect native vegetation of high conservation value and it has been widely credited with stabilising the extent of native vegetation in the state. Greens NSW are aware there have been calls for the Act to be repealed in its entirety, including a private members bill from the Shooter and Fishers Party. It is noted that the Government is not examining the Act as part of this review but will collate views raised about the Act for further consideration. Greens NSW support the *NV Act* and would oppose its repeal.

The success of the Act is largely dependent on the detailed regulations and the methodology for the assessment of environmental outcomes which are the subject of this review.

Under the NV Act and Regulation vegetation clearing requires approval in the form of a Property Vegetation Plan (PVP). PVPs are negotiated with local Catchment Management Authorities (CMAs) and expected to meet an 'improve or maintain' environmental standard. Some native vegetation clearance activities do not require approval and these are termed Routine Agricultural Management Activities (RAMAs). It is proposed to add to the list of RAMAs that will be exempt from having to obtain CMA approval. A new category of RAMA is introduced where the activity is exempt if it complies with a Code of Practice. CMAs use an Environmental Outcomes Assessment Methodology (EOAM) to guide the assessment of clearing proposals that require approval. The EOAM is being reviewed along with the Regulation. They are further proposing to relax the compliance regime.

The Greens are supportive of proposed initiatives to work with landholders cooperatively to get PVPs in place in an efficient manner and to improve information delivery and education options for landholders.

However, we are extremely concerned that some of the new exemptions and streamlining proposals in this review will weaken the integrity of the legislative scheme and its environmental protections. Proposals to allow new exemptions for ecological thinning, burning and invasive native species are particularly concerning as are the relaxation of rules for the clearance of small patches and clumps and paddock trees.

We are also very concerned that concurrence from local CMAs will not necessarily be required for several decisions. CMAs have been established across New South Wales to ensure that regional communities have a say in how natural resources are managed in their catchments. Among their important and relevant duties are to ensure that decisions about natural resources take into account appropriate catchment issues, to involve communities in each catchment in decision making, to make best use of catchment knowledge and expertise and to apply sound scientific knowledge to achieve a fully functioning and productive landscape. These remain important considerations for the management of native vegetation.

There are also instances in this review where it is proposed to remove requirements for the Minister to consult with the Natural Resources Commission.



The object of the *Natural Resources Commission Act 2003*⁴ is to establish an independent body with broad investigating and reporting functions for the purposes of:

- (a) establishing a sound scientific basis for the properly informed management of natural resources in the social, economic and environmental interests of the State, and
- (b) enabling the adoption of State-wide standards and targets for natural resource management issues, and
- (c) advising on the circumstances in which broad scale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of the *Native Vegetation Act 2003*.

It is vital that the Minister be required to take into account the sound scientific basis for native vegetation management decisions that the NRC is able to provide. The management of native vegetation is highly politicised in this state and the NRC provides an important check against the politicisation of decision making. The NRC should not be side-lined.

The controls for Private Native Forestry are already grossly inadequate and this review does not propose to improve them in the way that is needed. The current reliance on landholders to self regulate and identify threatened species and threatened ecological communities on their properties will continue. It is unrealistic to expect all landholders to have this expertise and it also ignores their inherent conflict of interest. It is inevitable that important biodiversity will continue to be overlooked and put at risk. Neither does the review propose to address the known and frequently criticised inadequacies that already exist with the threatened species prescriptions. The notifications and protections for threatened species and ecological communities that are proposed in the reforms are wholly inadequate. However, the proposed protection for regrowth is an improvement that we can support.

Draft Native Vegetation Regulation 2012:

The NSW Greens understand the *Native Vegetation Regulation 2005* is due to be repealed under the *Subordinate Legislation Act 1989* unless remade by 1 September 2012, or a postponement to the repeal is granted by the Premier.

RAMAs

The changes to the Regulation significantly expand the categories and definitions of clearing where a formal approval is not required – the exempt Routine Agricultural Management Activities (RAMAs).

The new and expanded RAMAs include:

- New meaning of rural infrastructure (proposed section 20)
- Changes to obtaining construction timber (removal of requirements to use within 18 months and undertake restoration (proposed section 27)
- New RAMA for non-rural infrastructure – Permanent boundary fences (proposed section 28)
- New RAMA for non-rural infrastructure –shed (proposed section 29)



- Telecommunications RAMA applies to all land (proposed section 32)
- Clearing invasive native species (proposed section 34) in line with a new Code of Practice
- Clearing for Environmental works (proposed section 35) in line with a new Code of Practice (including 'ecological' fire management).
- Thinning of native vegetation (proposed section 36) in line with a new Code of Practice
- More flexibility for dwellings (proposed section 42)
- Conservation purposes (proposed section 43)
- A scientific license (proposed section 44)
- Pest animals (proposed section 45)
- Planted native vegetation (proposed section 46)

An estimation of how much additional native vegetation will be lost as a result of these new exemptions is not provided in the Office of Environment & Heritage (OEH) Fact Sheets prepared for the Review nor in the Regulatory Impact Statement (RIS).

Once an activity is exempt it is difficult to track how much clearing is undertaken as a result of that activity and therefore difficult to assess the cumulative impact. This is noted in the RIS. We are concerned that the Government will have little to no ability to ensure the Codes of Practice for the new categories of RAMA for thinning, invasive native species and environmental works are enforced.

The new RAMAs for clearing declared invasive native species and thinning native vegetation, without the approval of the local Catchment Management Authority, have the potential for hundreds of thousands of hectares of native vegetation to be lost. We do not support a lack of oversight from the CMAs and we are concerned over the enforceability of the proposed codes of practice. We do not support these exemptions.

It is proposed that 'ecological fire management' can be declared an environmental work RAMA and that this may also be done without concurrence from the Catchment Management Authority providing it is carried out with a new Code of Practice. Burning native vegetation in an ecologically sustainable way requires considerable planning and an understanding of the ecology processes involved and how the vegetation will respond. It is not a routine agriculture activity. To exempt it from approval processes and consultation with the CMAs risks detrimental impacts on wildlife, threatened species and ecological communities and poses a risk to life and property. The Greens do not support ecological fire management being included in the RAMA exemptions.

We do not support the removal of the requirement for the Minister to consult with the Natural Resources Commission in relation to the declaration of a species of native vegetation as a feral species for specified land. Instead the Minister may by order declare a native species feral on the basis of a recommendation of a CMA or the Director General. Once a native species is declared a feral it can then be cleared as a Routine Agricultural Management Activity (RAMA). We consider it important for the Minister to be required to take advice from the NRC and the CMA on these decisions.

The proposed Regulations extend the clearing exemption for a single dwelling to other dwellings such as: dual occupancy, a dwelling house, secondary dwelling or semi-detached



dwelling, where development consent is required (new clause 42). As a consequence individual LEPs will be a critical component in achieving Catchment and NSW Standards and Targets for Quality Natural Resource Management (NRM) which include: ... *By 2015 there is an increase in native vegetation extent and an improvement in native vegetation condition.* We believe it is worth maintaining a requirement for advice from the CMAs.

We also consider it prudent for the CMAs to be consulted in relation to clearance for the construction of public utilities.

We are concerned that the RAMA for non rural infrastructure could lead to cumulative impacts when taken up in landscapes with multiple small landholdings. It might be that the exemption could be conditional on the size of the landholding.

The new RAMA to allow clearing of vegetation that has been planted is likely to be difficult to enforce. It states that vegetation which has been planted for conservation purposes would be excluded from the RAMA, however we point out that this will be difficult to police and recommend oversight from the local CMA.

Environmental Outcomes Assessment Methodology (EOAM)

The new clause, 17 Procedure for amendment of Environmental Outcomes Assessment Methodology (EOAM), replaces the requirement of the Minister to consult with the Natural Resources Commission (NRC) when making an amendment with a broader public exhibition process and a discretionary power to refer the Director General's report and amendment to the NRC for advice. While the Greens NSW are supportive of public exhibition, it is very concerning that input of the independent expert Agency, which has a statutory role in advising on broad scale clearing, is no longer a requirement. The EOAM is critical for biodiversity protection and the Minister should not be able to weaken it in the absence of independent scientific advice from the NRC. Once again it is a guard against the politicisation of decision making.

It is also concerning that the Minister is not required to pursue these public consultation requirements in circumstances where the Minister deems the changes to the EOAM are of a minor nature.

The current proposed changes to the EOAM are focussed on reducing assessment requirements in order to speed up assessment times and to align the methodology with other tools such as biobanking.

To stream line assessment times it is proposed that there be less protection for mature paddock trees and small patches or clumps of vegetation. Hollows in mature trees provide precious habitat for wildlife while loss of hollows has been recognised in law as a key threat to endangered species. Endangered Ecological Communities and threatened species habitat must not be cleared by stealth with less scrutiny over the clearance of small patches. These proposals risk a return to the problems which existed prior to the introduction of the NV Act in 2003 when exemptions for small patches and individual trees led to significant cumulative clearing. We do not support these changes to the assessment methodology.



We are further alarmed by the proposal to allow a biodiversity credit system for farmers to exchange credits with other landholders to give them greater flexibility to clear vegetation and 'offset' it with vegetation protection elsewhere. This weakens the 'improve and maintain' test so that it is measured across a landscape rather than a property. We note the changes are being pitched as a precursor to allowing farmers to participate in the state's BioBanking Scheme – a scheme that is already fraught with problems. The EOAM will be further weakened if the tool is brought into line with the alarming changes that have recently been proposed to the BioBanking tool to allow offset trading between vegetation formations rather than vegetation types. Those proposals are designed to tolerate biodiversity loss and we have strenuously opposed them in our submission to the review of the BioBanking scheme.

It is also proposed to use vegetation types as surrogates for predicting whether threatened species occur on properties rather than requiring the presence of threatened species to be assessed individually. We suggest the Government exercises extreme caution before taking this step. It relies on a strong degree of confidence in the mapping and identification of vegetation types that we do not believe is currently possible in all areas of NSW. We have written separately to the Minister in relation to our concerns over the inadequacy of the SPOT5 vegetation mapping we believe OEH intends to roll out across the state in the interests of speed over accuracy. Our recommendation has been for OEH to invest in ASD40 mapping technology to identify vegetation types state-wide with superior accuracy in order to reliably inform landholders and CMAs for decision making under the NV Act. If OEH is not heeding this advice and persisting with inferior SPOT 5 mapping technology then it would be even more problematic to do away with individual species assessments. We do not support this change to the EOAM.

Compliance

Greens NSW support a focus on communication and extension activities to ensure that landholders understand their legislative responsibilities. This is essential to any compliance regime. We also support the hierarchy of responses that are proposed for clarifying the rules, minor and serious breaches. However, what is of paramount importance is for landholders to know that the Government is dedicating significant resources for a vigilant monitoring and compliance regime through satellite imagery and aerial photography and on ground site inspections. This will be particularly important if the Government persists with an expansion of RAMA exemptions in line with voluntary codes of practice that present new enforcement challenges. We consider it irresponsible to send signals to landholders that compliance is to be relaxed.

Regulatory Impact Statement

The *Subordinate Legislation Act 1989* requires a Regulatory Impact Statement (RIS) to be prepared for all new regulation (including the remake of an existing regulation). The RIS must assess the costs and benefits of the proposed statutory rule and alternative options, and determine which option involves the greatest net benefit or the least net cost to the community.



The RIS only compared 3 options, Option 1- having no Regulation (the Base Case); Option 2- the proposed amended Regulation ; or Option 3-the existing Regulation. The RIS indicates that the costs and benefits of the options depend on their relative ability to achieve the objects of the Act. There is however, no evidence that the RIS considered in any substantive manner the cost and benefits with respect to the Objects of the NV Act particularly 3(e) *to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation; in accordance with the principles of ecologically sustainable development.*

Private Native Forestry Reforms

The Private Native Forestry Code of Practice must be strengthened to better protect the environment. More protection is needed to maintain the integrity of forest structure, protect steep slopes and protect wild life habitat. There is a real risk that even some existing controls will be lost if some of the proposed changes are implemented. Following are the Greens NSW most serious concerns:

Expert Surveyors, accredited experts

There should be a requirement for a landholder seeking a Private Native Forestry Property Vegetation Plan to have a fauna and flora survey of their property carried out by fully independent and highly qualified accredited ecologists prior to submitting their PVP for approval. The current reliance on the landholder to identify the threatened species and ecological communities on their property is unrealistic and unwise and is already leading to significant biodiversity loss. This is an inappropriate concession for private native forestry that should be rectified in these reforms.

Pre-logging surveys should be standardised so that the information can be made available for a state wide undertaking to obtain more thorough standardised vegetation mapping that is available to the public. This can then inform regional planning and assist with understanding cumulative impacts of forestry activities on a regional basis.

For the public to have confidence in accredited experts there also need to be rules and procedures to challenge the approvals and reports provided by accredited experts and to remove accreditation when approvals and reports are found to be deficient.

Notification of commencement of logging activity

We are alarmed by the proposal to enable a landholder to notify the EPA that logging operations will happen at some point in the next 14 days or up to 3 days after the commencement of operations. This is entirely inadequate.

The EPA must be given adequate notification of 14 days or more prior to commencement. With reference to the original thorough flora and fauna survey held by the EPA, information must include the type of vegetation and the area to be cleared. This should be made available on a



publicly accessible web site to allow ongoing assessment of the regional status of vegetation cover.

Protection of ecological communities that are listed by the TSC Act

No logging should be allowed in threatened ecological communities or core habitat for threatened species listed under any category of the TSC Act. Even ecological communities that are listed as vulnerable should not be logged because incremental logging may force previously vulnerable species and ecological communities into endangered or even critical status in a short time.

Species prescriptions

The species prescriptions are inadequate and many threatened species are not listed. Constituents are repeatedly advising us of PNF operations taking place in habitat for threatened species that are not included in the prescriptions. The regulations ought to refer to the lists of species as they appear in the *Threatened Species Conservation Act*. This would be simpler, more comprehensive, reduce the risk of species being overlooked and would allow for ongoing automatic updating rather than having to revisit the regulations each time a new species is added to the list.

Protection of Regrowth Trees

The amendment to enable the Minister to prepare natural resource management plans to protect regrowth is to be supported however, it is essential that this is made mandatory rather than discretionary.

Protection of Aboriginal Heritage

Proposed amendments to allow landholders to exercise due diligence to identify Aboriginal objects on their land would lead to subjective decision making and may lead to losses of items of significance to the Australian community.

Changes to RAMAs allowed on land subject to PNF PVPs:

We hold similar concerns over the RAMAs that will apply to PNF PVPs as we do to those for native vegetation generally. Approval to clear land for building houses by local council only, will lose the expertise of the Catchment Management Authority (CMA) in the decision making process. Not all local governments have the resources to have appropriate expertise on hand when they need it. A considerable amount of land can be cleared in a very short time especially in areas with many small holdings. Cumulative impacts must be considered with all land clearing.

Approvals to allow ecological burning without approval from the CMA presents the same sorts of risks as for clearing to build houses.



Clearing scattered and small clumps, small patches, single paddock trees and thinning dense vegetation without adequate supervision has the potential to remove critical habitat in wildlife corridors for many species, particularly birds that rely on hollows for nest sites. Old paddock trees and clumps are often the last refuge in a cleared landscape and removing these may force many species into a higher danger category. Improve or maintain trees where there is offsetting may not offset with like for like. It can take many, many decades for appropriate tree species to develop tree hollows and any loss of these has the potential for further endanger threatened species.

Private Native Forestry and Koalas – Discussion Paper

Greens NSW support the strongest possible protections for the koala. The Discussion Paper canvasses 3 options for using koala habitat mapping in the PNF regulation.

- a) No change - continuation of the current rules where landholders and forestry operators are relied upon to identify the areas of core koala habitat based on known records/site evidence (unless habitat has been identified by a council in a Koala Management Plan in which case PNF is prohibited).
- b) PNF prohibited in certain mapping categories of an approved Koala Plan of Management and restricted in other categories with no need for a follow up field assessment. It is noted that the lack of on ground validation could result in logging being prohibited in areas of little or no value for koalas at significant cost to landholders.
- c) Certain mapping categories in an approved Koala Plan of Management trigger on-ground validation of the presence or absence of koalas.

We consider each of these 3 options to be problematic. Previously in this submission we have said that pre logging flora and fauna surveys by independent accredited experts should be required before PNF PVPs are submitted for approval. Private native forestry should not be allowed in core habitat for any threatened species. This would be stronger than each of the options above and provide essential protection for all threatened species including the koala.

Summary:

The Greens NSW support retention of the Native Vegetation Act 2003. We support some of the initiatives proposed in the reform of the Regulation and the Private Native Forestry Code of Practice to improve the transparency and availability of information to landholders. We are concerned by proposals to add to the list of RAMAs in the absence of oversight from the Catchment Management Authorities, and therefore by the cumulative impacts and ecological consequences that will follow. We are concerned that the role of the Natural Resources Commission to provide impartial scientific advice, which we consider essential, is being sidelined. We further consider it essential that OEH invest in accurate standardised vegetation



mapping to inform native vegetation management decisions using ADS40 technology rather than SPOT 5. The failure to require flora and fauna surveys by independent accredited experts prior to submitting a PNF PVP should be rectified in these reforms. Without this vital first step PNF will continue to present a serious risk to biodiversity. We don't support further entrenchment of offsetting as a tool for biodiversity protection because more often than not it does the opposite and we would like to see stronger safeguards for threatened ecological communities and threatened species habitats in both native vegetation and private native forestry controls.

Thank you for considering our views.

Yours sincerely

A handwritten signature in black ink, appearing to read "Cate Faehrmann", with a long horizontal line extending to the right.

Cate Faehrmann
Greens NSW