

Native Vegetation Regulation Review  
Level 12  
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SYDNEY SOUTH NSW 1232

*Our Reference:*  
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Mr Mat Bell



24 August 2012

Dear Sir/ Madam,

**Re: Submission to the Native Vegetation Regulation Review – Mat Bell of Great Lakes Council**

This submission has been prepared pursuant to the Native Vegetation Regulation Review that is being undertaken by the NSW Office of Environment and Heritage.

I have attended two (2) workshops and information sessions in relation to the Review, comprising meetings at Maitland on the 25 November 2011 and 29 June 2012. I have prepared and submitted initial comments to the Review, via an e-mail dated 6 December 2011, to the Hunter/ Central Rivers CMA Office. I have read through the supporting material to the Review, including Fact Sheets, Discussion Papers, Outlines of Proposed Changes and the Regulatory Impact Statement. I am familiar with the operation of the current *Native Vegetation Act 2003* and *Regulation 2005*.

This submission represents my views as Senior Ecologist at Great Lakes Council. It does not purport to represent the views of the elected Council of the Great Lakes.

The most important point that I would raise is that there is a critical need for effective regulation of clearing and modification of native vegetation in New South Wales.

Until the introduction of SEPP46 and the ensuing Native Vegetation statutes, the unfettered and unimpeded clearing of native vegetation resulted in significant scale ecological damage. This included the impairment of essential ecosystem services, salinity and soil decline, land and water degradation as well as species extinction and biodiversity decline. Therefore, it is critically important that strict and effective regulation of native vegetation clearing is maintained and enhanced as a consequence of this review. The fundamental basis of Native Vegetation regulation needs to remain with the “*maintain and improve principle*” to stem and ultimately reverse the chronic history of degradation and harm associated with broadscale land clearing in NSW.

Therefore, it is my strong belief, that the NSW Government must not wind-back controls on the regulation of Native Vegetation in NSW. To do such would be a retrograde step and would result in significant further environmental impairment and landscape-scale damage.

The second key-point that I would like to raise in this submission is that Local Government can be a significant and constructive partner with regards to meeting the objects and outcomes for Native Vegetation in NSW. The synergies and contributions of Local Government in this regard should be understood and strengthened through appropriate recognition and inclusion in technical aspects and processes under the Native Vegetation statutes.

The specific comments with which I would like to raise in relation to the review of the Native Vegetation Regulation are set out below:

1. The proposed changes to the Local Government RAMA in the exhibited material appear, in my opinion, to be counter-productive and would lead to increasing rather than decreasing administration. By my reading, clearing of native vegetation for community facilities,

including essential public infrastructure on Council-owned land is likely to invoke the need for a PVP. Most such lands are zoned for Open Space, Environmental Protection or Special Uses to which the *Native Vegetation Act* applies. Assessment under Part 5 of the *EP&A Act* may circumvent the need for clearing approval, but there are many public infrastructure activities that need to be addressed under Part 4 of the *EP&A Act* and where dual consent under the *Native Vegetation Act* is likely to apply. This would burden the CMA Officers time, detracting from regulating the development industry and assisting sustainable native vegetation management in agricultural landscapes, which are, by far, more important tasks. The Crown appears to have *Native Vegetation Act* exemptions, whereas Council does not. This issue needs to be further evaluated. *Bona fide* and important public/ community facilities should be assessed via streamlined processes as far as Native Vegetation Regulation is concerned.

2. The process of tying the definition and application of RAMAs to agricultural activities is, in my opinion, a positive step.

In my experience, developers do utilise RAMAs to facilitate clearing of native vegetation preemptively ahead of the formal development consent process. These loop-holes need to be identified and closed. The application of such RAMAs in this manner is not *bona fide* and circumvents due planning process. This occurs broadly on a range of lands, but is often prevalent on the series of non-urban (rural) zoned land in paper subdivisions at places such as North Arm Cove, Bundabah, The Branch, Hamilton, etc. I do not object to the *bona fide* application of RAMAs that operate within both the objective and intent of the law. However, exploitation of RAMAs can undermine planning procedures and damage the natural environment unreasonably. I would encourage the tightening of the types, dimensions and applications of RAMAs to reduce the incidence of unreasonable exploitation. This may

require the terms of the application for each RAMA to be tightened and more explicitly defined in the NVR. Focussing RAMAs to *bona fide* agricultural activities is a positive step.

3. The intent to make consistencies between the Environmental Outcomes Assessment Methodology and Biobanking are positive and appropriate. This would enhance decision-making.
  
4. The NSW Government should further develop exemptions or permitted clearing for environmental enhancement and restoration projects, where there is a Management Plan that has been approved by the relevant authority. As an example, Darawakh Creek Wetland is a drained and highly modified acid sulfate soil landscape. Swamp Oak had colonised spoil banks created through the initial draining of the lands in the 1950's – 1970's. A fast-tracked approvals or exemption process should apply to the removal of such vegetation for drain-infilling, wetland restoration and conservation management purposes, where an approved Management Plan is in place and is being actioned.

In this manner, I would encourage the preparation and adoption of a permitted activity or exemption in the Native Vegetation Regulation for "*approved public environmental works and restoration activities*". A more expedient process to allow clearing for approved public environmental works and restoration would therefore be beneficial.

5. The requirement to obtain a Clearing Approval under the *Native Vegetation Act* should be integrated with the Part 4 Assessment process of the *Environmental Planning and Assessment Act 1979*. This would remove confusion and delays associated with the "*dual consent*" process. Further, there should be an application process for development PVPs and cost recovery for CMA/ OEH officers to assess such (allowing more appropriate resourcing of

development PVP assessment). Integration in such a manner would ensure consistency for approved developments with the provisions/ objects of the *Native Vegetation Act*. This would enable a more level playing field between the development industry and the agricultural sector with regards to Native Vegetation management. The current system is confusing and cumbersome. The impacts of development would also then scientifically demonstrate compliance with the “*maintain or improve*” principle, which is important and positive for vegetation conservation and landscape function.

6. This Council still has great problems associated with cumulative and chronic vegetation loss and degradation through the application of RAMAs on Rural-zoned (Non-Urban) small lots on paper subdivisions at localities such as North Arm Cove, Pindimar and Bundabah. Current RAMAs are being applied in this context and which can deplete most native vegetation on these very small holdings. The application of these RAMAs is not for *bona fide* agricultural pursuits. The intent to tie RAMAs more closely to bona fide rural activities may reduce the damage and degradation associated with this issue, but further thought is required.
7. RAMAs, other than dwelling-houses and boundary clearing, should not be permitted on Environmental Protection zoned land. There should be greater enforcement and regulation to protect, conserve and manage Environmental Protection zoned land in comparison with the provisions that apply to Rural-zoned land. At the moment, there is no such distinction. The distinction associated with land zoning should be enforced through enhancement and updating of the Native Vegetation Regulation.
8. There should be no moratorium on prosecutions of illegal land clearing. The offences and penalties, as well the ability of the NSW Government to track, identify, investigate, prosecute

and monitor unlawful land clearing need to be not only maintained, but upgraded and enhanced. The provision of greater resources to compliance is a key requirement.

9. The system of determinations and notifications associated with Private Native Forestry approvals needs to be revised and updated. Council is typically informed of such for notation on s149 Certificates. However, Council is not provided any of the details of such. There are instances where PNF approvals have been issued over Environmental Protection land zones and in areas covered by Council's Tree Preservation Order. Essentially, this voids the PNF approval until such time as Council has issued consent via a Development Application. This is a cumbersome and illogical system. PNF should be excluded from such zones or there should be formal consultation between a PNF Applicant, OEH and Council prior to the determination of PNF Approvals. I am concerned that PNF activities are not adequately assessed with regards to ecological, planning or social constraints and there appears to be a very limited process of supervision, monitoring and compliance actions. This is leading to significant environmental harm and degradation. As such, Council should be formally consulted during PNF Application consideration and Council comments should be reflected in PNF Approvals and decision-making.

My community has expressed to me great concerns with respect to the process associated with PNF approvals and the perceived lack of compliance. The community feels that PNF approvals are issued without appropriate regulation and consideration of on site ecological constraints as well as other statutory processes and influences.

Further, I am greatly concerned that representations were made at one of the workshops that I attended to remove current exclusions from the PNF code for the logging of rainforest, old-growth areas and EECs. I feel that this would significantly undermine Local Governments

biodiversity and catchment health-related strategies and aspirations. I feel that PNF needs to be more closely and appropriately scrutinised, regulated and audited for the protection of biodiversity and catchment function/ health.

10. Councils should be informed of the spatial details of areas where conservation and incentive PVPs have been executed. This would assist shared NRM planning outcomes and due recognition of such in the Local Environmental Planning system.

11. I would suggest that the application of "*clearing to the minimum extent necessary*" be regulated and more effectively enforced as an outcome of this review for Clause 6 of the NVR. We had an issue with an application to modify development consent for a single dwelling in our LGA, where the landholder wished to relocate the dwelling approval from a flat topography close to a main road where clearing was minimised to an area on the land on a ridge-top position where mature and significant vegetation occurred and where APZ clearing widths were significantly broadened. It was our interpretation that Clause 6 of the NVR would have mandated that the relocation of the development consent from the area of minor clearing to an area of major clearing was unreasonable and not in keeping with the NVR. However, formal advice from the CMA undermined our attempts to regulate this matter and ultimately, the DA approval was relocated, resulting in a significant worsening of environmental damage on this landscape. This needs to be addressed. The approved clearing in this instance was not "*to the minimum extent necessary.*" As such, there needs clarification around this phrase and due application of this principle within the Native Vegetation Regulation process.

12. I maintain that the current situation where rezoning applications are assessed under the Environmental Outcomes Assessment Methodology tools should be continued (and indeed

formalised) such that there is a level playing field between rural landholders and the development industry and that development provided for in LEP amendments can demonstrate that the environment is maintained or improved.

13. Finally, I would wish to make note that the local CMA staff have a history of effective consultation and liaison with myself and other Council staff concerning relevant matters (ie. matters of dual consent, rezonings). Effective consultation should be continued and enhanced between relevant agencies concerning Native Vegetation management in NSW.

Once again, thanks for the opportunity to make submission to the Native Vegetation Regulation Review. If any matter raised in this submission needs clarification, please do not hesitate to contact the under-signed.

Yours faithfully

**Mr Mat Bell**  
Senior Ecologist – Great Lakes Council