

Native Vegetation Inquiry  
Productivity Commission  
LB2 Collins St East  
Melbourne 8003

18/7/2003

**Re: PRODUCTIVITY COMMISSION INQUIRY INTO  
THE IMPACTS OF NATIVE VEGETATION & BIODIVERSITY REGULATIONS**

The Nature Conservation Council of NSW is the state's peak environment group. NCC was established in 1955 and represents around 150 000 individuals through its 130 member organisations. NCC is a strong campaigner on native vegetation and biodiversity issues among other project areas.

The role of the NCC is to provide guidance and policy representation to its member groups, and campaign on pertinent environmental and natural resource management issues affecting New South Wales. NCC has the advantage of statutory representative involvement in various state and regional consultative and advisory committees and boards developing natural resource management strategic plans, policies and guidelines throughout NSW.

This submission largely reflects NCC's focus on NSW native vegetation and biodiversity regulations at the strategic and policy level. We have focussed on the following issues relevant to the Inquiry:

1. Perverse environmental outcomes of the NSW Native Vegetation Conservation Act (1997);
2. Development of the NVC Act;
3. Implementation of the NVC Act;
4. The role of regional committees within the NVC Act;
5. Impacts of regulations in Greater Metropolitan Sydney; and
6. Recommendations.

NCC appreciates the opportunity to make a submission to the Committee regarding these important issues. If you require further information or greater detail regarding this submission or the issues discussed, please contact Clare Hammill, Native Vegetation Policy Officer on 02 9279 2633 or myself on 02 9279 2466.

Yours Sincerely,

Brooke Flanagan  
Executive Officer

## **1. Perverse environmental outcomes of the NSW Native Vegetation Conservation Act**

The Native Vegetation Conservation Act promotes the development of regional vegetation management plans and a native vegetation conservation strategy, however it fails to provide guidance for the conservation of vegetation in unambiguous terms, by way of clear objectives, targets, strategies and benchmark plans, five years after its implementation.

There are two major areas where the NVC Act allows for perverse environmental outcomes, illegal land clearing and inappropriate clearing under the existing exemptions.

### 1.1 Illegal land clearing

In any transitional phase, for example during legislative review, the risk of preemptive or 'panic clearing' is heightened. Recent proposed changes in NSW have seen the government fail to enforce a moratorium on all new clearing applications, as would be deemed necessary abiding by the precautionary principle. Lack of prosecutions of illegal clearing has led to a lack of respect for the legislation by many landholders and the perception that it can be disregarded. Under State Environmental Planning Policy No. 46 (SEPP 46) and the NVC Act, the distinct lack of enforcement and prosecutions has led to disrespect for the Department of Infrastructure, Planning and Natural Resources and especially its predecessor, and for the intent of the legislation.

Native vegetation clearance was listed in 2001 as a key threatening process, following a determination made by the NSW Scientific Committee in accordance with the provision of the *Threatened Species Conservation Act 1995*. As a result of the listing, the National Parks and Wildlife Service is required to prepare a Threat Abatement Plan, outlining a strategy to eliminate or manage the key threatening process across the state. This is required to be completed by 2004.

### 1.2 Clearing under exemptions

Excessive and unchecked clearing under the existing exemptions together with a lack of benchmarks and accurate reporting are problems associated with legislative flaws rather than in the implementation of the regulations.

The NVC Act is undermined by 40 clearing exemptions which require self assessment alone, rather than a development consent. These exemptions have provided loopholes for land clearing, and they are expressed in such a manner that they are inherently difficult to prosecute.

NCC commissioned a report entitled *'The Native Vegetation Conservation Act 1997, Options for Amendment'*, written by James Prest, 2001. This document outlines the problems caused by the present exemptions, and a series of options to change the NVC Act to overcome some of the inherent difficulties.

There are major concerns about the unchecked cumulative impacts of the exemptions under the Act, as there is no requirement for landholders to inform the Department of clearing perceived to be exempt. Therefore land clearing is being carried out without assessment, and without consideration for the broader and cumulative impacts on a regional basis. Alleged breach reports indicate the use of exemptions over large areas, an increasing use of a combination of exemptions so more land can be cleared, clearing of areas adjacent to land that falls under the exemption, and 'creative' interpretations of the exemptions which are not consistent with the objects of the Act.

## **2. Development of the NVC Act**

With the introduction of the State Environmental Planning Policy No. 46 (SEPP 46) in 1995,

NSW was brought into line with most other Australian states in terms of introducing statewide legislative controls for the management of native vegetation. The primary objective of SEPP 46 was to halt inappropriate land clearing, while considering environmental issues such as soil erosion, salinity, the provision of wildlife corridors, habitat preservation and ensuring adequate representation of remnant vegetation types in reserve systems, in addition to the social and economic implications of land clearing.

SEPP 46 proved to be largely ineffective due to a failure to provide strong leadership, adequate resourcing for the planning implementation process or an effective and informative communication regime.

The *Native Vegetation Conservation Act* (NVC Act) was developed to replace SEPP 46 in 1997. This Act promoted sustainable management and protection of native vegetation, whilst providing opportunities for self-assessment for clearing under the many exemptions under the Act, 12 of which were carried over directly from SEPP 46. Not only are the exemptions too numerous and loosely worded, there are no inbuilt mechanisms to monitor let alone mitigate cumulative impacts.

The Act promotes the conservation of native vegetation on a regional basis, prioritising the conservation of high conservation value vegetation and the improvement in condition of existing native vegetation, all in the environmental, social and economic interest of the state.

One criticism of the development process is that there was inadequate analysis and consideration of lessons learned from similar regulations in other Australian states. Additionally, linkages with water plans and catchment blueprints are not clearly stated, resulting in striving towards differing if not conflicting objectives and targets.

Another impediment to the success of the NVC Act in the developmental stage was the seemingly ad-hoc development of native vegetation regions, that complied with neither water boundaries, catchment boundaries or Interim Biogeographical Regions of Australia (IBRA). This has led to some areas of NSW being excluded from all native vegetation regions, therefore they do not have a representative regional vegetation committee to draw up a Regional Vegetation Management Plan.

### **3. Implementation of the NVC Act**

The implementation of the NVC Act has seen widespread failure of government departments to promote the spirit and intent of the regulations perhaps due to confusion or antagonism towards the process.

There has been an unrealistic 40 day turn around period for all applications. Staffing resources have not been adequate to uphold this promise, which has not helped to inspire confidence in the system. Further to this, the criteria for assessing applications are not sufficiently transparent, making the auditing process for clearing applications difficult and cumbersome.

Successful implementation of the Act has been hindered somewhat by the lack of direction and discipline from the former Director General of the Department of Land and Water Conservation (DLWC) due to a potential conflict of interest in his role as head of two government agencies (State Forests and Land and Water Conservation) with conflicting objectives (one to protect and one to harvest).

Since the commencement of the Act more than 400 alleged breaches have been reported with very few prosecutions.

The onus of proof in prosecution cases needs to be shifted from the Director General of the Department having to prove that illegal clearing has occurred, to the landholder having to

prove that the clearing in question was carried out under consent or a legitimate exemption. The South Australian native vegetation legislation the *Native Vegetation Act 1991* presumes that clearing was carried out by the landholder, and similarly presumes that the vegetation is native vegetation and therefore falls under the Act unless the landholder can prove otherwise. The NVC Act lacks these clear-cut parameters that ensure prosecutions can and do occur when breaches have occurred. When breaches occur, the South Australian legislation bases the awarded penalty on the extra profit that would be gained by the illegally cleared land, hence removing the perverse incentive to clear and cop the often relatively inconsequential financial penalty.

Insufficient financial incentives to conserve remnant vegetation and to rehabilitate and restore vast areas of degraded rural land has been a long-standing failing on behalf of the government. Government response is to consider further ways of cost sharing through partnerships, but according to the 2001 Commonwealth State of the Environment Report these have not proved successful in adequately addressing the overall financial demands so far.

#### **4. Regional committees within the NVC process**

Underpinning the NVC Act are Regional Vegetation Management Plans (RVMPs) developed by community-based Regional Vegetation Committees (RVCs). These plans were intended to account for different vegetation types and regions requiring different management regimes, and to allow for social, economic and environmental considerations at a finer scale within the statewide legislation. The complex bureaucratic process for the development of RVMPs.

These committees have not been provided with adequate support or guidance by government departments to develop satisfactory plans. Department representatives and facilitators on the committees were intended to be a conduit between the process and departmental resources and information, however in many cases communication was poor and any information that was passed on to the committee was too little too late. In the current system, committee Chairs are appointed representatives, and therefore are not independent which has in cases led to the obstruction of the process.

Many plans have been edging closer to consensus through a process of compromise. This process has resulted in aspects of many of the draft plans being well below acceptable environmental thresholds. The State failed to develop benchmarks against which to assess RVMPs to ensure they adhere to the objects of the Act and meet all required standards.

To date there have only been two regional plans gazetted since the process began in 1998 (Mid-Lachlan RVMP and Riverina Highlands RVMP) which in itself suggests the process is not functioning effectively. There has been little feedback with regard to the attitudes of the broader community to the plans, in final or draft form.

#### **5. Impacts of native vegetation and biodiversity regulations in Greater Metropolitan Sydney**

**Remnants of native urban bushland in Greater Metropolitan Sydney provide much of the area's character and contribute significantly to land values in the region. Greater Metropolitan Sydney extending north to Newcastle, south to Illawarra and west to the Blue Mountains only comprises 4% of the state's area. However changing land uses, driven by economic incentives, within it have significantly contributed to a loss of the states biodiversity and the creation of threatened species and ecological communities.**

**Such impacts have negative long-term economic, social and environmental effects. As economic incentives drive urban development in Greater Metropolitan Sydney remnants**

**of native urban bushland have become a valued and increasingly rare community resource.**

#### 5.1 Impacts of the *Environment Protection and Biodiversity Conservation and Threatened Species Conservation Acts*

**The impact of Commonwealth and State threatened species legislation on the economic and environmental pressures related to population growth and retaining existing land uses in Greater Metropolitan Sydney can be best demonstrated in Western Sydney. As Western Sydney's boundaries grow the cumulative impacts of these pressures on Cumberland Plain Woodland, a community listed as an Endangered Ecological Community under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Threatened Species Conservation Act 1995* (TSC Act), have intensified.**

**Less than 10% of the original extent of native vegetation, all of it Cumberland Plain Woodland, remains in Western Sydney. Due to this, salinity continues to grow as a major problem for existing and future infrastructure in the area. Therefore, the cost of continued clearing and associated salinity will have a disastrous impact on the regions economic growth if the present rate of vegetation loss is not significantly reduced.**

**The process of assessing the impact of applications to clear species listed under both the EPBC and TSC Acts is made on a case by case basis of regional significance. As a result regionally significant areas of native vegetation continue to be cleared incrementally on an annual basis in Western Sydney. Without the implementation of a regionally coordinated vegetation management strategy the introduction of both these Acts and the listing of Cumberland Plain Woodland as an Endangered Ecological Community has done little to reduce the level of vegetation clearing in Western Sydney.**

**Sustainable economic growth in Western Sydney is essential to economic growth in NSW. However at present implementation of the current threatened species legislation is resulting in perverse environmental outcomes resulting in significant negative social and economic impacts.**

**Increased economic incentive to protect Cumberland Plain Woodland would minimise the adverse environmental and economic impacts of the current framework. For this reason a structured incentive program for private landholders to retain native vegetation in Western Sydney is essential to achieving the desired environmental, social and economic outcomes.**

#### 5.2 Regulatory Framework for Greater Metropolitan Sydney

The legislative and planning instruments used to manage native vegetation in urban areas within NSW include the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth), the *Environmental Planning and Assessment Act 1979* (State), *Threatened Species Conservation Act 1995* (State), *The Local Government Act 1993* (NSW), *State Environmental Planning Policy No. 19 Bushland in Urban Areas* (SEPP 19) and various Local Environment Plans (LEPs) and Development Control Plans (DCPs) managed by local government.

The intended effect of these regulatory instruments is the ecologically sustainable management of native vegetation across Greater Metropolitan Sydney and combined with the NVC Act provide a whole of state approach to vegetation management in NSW. However these instruments fail to cover all of the state and have proved ineffective in protecting biodiversity values in Greater Metropolitan Sydney.

### **5.3 Inadequacy of Existing Regulatory Framework for Greater Metropolitan Sydney**

Within Greater Metropolitan Sydney the local government areas of Newcastle and Wollongong are partially excluded from the NVC Act and SEPP 19 does not apply. Therefore clearing of native vegetation in these areas is only regulated consistently with others areas in the region if the land is:

- 1 defined as “community land” under the *Local Government Act*,
- 2 is considered State protected land; or
- 3 if it contains species and communities listed as endangered or threatened species under the TSC and EPBC Acts.

In the Newcastle and Wollongong Local Government Areas the relevant LEPs and DCPs regulate clearing of native vegetation communities that do not contain any of the above categories. This situation leads to inconsistency in the decision making processes across the region and confusion amongst consent authorities and stakeholders.

The inadequacy of the existing planning framework for urban bushland in areas other than Newcastle and Wollongong can be largely attributed to SEPP 19, as it fails to achieve its primary objective of preventing the clearance of remnant bushland, most significantly on private land. SEPP 19 only provides protection to land zoned ‘public open space’, privately owned bushland and public land not zoned ‘public open space’ remain outside its scope. Key to rectifying this problem is a review of SEPP 19 with a commitment providing economic incentives for the retention of bushland on private land in urban environments.

The exclusion of Newcastle and Wollongong from both the NVC Act and SEPP 19 as well as the identified weaknesses of SEPP 19 place further emphasis on the EPBC Act, EP&A Act through an eight-part test and the TSC Act to protect biodiversity in the region. At present assessments of significance under the TSC Act and the eight-part test are done on a case by case basis and as discussed previously this is leading to the incremental loss of bushland and biodiversity values in the region.

## **6. Recommendations**

### **6.1 Where to with NSW native vegetation regulations?**

- The administration of the NVC Act and the role of DIPNR in terms of native vegetation responsibilities need to be reviewed and addressed in light of increasing administrative complexity and reduced resources. New initiatives must be adequately resourced and staff must undergo a training program, and an education campaign launched to raise general awareness of specific issues and the options available to deal with them.

- There is a need for an adequate and thorough evaluation, review and audit process by an independent body (this happens through Auditor General's office, but need an EPA equivalent to prosecute breaches of the Act).

- Promotion of sustainable management practices and recognition of those employing them through the media, on-site workshops, awards etc and public recognition and promotion of good work practices coupled with the denigration of unsustainable practices. This is a variation of the 'carrot and the stick approach' which has proven to be ineffective in the past.

- Need for workable regional boundaries.

- Need for good science to underpin the legislation together with a realistic and thorough assessment of existing data and knowledge gaps, together with adequate human and financial resource allocations.

- All exemptions need to be tightly defined by regulations and capped at the property level.

- Earning, obtaining and retaining community confidence in new approaches to native vegetation management, evaluation, monitoring and compliance will be an ongoing challenge under any regulatory system.

- Resolving essential knowledge gaps and consequent problems.
- The NSW government should acquire extensive areas threatened by land clearing and place them under conservation covenants.

## 6.2 Where to for Greater Metropolitan Sydney?

Conservation of biodiversity to improve the economic and environmental values of Greater Metropolitan Sydney is most likely to occur through the integration of a legislative and incentive driven framework to facilitate conservation. Such an outcome can be achieved through the following amendments to NSW government policy:



- The development of a mapped baseline establishing the extent of urban bushland left and enable ongoing monitoring of extent and condition;
- Identifying key conservation areas and further developing a comprehensive range of economic incentives for private land holders on these sites to aid conservation;
- Regionally coordinated vegetation management strategies clearly stating the economic and social values of retaining bushland;
- The inclusion of Newcastle and Wollongong Local Government Areas in SEPP 19;
- Amendments to SEPP 19 and the implementation of a compliance policy to ensure accountability for inappropriate clearing of native urban bushland.