eurobodalla shire council

Our Ref: E04.8913

24 August 2012

Native Vegetation Regulation Review
Conservation Policy and Strategy Section
Office of Environment and Heritage
PO Box A290
SYDNEY SOUTH NSW 1232

native.vegetation@environment.nsw.gov.au

Dear Sir/Madam

Comment on the Draft Native Vegetation Regulation 2012

Eurobodalla Shire Council is responding to your request for submissions on the review of the *Native Vegetation Regulation 2012 (the Regulation), the Environmental Outcomes Assessment Methodology 2012 (EOAM)* and *Draft Private Native Forestry Code of Practice, Southern NSW 2012 (PNFCoP).*

The governance of this Act has presented challenges for Council and the local community, particularly in relation to development assessment, and the dual assessment process it invokes. In Council's experience there seems to be a lack of understanding locally of the scope of the *Native Vegetation Act* (*NVAct*) and *Regulation* with confusion between planning controls of the *Environmental Planning and Assessment Act (EP&A Act)*, the *Threatened Species Conservation Act* and *NVAct* evident in local communities. Consultation with rural landholders that have actually had direct experience with the *NVAct* is encouraged.

Council supports the efforts evident in the exhibited material to improve efficiencies and streamline assessment and encourages the flexibility to tailor decisions to the local area and for Catchment Management Authority staff to negotiate management actions with landholders.

It is recommended that any development that has been assessed and determined under the *EP&A Act* where there is already a requirement for environmental impact assessment including direct and indirect impacts on threatened species or their habitats should be exempt from the operation of the *NVAct*. It is also recommended that the *NVAct* not apply to land zoned SP1 Special Activities, SP3 Tourism or R5 Large Lot Residential.

The attached tables outline specific comments with reference to the exhibited drafts.

89 vulcan street moruya
po box 99 moruya nsw 2537
t 02 4474 1000 | f 02 4474 1234
council@eurocoast.nsw.gov.au | www.esc.nsw.gov.au

The Eurobodalla derives significant benefits from its unique natural environment; from the provision of essential ecosystem services through to supporting a growing tourism industry. These same biodiversity values present significant constraint to the development of land which is in limited supply in the Eurobodalla Shire and add considerable cost and time imposts to development proposals. Council supports the streamlining of native vegetation assessment and the draft regulations intent to remove remaining dual consent situations. It is however essential that any legislation provides for efficient processes and balanced outcomes.

The content of this legislation is controversial and there will always be discussion regarding regulation of land management and how state-wide provisions play out at the property scale. The key is to ensure that the framework of the Act and practical application through its regulation is fair, relevant, consistent and that the asset it aims to protect and manage is actually benefiting from the actions prescribed under its governance.

Council urges the Department to consider the issues raised, in the interests of the Acts' integrity and of ensuring that the high community expectations and the concepts of ecological sustainable development are upheld. It is hoped that with political will, concerted effort by scientists and policymakers and a genuine and cooperative effort from rural landholders the current approaches to native vegetation management can be refined and that we can collectively get the details right. Thank you for the opportunity to provide comment.

If you require further information please contact Paula Pollock - Natural Resource Planner on (02) 4474-7449.

Yours faithfully

Paul J Anderson
General Manager

Attach.

Native Vegetation Regulation 2012

Issue	Description	Reference
Land Use Zones	The list of land excluded from the operation of the Act in schedule 2 should be amended to include SP1 Special Activities, SP3 Tourism and R5 Large Lot Residential in consideration of the purpose of the zone and substantial character of land so designated. The inclusion of SP2, SP3 and R5 in Schedule 2 is supported.	Schedule 2
RAMAs general	The term *routine agricultural management activity* (RAMA) is applied broadly by the *NVAct* and current *Regulation*, and refers to activities that are neither routine, agricultural, nor associated with land management. The appropriateness of applying RAMA clearing exemptions to land where agriculture is not the primary land use or the activity is not related to agriculture is misleading and confusing. The reference to agriculture reinforces Council's views that the Act has been applied in cases where it was not originally intended. Cumulative execution of RAMAs effectively removes all responsibility for environmental impact assessment of clearing actions and has the potential to facilitate land use change on small, non-agricultural holdings which is inconsistent with the objectives of the Act. Intensive use of RAMAs in such situations can result in almost complete clearing on small holdings The NV Act/regulation does not sufficiently define **appropriate** RAMA use and therefore fails to allow RAMA infringements to be penalised appropriately. There is no mapping or monitoring of cumulative clearing occurring as permitted and/or excluded clearing, nor clearing of regrowth. Application of a minimum lot size for RAMAs could be investigated or preferably a full strategic assessment of lands at subdivision stage should be undertaken and impacts on native vegetation managed through conditions of consent.	Reference
NRC	The removal of the requirement to consult with the Natural Resources Commission on changes to the assessment methodology opens the door for amendments to be made on political whim rather than sound science. This amendment represents a loss of independent scientific scrutiny, but on the positive, gains in requiring broad public consultation on proposed changes.	17

Issue	Description	Reference
Minimum Extent Necessary	Clearer definition supported, although what is required to justify the minimum extent necessary remains ambiguous. Landholders could be encouraged to document RAMA clearing for their own benefit and to monitor and explain observed regional changes in cover.	25
RAMA – Rural Infrastructure	'existing' agriculture and farming activities; non critical areas. Support the inclusion of the rural infrastructure definition and limitation of RAMA to instances where agriculture or farming activities are being carried out and for the purpose of, or in connection with such activities. The Provision eliminates any remaining agricultural related dual consent scenarios	Cl 24, 26 26(3)(f) and(4)(g)
RAMA - Construction Timber	Support the intent of this clause, but it needs to be clarified that the rural infrastructure must be constructed within a specified timeframe and undertaken to a specified limit otherwise unlimited clearing and stockpiling will occur (clearing in lieu of formal assessment) which is inconsistent with the intent of the clause and Act.	27
RAMA – Non-rural Infrastructure	Limit RAMA application to <u>one</u> shed, be it rural (3), non-rural (1) or existing (2) per landholding. This will eliminate ambiguity for landholders and is consistent with Codes SEPP. In relation to the application of Planning for Bushfire Protection, the clause should also specify 'as determined in accordance with the document entitled planning for Bushfire protection published by the Rural Fire Service in 2006 *and where the use is consistent with approved purpose*'.	29
Infrastructure Local Government	Support the intent of cl 30 in defining the construction, operation and maintenance of infrastructure by an authority as a RAMA, so long as clearing does not impact on a threatened entity or associated habitat. The inclusion of 'or a local government authority' to 30(1) is critical and will allow Council's to undertake general business in low risk situations without the requirement for additional assessment. Most of Council's infrastructure works are excluded from the operation of the *NVAct* as they are undertaken through part 5 of the *EP&A Act* (via infrastructure SEPP) or are deemed to be designated development. A possible anomaly is non-rural infrastructure such as public recreation facilities on public land. It is unclear if 'recreation facilities' is as described in the Standard Instrument LEP or limited to picnic and barbeque facilities. Clarification is required to ensure such activities are not restricted by the *NVAct.*	30

Issue	Description	Reference
RAMA - Dwellings	The inclusion of dwellings, dual occupancies and secondary dwellings if approved under the *EP&A Act* as a RAMA is supported.	42
Dual consent	Some of the Eurobodalla's farming community have previously expressed legitimate concern that the dual consent process is unnecessarily onerous for rural land clearing associated with genuine agricultural operations. Removing of land clearing from the Eurobodalla LEP has solved the main dual consent concern communicated by the farming fraternity. Most instances of dual consent have been removed by appropriate zoning applied in the new Eurobodalla LEP or through amendments proposed in this draft regulation.	
Planted Native Vegetation	The inclusion of clause 46, allowing voluntarily planted vegetation to be cleared without approval, (with the exception being situations where public funding has been utilised in the establishment of revegetation plots) is supported. It is unclear if publicly funded fencing or other materials associated with private revegetation projects should also be defined. This protects public investments but is not a disincentive for positive independently funded land management initiatives. Additionally, plantings or remedial works required under the *EP&Act* or other Act should be included as 46(3).	46
Environmental Protection Activities	While deemed as low risk activities by the draft – there are plenty of examples where well intended initiatives and projects on private and public lands have negatively impacted systems or species, for example; planting initiatives in grassy headland communities (EEC) and inappropriate fire regimes in coastal heath. Ecological fire management, in particular is prone to a wide variety of interpretative variation, and while a legitimate conservation management tool, unregulated application may have unintended deleterious impacts. The fact that inappropriate fire regimes are listed as a Key Threatening Process under the Threatened Species Conservation Act 1995 does not support the activity as low risk. Ecological fire management would be best provided for in clause 19. It is unclear if a Code of Practice or conditions of an as yet unmade order would sufficiently provide for balanced land management outcomes and improved clarity for the community. By declaring these as a RAMA, limited reporting or regulation of actions is expected to occur and it is therefore important that clarity in the operations of provisions is provided. Some form of mandatory reporting should be required and pre and post benchmarking an inclusion in any Code or order. Public exhibition of any Code or orders is supported.	33-39

Issue	Description	Reference
	To be consistent with other areas of the *Regulation*, the carrying out of environmental protection activities should only be a RAMA in situations where clearing will not negatively impact on a threatened entity or associated habitat. In regard to Thinning of native vegetation and compliance with the draft Code of Practice provided by way of example for Namoi, it appears that assessment of vegetation type and relationship to any threatened community or species seems to be left to the landholder as are a range of other decisions best made in consultation with a professional officer. Thinning benchmarks for all CMAs are not available and is the case for Southern Rivers. The process appears to be overly complex and a result may either not be utilised or potentially eventuate in unintended breaches of the legislation through confusion. This may not be a low risk activity and is better dealt with as a clause 19 Policy.	36
Provisions for Vulnerable Land	Clarification is required on whether the Natural Resource Management Plan will replace State Protected land and prescribed streams mapping and definition referred to under the old Native Vegetation Conservation Act.	Part 7

Environmental Outcomes Assessment Methodology 2012

Issue	Description	Reference
Fast track assessment	Efforts to reduce assessment requirements are consistent with the political expectation to cut red tape and the streamlining and coordinating of environmental assessment is supported in principle. In practise, care should be exercised to maintain environmental standards.	Ch 6
Streamlined assessment of low risk categories: Clearing paddock trees and small clumps of veg <2Ha in cultivation paddocks and very small areas	Habitat trees are a limited and limiting resource, are slow to recruit and are very prone to incremental loss in agricultural areas. While streamlined or simplified assessment is supported in principle for this category; a threshold amount should be specified for 'low risk' situations and everything else should default to higher risk assessment. This may differ between CMA regions or be dependent on landscape characteristics. This will provide greater clarity to the community and landholders. Endangered ecological communities should not be regarded as low risk. Perhaps, like RAMA distances, these described 'low risk' clearing categories may be more appropriately dealt with by having different thresholds for western vs coastal CMAs. For example, most clearing assessments undertaken on the coast involve areas of <3Ha whereas in the west of the State, clearing applications are generally for larger areas. Irrespective of the approach taken, the definition for low risk small clump categorisation should be <1Ha in area and subject vegetation should be of no greater than 70% cleared AND not an EEC type. It should be noted that most EEC remnant patches on the coast are <10Ha in size. Further, a threshold number of 'clumps' or area and temporal limits should be specified per property, to prevent cumulative application. Such an outcome would provide for streamlined assessment of true low risk scenarios while maintaining environmental outcomes. Similarly, reviewed description is recommended for 'very small areas' as, on the coast, up to 10Ha is not regarded as being 'very small'. As the actual time consuming part of assessment under the native vegetation act is usually the field component of the assessment and negotiating outcomes for the landholder. It is unclear how much of a saving the proposed streamlined assessment will realise for areas of this size. Rigorous testing of the EOAM should have been undertaken under these conditions to demonstrate savings and losses and the results made publicly available.	6.2 6.3

Issue	Description	Reference
Site assessment	The EOAM to some extent eliminates the subjectivity of consultants and brings a greater level of consistency to clearing assessments. On the whole the method is sound, and the intent of keeping the assessment streamlined is recognised, however, there are areas where improvement is necessary. For example, in applying the tool it is difficult to detect a difference between a 25 year old patch of forest and a 250 year old patch of the same vegetation type. The age structure, habitat value and productivity levels of the two would be completely different, yet one can be offset with the other and a potential loss of ecological value realised. The EOAM previously identified red light vegetation that could not be cleared, such as EEC vegetation. If brought into line with the biobanking tool, it will be possible to offset EEC vegetation with non-EEC vegetation as offset trading can be undertaken between vegetation formations not types. It is unclear how such changes affect the maintenance of environmental standards, although, alignment of the two assessment procedures and standards would simplify the system and may remove confusion for the community.	
Connectivity	The EOAM, while incorporating the connectivity assessment process, does not consider the actual value of 'connecting' vegetation for species affected by clearing but assumes all extant vegetation is a linkage regardless of type, quality or configuration (affecting landscape movements). The methodology does not provide for the strategic location of offsets or consult local/regional/state/national mapped connections – the tool could allow for clearing in a high conservation value connection – this is a fundamental issue requiring rectification. The effect of clearing (usually in a remnant) on a link in terms of gap creation, or adjacent land uses or resultant edge effects is not assessed, nor is the dispersal capacity, tolerances or biological requirements of predicted species. A refined corridor assessment (chapter 10) is required as is endorsement, recognition and incorporation of existing mapped connections as a priority. Adaptation and migration provisions under changing climatic conditions will become increasingly important and it may be timely to introduce higher/weighted credit values as an incentive for offsetting into high priority landscape connections.	10.2.6
Riparian assessment	The Act and Regulations must be amended to limit clearing and RAMAs being exercised in sensitive foreshore and riparian locations (under currently EOAM this is limited to prescribed steams only and these are few in number). It is unclear if protected riparian land identified in as yet unmade natural resource management plans (cl 50) will comprehensively cover coastal drainage systems, lakes and wetlands.	7.51

Issue	Description	Reference
Data	More regular data updates are required and identified anomalies should be rectified at the earliest opportunity. For example, in the Biobanking tool, which utilises a common dataset to the EOAM, the Gang Gang cockatoo is identified as a species credit species when the Glossy Black cockatoo, which exhibits similar life strategies, is not. Additionally, cumulative impacts will be better assessed if the percentage cleared of each vegetation type is constantly updated and thresholds set to be more responsive to losses incurred through RAMA application in more fragmented or smaller lot sized coastal areas.	

Private Native Forestry Code of Practice 2012

Issue	Description
Service delivery and resourcing	It is unrealistic to expect a single officer covering an area from Sydney to the Victoria border and out to the tablelands to adequately service the community, to undertake quality assessment, inspection and auditing and ensure harvest operations and environment protection standards are maintained. Further, without a 'private native forestry' definition in the standard template, and, in the interests of dispensing with dual consent obligations, many LGAs have included 'forestry' as an activity permitted without consent in most rural zones. This effectively means that local councils will no longer have an assessment role in activities of this nature, leaving this single officer to assess and approve not only forestry operations but implement controls relating to identification and management of environmental assets (ecological specialist), comment on design and siting of creek crossings and bed controls ensuring downstream impacts are minimised (geomorphological specialist), design operations to avoid landuse conflicts, key strategic assets such as landscape connections and infrastructure and contaminated, historic or culturally significant sites (landuse planning specialist). Additionally, this one officer will have to investigate and plan for impacts on public roading and infrastructure for movement of product and machinery to and from the site (engineering expertise) and consider how operations will affect other users of these public assets. Most of this assessment is not a requirement of the Act nor covered by the *Regulation* and now no longer assessed by local government. Operationally, this area of the regulation appears to be grossly under-resourced and a regulatory hole now exists in relation to the ancillary impacts of PNF. The failure to adequately resource such functions will have an adverse impact on landholders and timely progression of planned activities. Further, it may result in increased breaches.
Code sets minimum standards	The PNF assessment appears to circumvent other controls established under the same Act. Under existing regulation PNF PVPs are generally issued for a period of 5-15 years and following this the areas subject of logging activities is required to be allowed to regenerate. This is strongly supported. Should land be subject to continual harvesting (varied intensity), then this is equivalent to broad scale clearing and should be assessed as such. Under the Code, PNF cannot be undertaken on critically endangered communities, but can be undertaken on EEC under

	an Ecological Harvesting Plan and vulnerable ecosystems under a Forestry Operations Plan by an accredited expert. Since there are no examples of an Ecological Harvesting Plan for the south coast, comment is difficult to provide. In general, clearing or habitat modification activities adversely impacts EECs are not supported. This process also seems to be at odds with the process required to be undertaken on urban zoned land. The regulation provides little guidance of who would be regarded as an 'accredited expert' in relation to cl 22, consequently comments on the adequacy of the measures proposed are difficult to provide other than the provision of a pathway for considering local variation is supported, subject to addressing all nominated issues in 22(1)-(3). It is unrealistic to expect landholders to be able to comprehend the complexities of the threatened species prescriptions of the Draft Code. The prescriptions place an unreasonable expectation on the private landholder, that they have an intimate working knowledge of the *Threatened Species Conservation Act 1995*. Under the regulation, Landholders would be responsible for checking atlas data and independently assessing the habitat values of the site. An assessment of this nature would usually require a unique skillset and experience in ecological assessment To be consistent with harvesting activities undertaken on State Forest Estate, biodiversity and habitat assessments of all areas prior to logging should be mandatory. Exclusion of activities from riparian, old growth, rainforest, steep & erodible land & EEC is supported