Submission on the Draft Native Vegetation Regulation 2004 and the Environmental Outcomes Assessment Methodology

21st January 2005

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Executive Summary

In 2002 following severe drought and dust storms across the eastern seaboard, the NSW Government responded to community concern about land clearing and the impact it is having on our rivers, farmland and wildlife and the state's greenhouse gas emissions. In response to the maturing of the public debate about our natural landscapes and the impact that damaging activities such as landclearing are having, the Government announced it would end broadscale land clearing and reform native vegetation management in NSW.

The undersigned conservation groups (Total Environment Centre (TEC), Nature Conservation Council of NSW (NCC), Environmental Defender's Office (EDO), WWF - Australia, The Wilderness Society (TWS) and Humane Society International (HSI)) have been involved in the campaign to control land clearing for many years. Since the Government's election promise to end broadscale landclearing in 2002, this involvement has been by representation and advice to the Native Vegetation Reform Implementation Group (NVRIG), negotiations on the legislation, and subsequent negotiations on the draft regulation and environmental outcomes assessment methodology. These groups share the view that the system as it stands will not deliver an end to broadscale land clearing.

The native vegetation and natural resource reforms underway are potentially historic, and provide a rare opportunity to change the way we manage our landscape and restore landscape function. A key element of the reforms is the "banning" of further clearing of remnant vegetation and protected regrowth. The NSW Government must deliver an end to broadscale landclearing of remnant vegetation and protected regrowth, or it will have failed to solve the problem.

The Draft Native Vegetation Regulation 2004 ('*Draft Regulation 2004*') and the Environmental Outcomes Assessment Methodology ('Draft Assessment Methodology') were exhibited for public exhibition on 9th November 2004. These documents provide the detail of how the Native Vegetation Bill passed in December 2003 ('*NV Act 2003*') will be implemented. The legislation is contingent upon the passing of the *Draft Regulation 2004*. Environment groups support the gazettal and commencement of the regime in February 2005.

Broadly, environment groups support the intent to end broadscale clearing and the commitment of funding for on-farm conservation. However, there are a number of concerns that must be effectively addressed by the *Draft Regulation 2004* to ensure that the new package delivers this outcome.

Under the current system – the Native Vegetation Conservation Act 1997 ('NVC Act 1997') - illegal clearing has been inadequately regulated, clearing exemptions have been used cumulatively to facilitate vast amounts of clearing, and enforcement has been generally poor, creating little or no deterrence. The new regime must redress these failures if it is to bring about an end to broadscale land clearing.

The EDO, NCC and TEC have conducted 10 public consultation workshops on the Draft Regulation 2004 during

the exhibition period. These workshops were held at Coffs Harbour, Grafton, Tamworth, Coonabarabran, Orange, Blue Mountains, Albury, Wollongong, Bateman's Bay and Newcastle. A number of phone interviews were also conducted with interested stakeholders from the Western Division. Feedback from these workshops is included in the submission and in Appendix A.

This submission explores the legal and policy issues surrounding the *Draft Regulation 2004*.

The key areas of concern include: exemptions (in particular how RAMAs will be limited); Property Vegetation Plans (including the issue of access to information); evidentiary issues around rotational cropping; the practical problems surrounding the proposed groundcover assessment methodology; whether protected regrowth will be classified appropriately as a matter of priority; and potential problems with compliance and enforcement. We also critique the Draft Environmental Outcomes Assessment Methodology, based on feedback from stakeholders and attendance at PVP trials.

A summary of specific recommendations is outlined in the following table:

Recommendations

Part 1 - Preliminary (definitions)

- "Gardens" should be defined, with limits placed on location (such as adjacent to a dwelling house) and size (such as ½ hectare).

Part 2 - Development Consent for clearing

Part 3 - Property Vegetation Plans

- PVPs must be included on Planning Certificates under section 149 of the Environmental Planning and Assessment Act 1979.
- Clause 8 (d) should require all maps to include coordinates.
- Clause 8 (h) should read "in accordance with a PVP" instead of "by a PVP".
- Clause 9 should stipulate a hierarchy of evidence required for PVPs that change the regrowth date to accommodate existing rotational farming practices (for example: aerial photographs, contracts with clearing contractors; receipts associated with clearing or cultivation; farm journal entries; and statutory declarations). This would also require some guidance as to how the hierarchy would operate.
- Clause 9 of the *Draft Regulation 2004* should be amended to define "farming practices", and clarify that such practices are restricted to a particular area of land. This should be done by limiting the continuation of the practices to the area actually and physically used, consistent with existing use rights principles under planning law against "intensification, expansion and enhancement". It should also be clarified that the activities were lawful at the commencement of the Act.
- Clause 10 should stipulate that perpetual offsets continue even where a PVP has been terminated.
- Clause 11 must provide for a genuine public register available on CMA websites, rather than a register available only to prospective purchasers.
- All PVPs must require a site visit to be undertaken before the PVP is granted. This includes continuing use PVPs.

Part 4 - Routine agricultural management activities (RAMAs)

- The Regulation should contain principles for defining "minimum extent necessary."
- Clause 13 should clarify the application of the pest control clearing exemption regarding den-making pest animals.
- Define "garden" (as noted above)

- The size of small holdings should be increased to 60 ha in the Western Division and 20 ha elsewhere in the state in clause 15.
- Delete the 5 ha exemption in clause 16 (1) (vi), and reinsert a 1 ha buffer zone. Delete "or similar utility."
- Default buffer distances equal to those in clause 16 (2) for small holdings should be inserted into Clause 16 (1) (b). These default distances apply unless the CMA varies the distances with Ministerial consent.
- Clause 16 (2) should be amended to read "small holdings (as defined by section 15) and rural residential zones."
- Delete clause 16 (2) (c) regarding temporary fences.
- Clause 17 should be limited to public authorities carrying out the work, to prevent abuse and in the interests of public safety.
- The regulation must clearly state that land cleared for the purpose of a RAMA cannot be later be cropped, or have its agricultural use intensified.
- The Regulation must specify that RAMAs can only be undertaken in unprotected regrowth (ie, RAMAs may not be undertaken in offset areas, remnant or protected regrowth).
- The prohibition of 2 ha per annum in the coastal zone, should be extended to all coastal CMA areas immediately.
- Timber for fence posts and rural infrastructure must not be taken from remnant, protected regrowth, vulnerable land or any offset area.

Part 5 - Broadscale clearing (Assessment Methodology)

The following changes need to be made to the Methodology and PVP Developer assessment process as a priority:

- Coordinates such as eastings and northings or latitudes and longitudes are required on the final PVP maps.
- GPS equipment needs to be made available to assessors, and the Mapping tool needs to be modified to allow assessors to enter waypoints.
- The methods for collecting field data need to be incorporated into the Methodology document. We recommend that this section be a distinct chapter in the Methodology.

This section must emphasis that random sampling with replication is to be used.

- Objective methods for measuring vegetation cover should be used instead of subjective estimates.
- The PVP Developer relies heavily on information that has been previously gathered and compiled into the underlying databases. Resources need to be allocated on an on-going basis to continually update and refine the information in the system. A feedback process needs to be established so the consequences of approved PVPs (such as area of each vegetation type cleared, amount and type of offset vegetation, amount of vegetation cleared in a the region, regional connectivity etc) can be used to update the underlying datasets. This information must be provided to DIPNR, DEC and the NRC.
- The Mapping tool needs to be modified to automatically draw buffers within wetlands and streams. The tool also needs to be able to accommodate streams and wetlands with variable widths.
- The water quality assessment should specifically address water quality by including consideration of factors such as slope, soil type and groundcover. Riparian vegetation should be mapped and assessed in the Biodiversity tool, but must not be cleared because of its importance for both biodiversity conservation and water quality.
- Guidelines are required to prevent the thinning protocol being used to completely remove trees from areas of a patch.

- Resources need to be allocated to increasing the number of vegetation types in the database, and to reviewing and collecting benchmark data.
- The Biodiversity Assessment and Threatened Species Assessment tools have been designed with the assumption that RAMAs or clearing of regrowth will not be allowed in offset areas. Conditions to this effect need to be automatically attached to the final PVP.

Part 6 - Special provisions for vulnerable land

- The scientific basis underpinning clause 25 is unclear, with vast clearing allowed in the absence of specifying the genus and species of relevant lignum.
- The definition of state protected land should be brought into this regulation, removing the need to reference old legislation.

Part 7 - Savings and Transitional Provisions

- Existing cultivation consents must expire on the date of gazettal of the regulation.

Part 8 - General (groundcover, penalty notices)

- Amend clause 33 to require a more practical methodology.
- Penalty Infringement Notices (PINS) must only be used for technical breaches and not serious breaches of the Act or Regulations.
- Clause 35 should delete Hawkesbury and Newcastle local government areas from clause 13, Schedule 1 of the *NV Act 2003*.

Additional issues:

- There should be a regulation developed on commercial firewood collection.
- There should be a regulation developed on sustainable grazing.
- Guidelines should be developed for local councils regarding the application of the NV Act 2003 to LEP zoning.

This submission was prepared by the Environmental Defender's Office NSW on behalf of the Nature Conservation Council of NSW, Total Environment Centre, The Wilderness Society, WWF - Australia, and the Humane Society International.

Introduction

The evolution of the current regulatory provisions on public exhibition can be traced through a series of events. First, the State government made an election promise to end broadscale clearing in NSW. This was followed by adoption of the 'Wentworth Group Report on Landscape Conservation' by the Government, and subsequent adaption of the concepts in that report by the Native Vegetation Reform Implementation Group (NVRIG).

Legislation was then passed in December 2003, leaving final detail to be provided for in regulations. Finally, the Draft Native Vegetation Regulation 2004 and Environmental Outcomes Assessment Methodology were exhibited for public comment on 9th November 2004. These developments are summarised below.

Reform process: background to development of the *Draft Regulation 2004* In early 2003, the Wentworth Group of Concerned Scientists (the Wentworth Group) proposed new native vegetation clearing controls in their document entitled A New Model for Landscape Conservation in New South Wales (the Wentworth Model). For present purposes, the most important elements of the model were that:

- broadscale clearing of remnant vegetation would be banned;
- broadscale clearing of certain other native vegetation – such as in riparian zones or comprising the habitat of threatened species - would also be banned (so-called "protected regrowth");
- consent to clear remnant vegetation and protected regrowth would only be granted if doing so would improve or maintain environmental outcomes;

- incentives would be available to conserve protected regrowth;
- landholders would have the ability to manage their land in a fair and equitable manner to the minimum extent necessary;
- the number of legislative exemptions to the general principles outlined above would be very limited; and
- all other native vegetation – non-protected regrowth - would be able to cleared without either development consent or a certified property vegetation plan (PVP).

The Wentworth Group proposed the Wentworth Model because they believed that the existing regime (the Native Vegetation Conservation Act 1997 (NVC Act 1997) and SEPP 46) had failed to control the broadscale clearing of native vegetation, despite such clearing being a key driver of ecosystem damage. The Wentworth Group believed that the NVC Act 1997 had failed to control native vegetation clearing because it was: complex and bureaucratic (particularly regarding the preparation of regional plans); had failed to obtain landholder support; and was subject to numerous exemptions, which made successful enforcement very difficult.

As noted in the Regulatory Impact Statement for the *Draft Regulation 2004*, between 1998 and 2004, 3804 clearing applications were received under the NVC Act, with only 140 refused 9 (3.68%).1 The approved clearing in all DIPNR regions amounted to 87,818 ha.2 Significantly these figures "do not include clearing carried out under exemptions, illegal clearing or clearing excluded under the NVC Act or clearing approved under other Acts."3 The estimate of actual total clearing that has occurred under the NVC Act 1997 is far higher, and represents a regulatory failure.4 The fundamental objective of the Wentworth Group was to develop a scheme that was simpler, would deliver an end to broadscale clearing, be more enforceable and more likely to obtain landholder support.

Prior to the March 2003 election, the Carr Government adopted the Wentworth Model as its policy on land-clearing. After its re-election, the NSW Government formed a stakeholder group, comprised of representatives of the Government, landholders and conservation organisations to develop a more detailed policy. This group was known as the Native Vegetation Reform Implementation Group (NVRIG) and chaired by The Rt Hon Ian Sinclair AC. The NVRIG Report was used as the basis for the *NV Act 2003*, which was assented to on 11 December 2003.

The *NV Act 2003* is largely "framework" legislation, with much of the details left to proposed regulations. Consequently, it will be proclaimed when the Native Vegetation Regulation 2004 is gazetted.

A smaller stakeholder group has been working with the Government on developing the regulatory detail in light of the legislative structure and the NVRIG Report.

The Government has now placed the following on exhibition:

1. Draft Native Vegetation Regulation 2004 (*Draft Regulation 2004*)
2. Draft Environmental Outcomes Assessment Methodology (Draft Assessment Methodology)

The *Draft Regulation 2004* seeks to operationalise the broad framework of the *NV Act 2003* and provide details on how the legislation will work on the ground. It covers the following:

- relationship with development consents;
- form and content of PVPs;
- routine agricultural management activities, for which clearing approvals are not required, including rural infrastructure clearing buffer distances;
- clearing associated with maintenance of public utilities;
- environmental outcomes methodology for assessing the 'improve or maintain' test;
- special provisions for State Protected Lands;
- savings and transitional provisions relating to the authorised officers, Native Vegetation Fund, pending applications, stop work orders, clearing under the Plantations and Reafforestation Act 1999, and existing cultivation consents;
- methodology to assess ground cover;
- penalty notice offences and penalties; and
- extension of the native vegetation regime to the Wollongong local government area.

The *Draft Regulation 2004* provides for an Environmental Outcomes Assessment Methodology (Draft Assessment Methodology), which sets out the rules for assessing whether clearing proposals 'improve or maintain environmental outcomes' for each environmental value: water quality, land degradation, salinity and biodiversity (which includes threatened species). The Draft Assessment Methodology will apply this test to both PVPs and development applications under the *NV Act 2003*.

We understand that the Draft Assessment Methodology will be updated when scientific developments generally

and more regional data become available, and updated versions will be gazetted. Furthermore, biodiversity outcomes will not be tradeable, but it has been suggested that trading of impacts and benefits on water quality, land degradation and salinity may be possible when an appropriate methodology has been approved by the Minister on advice of the Natural Resources Commission. Biodiversity must never be tradeable and we oppose trading between water, salinity and soil impacts and benefits.

The EDO, NCC and TEC have conducted 10 public consultation workshops on the Draft Regulation 2004 and Draft Assessment Methodology during the exhibition period. These workshops were held at Coffs Harbour, Grafton, Tamworth, Coonabarabran, Orange, Blue Mountains, Albury, Wollongong, Bateman's Bay and Newcastle. A number of phone interviews were also conducted with interested stakeholders from the Western Division. The workshops were attended by members of regional environment groups, field naturalists, farmers, representatives from DIPNR, representatives from CMAs, academics, and other interested persons.

This submission includes feedback from the consultation workshops and is divided into two parts:

Part 1 – Comments on the draft Native Vegetation Regulation 2004
Part 2 – Comments on the Draft Environmental Outcomes Methodology
Appendix 1 – Summary of consultation workshops

This submission does not address the issue of private native forestry (PNF). This is being dealt with in a separate code. Environment groups want the relevant methodologies and protocols included into the Assessment Methodology, and not dealt with in separate protocols. Currently, the only external code is regarding PNF. This and any future protocols must be integrated into the Environmental Outcomes Assessment Methodology.

PART 1: The Draft Native Vegetation Regulation 2004

1.1 Exemptions and permitted activities

Current regime: the NVC Act 1997

The effective operation and enforcement of the NVC Act 1997 has been undermined by the clearing exceptions and exemptions available under the regime. As well as exempting certain types of land and excluding clearing authorised under other laws (for example, Rural Fires Act 1997, Noxious Weeds Act 1993, Roads Act 1993, and Water Management Act 2000), there were 12 exemptions carried over from SEPP 46 under Savings and transitional provisions (see section 68, Schedule 4, Part 2, clause 3(2)). These are contained in Schedule 3:

> (a) minimal clearing (of up to 2 ha per annum), except in the coastal zone;5
>
> (b) minimal tree cutting (of no more than 7 trees per hectare for on-farm use, including fence posts and firewood);
>
> (c) stock fodder in times of drought;
>
> (d) mistletoe control;
>
> (e) rural structures (clearing to a minim extent if necessary for construction, operation and maintenance including dams, tracks, bores, windmills, fences, ramps and sheds and the like);
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> (f) burning authorised under the Bush Fires Act 1949
>
> (g) public utilities and emergency work;
>
> (h) planted native vegetation (for forestry, agriculture, agroforestry and so on);
>
> (i) private native forestry (selectively logged or managed for timber production);
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> (j) removal of regrowth of less than 10 years;
>
> (k) noxious weeds; and
>
> (l) vermin control.

An analysis of the case law, together with information received from interviewing experienced prosecution barristers, suggests that the legislative exemptions under the NVC Act 1997 function in such a way as to allow any well-organised landholder to avoid prosecution. The exemptions allow for the cumulative use of a wide range of types of exempt clearing. For example, a significant area may be cleared without consent, by relying on the exemptions available for 7 trees per hectare plus 2 hectares plus 10 metres for a fence line plus a contiguous 10 metres for a farm track plus clearing of clumps of bush for vermin control and so on.

Given this regulatory failure and the abuse of such exemptions, we absolutely oppose the NSW Farmers' submission that "farmers should be able to develop a proportion of their land each year without consent."[6]

The range and form of the NVC Act 1997 exemptions present problems in terms of enforcement as they have been interpreted broadly. For example, the Court of Criminal Appeal in 2003 affirmed that clearing for construction and inundation of large dams could be correctly classified as being for "rural structures" and therefore exempt: Director-General of Department of Land and Water Conservation v Bailey [2003] NSWCCA 361 (see also Director- General of DLWC v Jackson and Others [2003] NSWLEC 81; Director-General of DLWC v Bailey [2003] NSWLEC 160).

It is also possible that these exemptions have operated so as to create perverse incentives to clear (such as removing regrowth every 9 years pursuant to Schedule 3(j)).

Proposed scheme: the *NV Act 2003* The revised exemptions under the *NV Act 2003* dispense with many of the specific exemptions which have been the subject of abuse under NVC Act 1997, such as 2 hectares per year, 7 trees per hectare and regrowth of less than 10 years. The clearing of up to 2 ha per annum in the coastal zone has been prohibited in the coastal zone since 26th March 2004 by the Native Vegetation Conservation (Savings and Transitional) Amendment (Coastal Areas) Regulation 2004 which amends the Native Vegetation (Savings and Transitional) Regulation 1998 clause 9. We support this amendment and recommend that the prohibition be extended to all coastal CMA areas immediately.

Furthermore, clearing is no longer permitted in relation to noxious weeds and vermin control generally, but rather must be undertaken in accordance with an eradication order or pest control order (see clause 13 of the *Draft Regulation 2004*). These changes will increase the efficacy of the scheme and provide more certainty.

Nevertheless, concerns remain.

Routine Agricultural Management Activities (RAMAs)

The *NV Act 2003* permits clearing for routine agricultural management activities (RAMAs) under section 22(1). RAMAs are defined under section 11 of the *NV Act 2003* as, amongst other things, construction, operation and maintenance of rural infrastructure, removal of noxious weeds and animals, the collection of firewood, the maintenance of public utilities and so on. The *Draft Regulation 2004* provides more detail regarding such RAMAs (as per section 11(2)). Such clearing must only be to the minimum extent necessary to carry out the activity (section 22(2), notwithstanding that clause 16 and 17 of the *Draft Regulation 2004* set buffer distances).

The original Wentworth Group Report suggested the new regime should contain 3 limited exemptions namely, "the construction of a dwelling; carrying out routine farm activities, such as collecting firewood for personal use, fencing material and reducing bushfire hazard; and vegetation managed in accordance with a certified PVP."[7] Given that the aim of the Act is to prevent broadscale clearing,"[8] and numerous Ministerial assurances to this effect were given during the passage of the Bill, permitted clearing under RAMAs must be tightly regulated and effectively limited.

It is imperative that the *Draft Regulation 2004* clearly establishes limits on the clearing permitted for RAMAs. Under the previous regime, it was abuse of such clearing exemptions that led to excessive broadscale clearing in NSW, with severely limited recourse to the Land and Environment Court.

Key concerns regarding permitted clearing to carry out RAMAs are outlined below.

First, RAMAs can be undertaken on remnant native vegetation, except in riparian zones (clause 24 of the *Draft Regulation 2004*). This seriously undermines any ban on broadscale clearing and is not appropriate. Remnant native vegetation is, in theory, afforded the highest level of protection under the *NV Act 2003* but a range of exemptions trump this protection.

In particular, it is inappropriate that timber for fence posts and rural infrastructure can be taken from anywhere on the property. We recommend that such timber must not be taken from remnant, protected regrowth, vulnerable land or any offset areas.

Second, there are still a broad number of exemptions. These can be used cumulatively and, as noted above, take place on remnant native vegetation as of right. In this respect, as is apparent, the exemptions far surpass those envisaged by the Wentworth Model, and repeat the errors of the previous system.

Third, we note that the ambit of the RAMAs regarding gardens in clause 14 of the Draft Regulation 2004 is uncertain and thus difficult to enforce. We believe that the proposed scheme would be improved if the term was defined, with limits placed on its location (such as adjacent to a dwelling house) and size (such as ½ hectare). Outside of these limits, of course, a development consent or PVP could provide for such gardens.

Fourth, there seems little rational basis for the setting of certain buffer distances - for example 20 metres for permanent fences, 5 hectares for ground tanks and 30 metres for fence management or stock management in relation to lignum on special category land (see clauses 16(1)(a)(i), 16(1)(a)(vi) and 25(1)(b) of the *Draft Regulation 2004* respectively).

Notwithstanding that these are based on machinery width and rural fires buffer distances, now is the opportunity to assess the efficacy and rationale for these distances. In this respect, we submit that distances as set for the coastal CMAs provide the proper basis for discussion.

We note that Catchment Management Authorities are to recommend buffer distances for larger holdings outside the Western Division (see clause 16(1)(b) of the Draft Regulation 2004). We note that the setting of appropriate distances will be crucial for the efficacy of the scheme. We recommend that default distances be those as for small holdings (see clause 16 (2) *Draft Regulation 2004*), unless changed by the CMA with Ministerial consent.

We also recommend that the appropriate buffer distance of 2 metres either side be required around licensed levies.

Fifth, the *Draft Regulation 2004* is sometimes vaguely or poorly drafted. For instance, clause 16(1)(a)(vi) allows up to 5 hectares clearance around house, shearing or machinery shed, ground tank, dam or stock yards, or similar utility [emphasis added]. This latter phrase, being uncertain as to its scope and operation would hinder proper enforcement and should be deleted. We recommend that the buffer distance be reduced to 1 ha, and the words "or similar utility" be deleted. Likewise, clause 25(1)(a) should be redrafted to clarify that it only applies to the existing infrastructure listed (at present it is ambiguous and possibly confined to existing sheds, as defined).

A further example is for the clearing of lignum on vulnerable land for the purpose of stock management or internal paddock access involving any number of parallel strips of up to 20m: clause 25(1)(g). This seems extraordinarily broad, as well as being based on nebulous concepts such as stock management or internal paddock access that would be difficult to enforce.[9] The proposed provisions for clearing lignum are not underpinned by an appropriate scientific rationale, and are therefore opposed.

Sixth, areas cleared for the purpose of undertaking a RAMA must not be cropped at a later stage, or have the agricultural use intensified. The legislation clearly contemplates that the Regulation is to limit RAMAs where appropriate (section 11(2)), and the carrying out clearing for a "routine" activity does not contemplate intensification and a change of land use, such as cropping.

Seventh, we recommend that clause 16 (2) (c) be deleted. This exemption would be open to abuse on small holdings and could have a significant cumulative impact where temporary fences are dismantled and moved around the property.

Maintenance of public utilities

We support the restriction of activities comprising "maintenance of public utilities" in section 17(2).

We note that clause 17 of the *Draft Regulation 2004* allows for the maintenance of public utilities as a RAMA. It is clear, from section 11(1)(h) of the *NV Act 2003*, that landholders may carry out these activities. We would suggest that these exemptions be limited to public authorities carrying out the work, to prevent abuse and in the interests of public safety.

Column 2 of the Table indicating clearing distances needs to be clarified to ensure that the maximum clearing distance refers to a single strip under the utility, and not a strip either side.

Furthermore, the 'undergrounding' of utility infrastructure (for example, laying transmission lines under ground) should be considered as a priority to avoid the necessity for initial and continued clearing.

Control of pest animals

Regarding the control of pest animals, clause 13 of the *Draft Regulation 2004* extends the clearing exemption to anything done pursuant to an obligation arising under an eradication or pest control order (PCO) under Part 11 of the Rural Lands Protection Act 1998. Apart from locusts, the only general PCOs are for rabbits, feral pigs and wild dogs.[10] The listing of pigs raises a concern about clearing native vegetation such as lignum in the guise of feral pig control. Furthermore, the PCOs list recommended control techniques and limits techniques to those that are lawful. It could be assumed that this does not include clearing of native vegetation unless the clearing was done legally. The overall effect of clause 13 of the Draft Regulation 2004 and s11(1)(c) of the *NV Act 2003* must be clarified to prevent this clause providing a loophole.

Minimum extent necessary

The lack of limitations on RAMAs is of great concern to environmental groups. Section 22 (2) of the *NV Act 2003* requires that clearing for RAMAs must not exceed "the minimum extent necessary", however, this is left undefined. The serious concerns surrounding this issue should be addressed by including a requirement that RAMAs must not be undertaken in remnant vegetation, protected regrowth, endangered ecological communities, offset areas or riparian areas. RAMAs may only be undertaken in unprotected regrowth.

We note that the phrase "minimum extent necessary" has not been defined under the Act or been the subject of previous case law. We submit that principles for interpretation of this phrase be considered and incorporated into the *Draft Regulation 2004*. It is not sufficient to rely on this phrase alone to regulate clearing for rural infrastructure, and consequently specific buffer distances are required. We oppose the NSW Farmers suggestion that buffer distances be dispensed with.[11] Buffer distances are essential, and should be measured from the trunk (not the canopy) of the tree to the fence or infrastructure in question. We refer to a commitment from Minister Knowles on December 5th 2003 in the box below.

[letter link]

The "minimum extent necessary" as stated in section 22(2)(a) *NV Act 2003* must be guided by clear principles to create certainty for farmers and courts interpreting the Act. The minimum extent necessary must be bounded by the distances set out in the Draft Regulation 2004 as determined by CMAs or the default (small holding) distances. Farmers cannot use a "minimum extent necessary" argument to go beyond the set distances. The principles should state:

- Regulations will set out maximum distances for RAMAs.
- The Minister and the NRC must approve any distances set out by the CMAs
- The minimum extent necessary cannot exceed distance set by Regulation or CMA. Notwithstanding distances set, clearing is only allowed within these distances to the minimum extent necessary to undertake the necessary RAMA (ie, not the maximum distance allowed).
- RAMAs may not be used cumulatively to achieve progressive clearing on a property.

Small Holdings

The size of small holdings should be increased to 60 ha in the Western Division and 20 ha elsewhere in the state in clause 15 of the *Draft Regulation 2004*.

We recommend that the buffer distances for small holdings as set out in clause 16 (2) of the *Draft Regulation 2004*, also apply to rural residential zones. The clause should be amended to read "small holdings (as defined by section 15) and rural residential zones."

Extension of Act to other local government areas

We note that clause 35 of the *Draft Regulation 2004* extends the Act to apply to the Wollongong local government area. We submit that the Hawkesbury local government area and Newcastle local government area should also be included.

We support the continued inclusion of Gosford and Central Coast local government areas.

1.2 Property Vegetation Plans (PVPs)

Content of PVPs

We support the content of PVPs as set out in Part 3, clause 8 of the *Draft Regulation 2004*.

The level of detail must not be watered down, and it must be very clear in the plans that offsets are in perpetuity.

Clause 8 (h) should be amended to read "any works required to be carried out in accordance with the PVP" rather than "by the PVP." PVPs should also set out the area from which a farmer proposes to take timber for the purpose of carrying out rural infrastructure RAMAs. Clearing for RAMAs must only occur in unprotected regrowth.

Section 30 (3) of the *NV Act 2003* states that the regulations may make provision for review of PVPs after 10 years. We recommend that the Regulation includes an explicit requirement that PVPs are reviewed after 10 years, and the review involves assessment the following criteria:

- the extent to which the PVP has achieved the Objects of the *NV Act 2003* at a property level;
- consistency across CMAs, and the extent to which PVPs have achieved the objects of the *NV Act 2003* at

a catchment level;
- strategic assessment of compliance over the 10 years;
- effectiveness of PVPs in achieving landscape protection, including by the establishment of offsets and riparian zone protection; and
- the interrelationship of PVPs with permitted clearing.

Public register

The *NV Act 2003* provides that the regulations may make provision for the keeping of various public registers. This is a vital component of a transparent and accountable regulatory scheme, and is imperative where public funds are involved. The relevant provisions contemplate a register of development consents and applications under section 15(1)(e) of the *NV Act 2003* and a register of PVPs under section 32(e) of that Act. Those provisions relevantly provide:

> **15 Regulations**
>
> (1) The regulations may make provision for or with respect to the following:
>
> …..
>
> (e) the keeping of a public register by the Director-General relating to development consents granted by the Minister under this Act and applications for such consents.
>
> **32 Regulations**
>
> The regulations may make provision for or with respect to property vegetation plans, including the following:
>
> …..
>
> (e) the keeping of a public register by the Director-General relating to any such plans approved by the Minister under this Act that authorise the clearing of native vegetation or provide financial incentives, and applications for such approvals.

When the *NV Act 2003* was debated in Parliament on 5 December, the Minister for Primary Industries, the Hon Ian McDonald, moved an amendment regarding the establishment of public registers. These amendments were adopted, giving rise to sections 15 and 32 of the *NV Act 2003* quoted above. In moving the amendments, the Minister stated:

> The Honourable Ian MacDonald (5/12/03): Amendment No. 36 is to ensure that the regulation making powers that apply to property vegetation plans are consistent with those that apply to development applications [emphasis added] in clause 15…Amendment No. 38 is made for the same reason as amendment No. 36. The public register of PVPs will only include information about clearing allowed under the PVP and any positive conservation actions required by the PVP. It will not include information about the 19 personal financial situation of the landholder or other commercial information. Information submitted by a landholder in connection with a PVP will not be passed on to third parties. In particular, farm business plans that include crop types and acreages will not be passed on. It should be noted that continuing use PVPs will not appear on the register. And, of course, the protections of the NSW Privacy Act in the management and handling of personal information apply to catchment management authorities.

Clause 11 of the *Draft Regulation 2004* provides:

> (1) Each catchment management authority is to keep a register of the PVPs that the authority has approved, and development consents that the authority has granted, as delegate of the Minister.
>
> (2) A catchment management authority is to provide the following information about a PVP or development consent to a person who satisfies the authority that the person is a bona fide prospective purchaser of the land to which the PVP or development consent applies:
>
> (a) a description of the land to which the PVP or development consent applies;
>
> (b) details of matters for which the PVP or development consent provides that relate to native vegetation management activities, such as conditions of clearing, agreed offsets and provision and expenditure of public funds.

The restriction of information to bona fide prospective purchasers has the capacity to undercut the proper enforcement of the *NV Act 2003*. Members of the public – an important component in any effective evidence gathering and enforcement regime - will not be in a position to assess whether the *NV Act 2003* is being properly complied with. The present construction largely renders nugatory the open standing rights in section 41 of the *NV Act 2003*.

The issue of inaccessibility of information has been raised at all the consultation workshops.

It has arisen particularly in the context of broader concerns surrounding monitoring, compliance and enforceability. As noted, a genuine public register would have the additional benefit of assisting to ease the administrative burden of CMAs (for example, by addressing inquiries as to whether observed clearing is authorised). The broader issue of accountability and transparency is central to establishing a legitimate system that all stakeholders can have faith in. It has been acknowledged by NSW Farmers Association representatives during the negotiations on the *Draft Regulation 2004* that it is appropriate that there be a public register where public funds are involved.

A public register pertaining to development consent and PVPs in the form provided by section 100 of the Environmental Planning and Assessment Act 1979 (or section 308 of the Protection of the Environment Operations Act 1997) would greatly improve the enforceability of the scheme.

It is also vital that information held by the CMAs on clearing undertaken pursuant to PVPs be given to the NRC and DEC. This is crucial so that databases may be kept up to date.

Furthermore, we recommend that PVPs be listed on Planning Certificates under section 149 of the Environmental Planning and Assessment Act 1979. This would benefit prospective purchasers and local Councils.

Definition of existing farming practices, and rotational farming

Section 23 of the *NV Act 2003* provides for the continuation of existing farming activities. It states:

> **Continuation of existing farming activities**
>
> (1) The continuation of existing cultivation, grazing or rotational farming practices is permitted if it does not involve the clearing of:
>
> (a) remnant native vegetation, and
>
> (b) in the case of the Western Division—native vegetation comprising trees not less that 3 metres high of any of the following species: *Eucalyptus camaldulensis* (river red gum), *Casuarina cristata* (belah), *Casuarina pauper* (belah) or *Callitris glaucophylla* (white cypress pine).
>
> (2) In this section, existing means existing at the commencement of this Act.

This clause, and section 23 of the *NV Act 2003* allow for a change to the regrowth date in exceptional circumstances pertaining to existing rotational farming practices (section 9(2)(b)) (essentially a subset of existing farming practices). Under clause 9 of the Draft Regulation 2004, the Minister is only to approve a change in date if satisfied that native vegetation has been cleared on at least two occasions pursuant to existing rotational farming practices since 1950 or 1943 (for Western Division land). The PVP contains a requirement that regrowth may only be cleared in a manner that is consistent with those existing rotational farming practices.

These clauses are broadly based on the concept of existing use rights. However, in contrast to the doctrine of existing use rights, the clauses both provide for a much more flexible test and are also uncertain in their ambit. A number of related difficulties present themselves.

First, the concept of existing cultivation, grazing or rotational farming practices is not explicitly restricted to a particular area of land, but may conceivably be demonstrated by accepted industry practices more generally (ie, justified by the general accepted land practice of a broad area rather than a specific plot of land). The *Draft Regulation 2004* must require that for a valid rotation, the regrowth cleared must be on the same area of land.

Second, the concept of "practices" is too amorphous and needs to be more clearly defined.

Third, it is noted that such practices are not restricted to lawful practices. Nor would they be necessarily restricted to activities still classed as exemptions until the *NV Act 2003* commences - such as clearing of 7 trees per hectare and the clearing of regrowth less than ten years old.

Fourth, it would be extremely difficult to enforce a breach of the Act according to either the vague standard of a 'continuation of existing practices' (section 23) or the "in a manner that is consistent" test (clause 9).

To cure these deficiencies, the following would at the very least be required. First, better precision in identifying the allowed activities is needed. This would include defining the term 21 "farming practices", restricting such practices to the plot of land concerned, ensuring that the activities were lawful at the commencement of the Act and specifically excluding exemptions under the NVC Act 1997. Second, the continuation of the "practice" needs to be consistent with principles of existing use rights that do not allow for "intensification, enhancement or expansion" see Part 5 of the Environmental Planning and Assessment Regulation 2000; Lemworth Pty Ltd v Liverpool CC [2001] 117 LGERA 305 and Starray Pty Ltd v Sydney CC [2002] NSWLEC 48. Third, and as argued

above, the onus needs to be on the defendant to establish that the practices fall within the terms of section 23 and/or clause 9 of the NV Act 2003.[**12**]

Furthermore, the *Draft Regulation 2004* must clarify what evidence is required to prove existing rotational cropping practices. This could include a hierarchy of evidence, for example: aerial photographs, development approvals, contracts with clearing or cultivation contractors, receipts associated with the clearing or cultivation, farm journal entries, farm log books, and statutory declarations. Some guidance for assessing this evidence should be included in the *Draft Regulation 2004*. We submit that a 'points' system be considered, analogous to evidence of identity required for opening bank accounts. For example, an aerial photograph would be worth more evidentiary points than a farm journal entry, with a minimum of 100 points required for proof. Such a system would have the advantages of promoting consistency, and reducing the discretion of CMAs by providing clear regulatory requirements for the farmer to meet.

Incentive PVPs: land types and existing agreements

A number of issues were raised at several workshops regarding the availability of options under an incentive PVP. SEPP 14 (wetlands) and SEPP 26 (Littoral Rainforest) and land subject to Voluntary Conservation Agreements (VCAs) under the National Parks and Wildlife Act 1974 are excluded from the NV Act 2004 and therefore it is not possible for a farmer to be eligible for incentives to protect such land. We note that this would require a change to the Act to make such land applicable, or for funding to be provided separate to the native vegetation regime.

Another issue that was raised was the status of 10 year Landcare agreements already in existence. How do these interact with a PVP? Are farmers eligible for incentive funds to conserve land that has already been set aside/managed under a Landcare agreement? What happens after the 10 year agreement period lapses – is the resulting vegetation considered remnant? We recommend that DIPNR and Landcare produce advice for farmers on this issue.

Cumulative Impact of PVPs

The issue of assessing the cumulative impact of clearing under PVPs at a catchment level was raised at a number of the consultation workshops. DIPNR, DEC and the CMAs must ensure that databases which feed into the Assessment Methodology and into CAPs take into account clearing under approved PVPs. For example, connectivity values must take into account new clearing.

Site visits All PVPs must require a site visit to be undertaken before the PVP is granted. This includes continuing use PVPs. It is unreasonable to expect that a farmer should automatically get the benefit of a 15 year agreement which substantially reduces the level of regulation (for example, the farmer need no longer be concerned about new threatened species listings) on the farm, without a proper assessment being undertaken first. Without a site visit and ongoing inspections, it would be impossible to accurately assess compliance.

1.3 Groundcover Groundcover

Assessment Methodology

A fundamental requirement of the new system will be to have properly mapped grasslands, and have appropriately qualified experts located in key CMAs to undertake groundcover assessment. Without the appropriate regulatory requirement and adequate funding for these foundations, assessment of groundcover will be inaccurate and unenforceable.

The proposed methodology for assessing groundcover in clause 33 of the Draft Regulation 2004 was consistently raised as an issue of concern at each consultation workshop. Key concerns include: qualifications of appropriate persons to carry out assessment, the time of year assessment is undertaken (due to the high degree of seasonal variation for some species), and issues of monitoring compliance and effective enforcement. This is of particular concern as the SPOT 5 satellite imagery cannot detect the level of detail required to assess legal clearing of groundcover.

Furthermore, the proposed method is statistically invalid because the two ends of the stick do not represent independent sampling points. The method also cannot account for layering of vegetation, where one groundcover plant may have foliage above another. Lastly, no equations are provided to enable the percentages to be calculated.

The EDO, NCC and TEC have encouraged stakeholders and workshop participants with ecological and botanical or farming expertise to provide DIPNR with alternative methodologies for consideration.

A possible alternative method could be as follows:

1) The site to be assessed must be stratified; that is, areas with different management histories, different types or densities of groundcover must be sampled separately.

2) A 50 m or longer tape-measure is run through the area to be sampled.

3) The assessor walks along the tape, and at each metre a thin pole is lowered vertically onto the ground.

4) All of the groundcover species (alive or dead) touching the pole are identified and recorded. More than one plant can touch the pole at a given point.

5) At least three 50 m transects, spaced evenly, should be run through a homogenous area to determine the status of the groundcover. The groundcover results from the different quadrats should be averaged.

6) The results are analysed as follows:

Section 20(a)
Count the number of sampling points at which native vegetation touched the pole, and the number of sampling points at which exotic vegetation touched the pole.

Equation 1 is then used to calculate the proportion of native cover.

$$\text{native}(\%) = \left(\frac{\text{number of points with native hits}}{\text{number of points with native hits} + \text{number of points with exotic hits}} \right) \times 100$$

Equation 1: Proportion of native groundcover expressed as a percentage of total groundcover

Section 20(b)
Count the number of sampling points at which groundcover vegetation (alive or dead) touched the pole. Important: even if more than one species touched the pole at a given sampling point, for this step just count one touch; that is, you need to know the total number of sampling points at which there was herbaceous vegetation. This figure cannot exceed the number of points sampled. Divide this number by the total number of sampling points, and multiply by 100 to calculate the percentage cover.

$$\text{groundcover}(\%) = \left(\frac{\text{number of points with vegetation touches}}{\text{total sample points}} \right) \times 100$$

Equation 2: Percentage cover of herbaceous vegetation If the result from Equation 1 is less than 50%, and the result from Equation 2 greater than 10%, then the groundcover can be cleared.

For an accurate assessment of the groundcover on site, the assessment must be repeated for a number of seasons before deciding whether clearing can be allowed.

More detail is required as to who is considered an "appropriately qualified person". Minimum requirements should be the ability to identify grasses and experience in vegetation field sampling.

Existing Cultivation Consents

The clearing of ground cover authorised under an existing cultivation consent is exempt from the need to obtain development consent or a PVP in clause 32(1) of the Draft Regulation 2004. The provision has a sunset clause of 31 December 2007 (clause 32(3)). We are advised that several hundred thousand hectares would fall within this exemption.

This is a continuation of a savings provision from the NVC Act 1997 (clause 7 of the *Native Vegetation Conservation (Savings and Transitional) Regulation 1998*). Clause 7 provides as follows:

Exemption of clearing authorised under existing cultivation consents

(1) Any clearing of native vegetation (other than trees) authorised under an existing cultivation consent is taken to be clearing that is exempt from any requirement under Part 2 of the Act for development consent.

(2) This clause ceases to have effect in relation to the exempt clearing if:

(a) the existing cultivation consent ceases to be in force, or

(b) the land on which the clearing relates becomes land to which a regional vegetation management plan applies, whichever first occurs.

(3) In this clause:
existing cultivation consent means a consent under section 18DA of the Western Lands Act 1901 and in force immediately before 1 January 1998."

We are advised that many of these permits were issued for an indefinite period.

This provision is obviously inconsistent with a ban on broadscale landclearing and will not prevent the clearing of remnant native vegetation or protected regrowth. In this respect, there are two main points to note about the continued extension of such rights.

First, there is no inherent legal right for such permits to carry through, notwithstanding that they may not be limited by date. The Government is entitled to remove rights under legislation. Indeed, the NSW Constitution does not even contain a guarantee that the removal of such rights be compensable.

The decision in 1997 to allow for transitional provisions was a policy decision, presumably based on equitable grounds. The same must be the case here, given the absence of legal obligation. However, the logic does not carry through indefinitely. The preservation of such rights through an additional reform process – the Wentworth Model – would be extraordinarily exceptional and anathema to the Government's policy.

Secondly, it is noted that the clause 7(2) of the Native Vegetation Conservation (Savings and Transitional) Regulation 1998 clearly provides a mechanism for the cessation of these permits (namely, by regional vegetation management plans). Limited regional vegetation management plans were made or exhibited in draft form under the NVC Act 1997 before the latest reforms were devised and introduced. We are advised that a significant portion of the Western Division was not covered by a regional vegetation committee, which could have produced such a plan. Nevertheless, the NVC Act 1997 gives the Minister the power to direct the Director-General to produce such a plan at any time (pursuant to section 24(2)). It is clear that the provisions contemplated the cessation of such rights.

We recommend that existing cultivation consents expire on the date of gazettal of the Native Vegetation Regulation 2004.

1.4 Protected Regrowth

The success or otherwise of the regime will also depend on the use of the Minister's powers to declare protected regrowth to comprehensively protect riparian vegetation and other areas deserving of protection pursuant to section 10 of the *NV Act 2003* and clause 23 of the *Draft Regulation 2004*. We support clause 23 of the *Draft Regulation 2004* which provides for the identification of protected regrowth on steep or highly erodible land or protected riparian land. It is vital that these vulnerable areas are adequately managed and protected.

Consequently, we oppose the NSW Farmers' Association submission that "vegetation on State Protected Land … should not be managed any differently than other vegetation areas."[**13**]

The first Natural Resources Management Plan prepared under clause 23 of the Draft Regulation 2004 must include all available data and mapping to expand the area of relevant protected regrowth beyond just prescribed streams. It should include, for example, grassland mapping under SEPP 46, and Dorrigo Rainforest mapping – special category C.

In light of the threatened species law reforms, it is essential that protected regrowth is properly and accurately mapped. This is a key issue if the biodiversity certification system is to effectively protect threatened species in NSW. The Department of Environment and Conservation (DEC) must have all available data in order to decide upon certification.

The CMAs, as a matter of priority, must identify and map areas of protected regrowth in their CMA area for referral to the Minister for declaration.

RAMAs should be excluded from areas of protected regrowth, in a similar manner to which they have been excluded from riparian zones in clause 24 of the *Draft Regulation 2004*.

Special Provisions for Vulnerable Land

The definition of state protected land should be expressly stated in the *Draft Regulation 2004* to negate the need to refer to old legislation. Section 7 of the NVC Act 1997 provides that:

7 State protected land

(1) The Minister may, by order published in the Gazette, identify:

(a) any land the surface of which generally has a slope greater than 18 degrees from the horizontal, or

(b) any land that is situated within, or within 20 metres of, the bed or bank of any part of a river or lake specified in the order, or

(c) any land that is, in the opinion of the Minister, environmentally sensitive or affected or liable to be affected by soil erosion, siltation or land degradation, 6 as State protected land for the purposes of this Act.

(2) Any such order must identify the land concerned in such manner as the Minister thinks appropriate (whether by the use of a map, land description, or otherwise).

…….

Note. State protected land is defined in this Act to include any land previously defined as protected land under the Soil Conservation Act 1938. An order under subsection (3) therefore will be able to deal with any type of State protected land even though it has not been identified by an order under subsection (1).

A single clear definition must be included in the *Draft Regulation 2004*, to include all land covered under previous legislation, including the Soil Conservation Act 1938.

Furthermore, guidelines need to be developed for exotic and dead trees. Such guidelines should provide clarification for example, on the clearing of willow trees.

1.5 Compliance and enforcement

The efficacy of any regulatory scheme depends on a number of external factors including the "will" of the prosecuting agency, the robustness of its compliance policy, its institutional structure and capacity to train and recruit, and the sentencing practices of the prevailing Court.

We note that the Regulatory Impact Statement for the *Draft Regulation 2004* states: "It is anticipated that the number of compliance actions which proceed to court with and without settlement will approximate two a year, with the number of small offences (ie, those settled out of court) totalling five."[**14**] Under the *NVC Act 1997* from 2002 – 2004 there were 330 compliance actions initiated by DIPNR, representing an average of 132 per year.[**15**] Enforcement and prosecution failed to make inroads against illegal clearing and create a deterrent under the *NVC Act 1997*. A predicted decrease in the number of compliance actions from 132 to 7 is of serious concern, even with the addition of PINs.

We support the use of SPOT 5 satellite imagery and welcome the assurances from the Minister that there will be "a complete picture of the state" including every tree by May 2005.

We understand there will be a SPOT 5 sweep of the state once a year with more frequent inspection for hotspots. It is absolutely critical that this is the bare minimum and that inspection is regular. If accurate data is not available for each year, then effective enforcement will be hindered.

Penalty notices

Section 43(1) of the *NV Act 2003* provides authorised officers with a discretion to issue a penalty notice for offences committed under the Act or Regulations.

Penalty notices

(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.

Section 43(6) of the *NV Act 2003* also provides that the Regulations may:

(a) prescribe the amount of penalty payable for the offence if dealt with under this section, and

(b) prescribe different amounts of penalties for different offences or classes of offences.

Clause 34 and Schedule 1 of the *Draft Regulation 2004* extends the giving of penalty notices to all offences under the *NV Act 2003*. This has the potential to undermine the effective working of the scheme. Penalty notices should be reserved for technical breaches and are inappropriate for circumstances governing illegal

landclearing (section 12), obstructing an investigation (section 35(5)), or non-compliance with notices, stop work or remedial orders issued by the Director-General (sections 36(4), 3795) and 38(4)).

We understand that DIPNR is currently developing a compliance policy. This policy should be made available for comment as a matter of priority.

1.6 Miscellaneous

Core koala habitat

Section 5 and Schedule 1 of the *NV Act 2003* exclude certain land from the operation of the Act. This land is usually capable of being objectively determined by virtue of being on a map (such as SEPP 26 – Littoral Rainforests, land in conservation reserves, State forest, critical habitat or particular local government areas), or referable to land that is subject to an agreement or order (such as a conservation agreement or an interim protection or heritage order). The exception is clause 3 of Part 1 of Schedule 1 – namely, land that is identified under SEPP 44 – Koala Habitat protection as core koala habitat. Such land does not appear on a map or on a piece of paper. Rather, core koala habitat is determined under SEPP 44 by a process of deliberation. This may change over time and pose additional prosecution difficulties. SEPP 44 needs to be included in the *NV Act 2003*, or alternatively, a parallel process to that provided under SEPP 44 must be conducted as part of the environmental assessment under the *NV Act 2003*.

Regulation on commercial firewood collection

Section 46 of the *NV Act 2003* provides that:

> **46 Regulation of collection of timber for commercial firewood**
>
> (1) In this section, dead wood means any dead tree or part of a dead tree, whether or not: 28
>
> (a) it is standing, or
>
> (b) it is of an indigenous species.
>
> (2) The regulations may regulate or prohibit the clearing or the removal of dead wood from any land, by the landholder or any other person, if it is done for the purposes of commercial firewood collection.
>
> (3) This section is not limited by the objects set out in section 3.

Section 11 (1) (d) states:

> 11 Meaning of routine agricultural management activities
>
> (1) For the purposes of this Act, routine agricultural management activities mean any of the following activities on land carried out by or on behalf of the landholder:
>
> …..
>
> (d) the collection of firewood (except for commercial purposes),

The definition of native vegetation in the *NV Act 2003* excludes dead timber, both standing and fallen. This is a major cause of concern, because collection of dead timber is listed as a Key Threatening Process under the *Threatened Species Conservation Act 1995*, and it should be regulated in order to mitigate its well-documented impacts on threatened species habitats.

Section 46 of the *NV Act 2003* does, however, make provision for a Regulation to prohibit or regulate the removal of dead timber from land if it is done for the purposes of commercial firewood collection. No such Regulation has yet been developed, and we recommend that this be done by DIPNR as a matter of priority. The regulation must clearly state that firewood may only be collected from unprotected regrowth.

Regulation on sustainable grazing

Section 51 of the *NV Act 2003* provides that Regulations, not inconsistent with the Act, may be made "for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act." A regulation made pursuant to this clause is necessary to provide detail and guidance for section 24 of the *NV Act 2003*. Section 24 states that:

> **24 Sustainable grazing**
>
> Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and

composition of native vegetation is permitted.

The consequences of uncontrolled grazing of native vegetation have long been recognised as including:[**16**]

- elimination of palatable species, including regenerating seedlings;
- soil compacting and trampling;
- introduction of excessive nutrients to a site;
- physical damage to plants including the ringbarking of trees;
- introduction of weeds;
- destruction of moss and lichen crusts on the soil surface; and
- reduction in ground cover.

The *NV Act 2003* does not define "substantial long-term decline" in terms of the structure and composition of grazed native vegetation. A regulation could include general principles for the sustainable management of grazed woodlands. Such principles could include the following:**[17]**

- Property planning and management should include a long-term vision which considers the whole of the property and its place in the catchment (including balancing the limitations and potential of the land, and incorporating the precautionary principle);

- Manage soils to prevent erosion and to maintain productive capacity and water quality (providing detail on exposed ground and rural infrastructure placement);
- Manage pastures for production and to maintain the variety of plants and animals (including limiting the extent of intensive grazing, and management of a diverse range of fodder sources);
- Maintain local native trees for the long-term ecological health of the property and catchment;
- Manage part of the property for wildlife values; and
- Outline special management for watercourses which are important to the ecosystem and grazing activity.

A regulation must take into account variables such as: time of year that the grazing occurs; duration of grazing; stocking rates; recovery periods; and stock type. It is also essential to include a requirement for the continual monitoring of grazing impacts.[**18**]

We recommend that DIPNR draft a regulation on sustainable grazing, in consultation with farmers and environment groups.

Interaction of native vegetation regime and LEP zoning

Environment groups support the continuation of dual consents. Currently there is a dual consent process with native vegetation and planning legislation. This is particularly relevant along the coast as it has been necessary to protect vegetation in regions under significant rural, rural residential and urban development pressure. We are aware of the desire by planning authorities to 'simplify' the planning system and remove apparent dual consent situations such as clearing controls for vegetation under the *NV Act 2003* and an LEP.

However, we believe it is essential that coastal environment protection provisions are upgraded with specific objectives as part of the development of coastal strategies, and that they are in addition to vegetation controls under the *NV Act 2003*. If a piece of land has two regimes (for example, clearing controls for remnant and a tree preservation order on other regrowth vegetation in the same site, or an absolute prohibition on clearing of remnant despite possible allowable clearing under the *NV Act 2003*), then dual consent should be retained, and the prohibition not be overridden. The consideration of dual consent should not countenance weaker environment protection under either regime.

The issue of applying the native vegetation regime to differently defined zones was raised at a number of workshops. The *NV Act 2003* applies to rural, and rural residential zones, but it less clear regarding its application to certain 7C environmental protection zones, where some development is permitted; public open space zones; tourism zones and council-owned land.

In the absence of clear guidelines it is necessary to examine the objectives of the particular zone as defined in each LEP to determine the applicability. This issue is illustrated in the box below.

The Wollongong LEP19 contains the following zones:

- **Zone No. 7 (a) Special Environmental Protection zone**
  The objectives are to protect lands having special aesthetic, ecological or conservation value, including protecting catchment areas; and allows a diversity of activities on degraded land; and allows agriculture and buildings associated with agriculture with development consent. The *NV Act 2003* would apply to agricultural land in this zone.

- **Zone No. 7 (b) Environmental Protection Conservation Zone**
  The objectives are the same as for zone 7 (a) but include scenic values; and allows dwelling houses and home employment on land that is not dedicated under the National Parks and Wildlife Act 1974. Agriculture and associated buildings are allowed with development consent. The *NV Act 2003* would not apply to the whole of this zone, only the off-park land.

- **Zone No. 7 (c) - Environmental Protection residential zone**
  Excludes agriculture. It may be assumed that the *NV Act 2003* does not apply.

- **Zone No. 7 (c1) - Environmental Protection rural residential zone**
  The objectives are to provide rural residential development, "ensuring an effective transition between urban development and environmentally sensitive land" and "to ensure that any development is accompanied by significant environmental enhancement"; allows agriculture and associated buildings with consent. It is assumed that the *NV Act 2003* applies to rural residential (small holdings), but would not apply if subdivisions continued and the land was rezoned as urban.[**20**]

- **Zone No. 7 (d) – Hacking River Environmental Protection Zone**Similar to the above, the objectives are to protect environmental values, and allow dwelling houses, agriculture and associated buildings with consent in land that is not dedicated under the National Parks and Wildlife Act 1974. It might be assumed that this is akin to a rural residential zone and the *NV Act 2003* would apply to parts of the zone that were off-park land, however this may not be clear to landowners.

There were also concerns raised about application in tourism zones, community land owned or managed by Council, and public open space zones (for example 6(a) or 6(b) zones).

We note that there is currently a planning reform process underway to standardise LEP definitions and zonings. [**21**] This may go some way toward addressing the issue. The proposed zones in the standard LEP that may be relevant to the new native vegtation regime are: Agriculture 1, Agriculture 2, Rural Living, Lower Density (possibly if includes small holdings), Environmental Protection Conservation; Environmental Protection Management; Environmental Protection Waterways; Environmental Protection Natural Hazards. (Under the proposed zones, public open space is included in the same zone as national parks and nature reserves, which may be problematic). The application of the *NV Act 2003* to each of these proposed standard zones needs to be clarified. This is important as the proposed planning reforms contemplate a Local Council power to add permitted activities to any standard zone.

It is important to note that one proposal for consideration in the DIPNR Standard LEP Discussion Paper was to remove the need for objectives of zones. If removal of objectives is an outcome of the planning reform process, this would no longer be a tool for determining applicability of the *NV Act 2003* to different zones.

It is necessary for DIPNR to provide guidance to local Councils on this issue. Where confusion arises, such as regarding clearing consent requirements on Council land that is a park with a plan of management, environment groups support dual consent.

Recommendations

Part 1 - Preliminary (definitions)

- "Gardens" should be defined, with limits placed on location (such as adjacent to a dwelling house) and size (such as ½ hectare).

Part 2 - Development Consent for clearing

Part 3 - Property Vegetation Plans

- PVPs must be included on Planning Certificates under section 149 of the Environmental Planning and Assessment Act 1979.
- Clause 8 (d) should require all maps to include coordinates.
- Clause 8 (h) should read "in accordance with a PVP" instead of "by a PVP".
- Clause 9 should stipulate a hierarchy of evidence required for PVPs that change the regrowth date to accommodate existing rotational farming practices (for example: aerial photographs,

contracts with clearing contractors; receipts associated with clearing or cultivation; farm journal entries; and statutory declarations). This would also require some guidance as to how the hierarchy would operate.
- Clause 9 of the *Draft Regulation 2004* should be amended to define "farming practices", and clarify that such practices are restricted to a particular area of land. This should be done by limiting the continuation of the practices to the area actually and physically used, consistent with existing use rights principles under planning law against "intensification, expansion and enhancement". It should also be clarified that the activities were lawful at the commencement of the Act.
- Clause 10 should stipulate that perpetual offsets continue even where a PVP has been terminated.
- Clause 11 must provide for a genuine public register available on CMA websites, rather than a register available only to prospective purchasers.
- All PVPs must require a site visit to be undertaken before the PVP is granted. This includes continuing use PVPs.

Part 4 - Routine agricultural management activities (RAMAs)

- The Regulation should contain principles for defining "minimum extent necessary."
- Clause 13 should clarify the application of the pest control clearing exemption regarding den-making pest animals.
- Define "garden" (as noted above)
- The size of small holdings should be increased to 60 ha in the Western Division and 20 ha elsewhere in the state in clause 15.
- Delete the 5 ha exemption in clause 16 (1) (vi), and reinsert a 1 ha buffer zone. Delete "or similar utility."
- Default buffer distances equal to those in clause 16 (2) for small holdings should be inserted into Clause 16 (1) (b). These default distances apply unless the CMA varies the distances with Ministerial consent.
- Clause 16 (2) should be amended to read "small holdings (as defined by section 15) and rural residential zones."
- Delete clause 16 (2) (c) regarding temporary fences.
- Clause 17 should be limited to public authorities carrying out the work, to prevent abuse and in the interests of public safety.
- The regulation must clearly state that land cleared for the purpose of a RAMA cannot be later be cropped, or have its agricultural use intensified.
- The Regulation must specify that RAMAs can only be undertaken in unprotected regrowth (ie, RAMAs may not be undertaken in offset areas, remnant or protected regrowth).
- The prohibition of 2 ha per annum in the coastal zone, should be extended to all coastal CMA areas immediately.
- Timber for fence posts and rural infrastructure must not be taken from remnant, protected regrowth, vulnerable land or any offset area.

Part 5 - Broadscale clearing (Assessment Methodology) See Part 2.

Part 6 - Special provisions for vulnerable land

- The scientific basis underpinning clause 25 is unclear, with vast clearing allowed in the absence of specifying the genus and species of relevant lignum.
- The definition of state protected land should be brought into this regulation, removing the need to reference old legislation.

Part 7 - Savings and Transitional Provisions

- Existing cultivation consents must expire on the date of gazettal of the regulation.

Part 8 - General (groundcover, penalty notices)

- Amend clause 33 to require a more practical methodology.
- Penalty Infringement Notices (PINS) must only be used for technical breaches and not serious breaches of the Act or Regulations.
- Clause 35 should delete Hawkesbury and Newcastle local government areas from clause 13, Schedule 1 of the *NV Act 2003*.

Additional issues:

- There should be a regulation developed on commercial firewood collection.
- There should be a regulation developed on sustainable grazing.
- Guidelines should be developed for local councils regarding the application of the NV Act 2003 to LEP zoning.

PART 2: The Environmental Outcomes Assessment Methodology

2.1 Benefits of the proposed assessment methodology

The proposed assessment methodology has many improvements over the current assessment process, of which we are fully supportive. The main benefits include:

1. The subjectivity, policy vacuum and inconsistency found in the current system is significantly reduced. This produces a decision making tool, with clear and narrow limits on discretion, not a support tool with wide discretion. Currently we have various interpretations of the NVC Act 1997 operating in NSW at regional level and this situation should not be repeated with the new *NV Act 2003*. Changes to the tool decision rules should be adaptive and done in a fully transparent manner, as proposed in the *Draft Regulation 2004* (clause 20).
2. A much greater level of data on biodiversity and other values is brought to bear on the decision than has previously been possible by any single vegetation officer.
3. The requirement for perpetual offsets is a clear recognition of the permanence of clearing impacts in an already cleared landscape. Further offsets appropriately only increase the condition score by one level if for 15 years.
4. The protection of slopes over 18 degrees due to erosion risk.
5. The placement of vegetation communities, their rarity, general extent and connectivity in a landscape and catchment context.
6. The protection of intact landscapes from fragmentation.
7. Deferring of clearing application for threatened flora, to allow viable survey, in particular for seasonal influences.
8. In many cases the system redirects clearing pressure away from highly valued or endangered vegetation, compared to the current system, due to better protection of Endangered Ecological Communities (EECs) in the Draft Assessment Methodology.
9. The transparent process achieved by making the Draft Assessment Methodology a regulation and the rigorous process applied to any change.
10. No trading between the four environmental values – recognising the serious policy and philosophical problems with devising a metrics that compares the fate of a species to tonnes of salt or sediment.
11. A particular advantage to the farmer is the removal of the need for threatened species licensing and species impacts statements, removing dual processes and resulting in an integration via the Draft Assessment Methodology and PVP Developer. This was a negotiated position between the stakeholders but was not intended to weaken threatened species protection, rather, to improve its efficiency and reflect the tougher stand in terms of the 'ban'.
12. The Draft Assessment Methodology provides for the first time a comprehensive basis for incentive programs. However, the CMA funding could be enhanced by linking the land valuation legislation to the *NV Act 2003*. This would mean that those areas on properties with perpetual offsets and conservation via a PVP, do not get rated and land is still valued even though it is not directly used for production.
13. 'Continuing use' PVPs require site inspection. Suggestions that CMAs could carry out their legal duties without a site inspection are a recipe for a legal minefield and prevent the collection of key data on native vegetation. The fact is, a farmer will require assistance with interpretation of the various legal concepts and advice on impacts for continuing use to be validated and in order to obtain removal from the threatened species regime.
14. The definition of wetland is supported as it provides a comprehensive landscape approach. Under the new native vegetation regime we should not adopt previous narrower approaches.

2.2 Key concerns

*General comments [**22**]*

- The lack of coordinates on the final PVP maps renders them worthless. Coordinates such as eastings and northings or latitudes and longitudes are required so the features shown on the map can be reliably located. This will be essential for landholders to comply with a PVP, and for the PVPs to be legally

enforceable.

- There is no function to enable assessment staff to enter GPS waypoints into the Mapping tool. This will inevitably lead to inaccuracies in marking the location of features on the maps. GPS equipment must be provided to assessment staff.
- The methods for collecting field data need to be incorporated into the Draft Assessment Methodology document, because the way data is collected is just as important as how it is analysed. We recommend that this section be a distinct chapter in the Draft Assessment Methodology. This section must emphasise that random sampling with replication is to be used.
- The PVP Developer relies heavily on information that has been previously gathered and compiled into the underlying databases, such as the satellite images and aerial photography, the area remaining of each vegetation type, and the predicted distribution of threatened species. If this information is not updated regularly then the accuracy and objectivity of the process will suffer. Resources need to be allocated on an on-going basis to continually update and refine the information in the system.
- A feedback process needs to be established so the consequences of approved PVPs (such as area of each vegetation type cleared, amount and type of offset vegetation, amount of vegetation cleared in a the region, regional connectivity etc) can be used to update the underlying datasets for the Biodiversity, Threatened Species, Salinity and Land and Soil tools. This information must be given to DIPNR, DEC and the NRC.
- The final map in a PVP takes precedence over field measurements in the event of a dispute — that is, if a stream should have had a buffer of 20 m either side, but the map only shows a buffer of 10 m, then the map prevails. Inaccuracies in drawing the map thus have serious ramifications. The use of GPS equipment should help to reduce inaccuracies.
- Guidelines need to be developed to help identify regrowth in the field. In particular, guidance needs to be given on how to map regrowth if different vegetation layers have been previously cleared, but others haven't (for example, underscrubbing but retaining the tree canopy).
- There is a large subjective element in drawing polygons on the map, and the Draft Assessment Methodology provides no guidance on the drawing of polygons. The clearing polygon is meant to be drawn around the largest extent of trees to be cleared. However, if there are two patches of trees to be cleared, of the same vegetation type, would the clearing area include the area between the two patches? Clear guidelines are required to address such issues.
- The process of digitising the different areas of vegetation and regrowth in the PVP Mapper is subjective. Digitising is done by hand — no two officers would draw exactly the same polygon around a patch of vegetation. Further, it is unlikely the same officer would draw the same polygon if the process was repeated. Deciding what is one large patch, or should be two separate smaller patches with a gap in-between will be another subjective procedure and can make a large difference to the outcome. The Draft Assessment Methodology does not set a threshold between what is considered to be scattered paddock trees and what constitutes a patch of trees.
- At the field trials we observed that the sampling was conducted in a biased and nonrepeatable manner. Quadrat locations were not chosen randomly on a map, and then located in the field. Instead, the officers briefly explored and placed the quadrat in areas that took their interest. These areas normally happened to have trees. For areas containing patchy trees, human bias will lead to the trees being sampled rather than the gaps, even if the gaps are the dominant feature.
- Too few sites are sampled by assessment staff. Feedback from the field trials reveals that normally only one site was sampled per stratum, non-randomly located. Because site condition is multiplied by the size of the patch to determine an overall score, failing to adequately sample the range of conditions in the patch will lead to a misleading conclusion about the patch quality.
- It is acknowledged that some landholders have managed land well and undertake best practice activities, which may reduce the opportunity for offsets of incentives. While it is not possible to reward for past practices as data on the previous state of the land is not 37 available for input into the PVP Developer, it should be possible to provide points for offsets and incentives if the best practice agricultural and native vegetation conservation management is ongoing and perpetual under a PVP.

Water Quality Assessment

- The current water quality assessment does not consider many of the factors known to influence water quality such as slope, soil type, groundcover, rainfall, bank structure, and the type and extent of riparian vegetation. The water quality assessment should be modified to explicitly examine the effects of a proposal on water quality by considering these and other such factors. Riparian vegetation should be mapped and assessed in the Biodiversity tool, but proposals to clear riparian vegetation must be refused because of the importance of riparian vegetation types for both biodiversity conservation and water quality.
- It is unclear if vegetation within rivers, streams and wetlands is able to be cleared. Section 3.1.1 of the Draft Assessment Methodology only states that native vegetation within a stream listed in Appendix A cannot be cleared; it also states that vegetation within the buffer around important wetlands or minor wetlands cannot be cleared. This suggests that vegetation within streams not listed in Appendix 1 can be

cleared, as can vegetation within wetlands. Clearing of riparian buffers on any size stream, as well as in-stream vegetation and clearing within wetlands and wetland buffers should be prohibited (red light).

- It is stated in Section 3.4 that for streams with defined banks the riparian buffer distances are measured from the top of the bank. It is unclear if the PVP Mapping tool also applies the buffer to the vegetation within the stream in such circumstances. This also applies to wetlands — the Mapping tool should apply a buffer across the whole of the interior of the wetland, as well as land outside the wetland.
- The current version of the Mapping tool cannot draw accurate buffers on streams that have sections of a different width. The tool simply applies the same size of buffer along the whole stretch of stream. A facility is needed to specify the width of the stream at different points along its length, with the Mapping tool then applying the appropriate buffers. Until this feature is available, buffers should be based on the widest part of the stream.
- If the pre-mapped watercourses (pre-digitised data layer) do not line up well with the aerial imagery in the PVP Mapper, the assessing officer can draw the watercourse by hand. This introduces subjectivity, both as to when the pre-digitised watercourses need to be re-drawn by hand, and the locations where the officer draws the lines. This is important, as the riparian buffers are areas which cannot be cleared, but may appear differently depending on who does the assessment. At the scale of 1:10 000 at which the digitising (mapping) is conducted, an error of 1 mm on the map amounts to 10 m in the field. To accurately draw the location of the watercourse, assessing staff need access to stereo-pair aerial photographs.

Biodiversity Assessment

- Much of the information in the BioMetric Users Manual should be incorporated into the Draft Assessment Methodology, or the Manual should become an Appendix to the Draft 38 Assessment Methodology. For example, most of the information in the Appendices of the Manual is essential for both understanding and conducting the assessment.
- The introduction to the Biodiversity Assessment (page 51) states that the method is only used for assessing clearing under a PVP. However, page 3 of the Draft Assessment Methodology states that the Biodiversity tool is also used for assessing development applications. This confusion needs to be resolved.
- The introduction to the Biodiversity Assessment (page 51) states that the biodiversity tool cannot be used to assess the impacts of burning. However, "burning" is defined as "clearing" in section 7 of the *NV Act 2003*. The means of assessing the impacts of burning need to be resolved.
- The estimation of vegetation cover is highly subjective and differs between assessors. Objective methods for measuring cover are available and should be used.
- On page 26 there is a list of common names of species. To avoid confusion, scientific names should also be used.
- It is stated that section 5.2 (assessing thinning to benchmark stem densities) does not apply to the five species listed. How is thinning or clearing of those species to be assessed?
- In section 5.2.2 (page 26) it is stated that areas with more than one vegetation type must be divided into different zones. Areas of the same vegetation type, but with different stem densities, should also be assessed separately — if not, the single assessment of an area that includes patches of both high and low stem density could be used to justify completely clearing the areas with low density.
- In relation to the above point, there must be restrictions on where thinning can occur.
- Presently, there is nothing to stop the stems to be thinned from all being removed from one area of a patch, potentially completely clearing it. Guidelines are required to control the use of the thinning protocol.
- The thinning guidelines need to specify that stems cleared in the process of thinning to benchmark must be left on the ground to provide habitat.
- On page 27 there is an explanation of thinning to benchmark values: "Thinning is permitted WHILE Observed stemsij ≥ Benchmark stemsj ELSE …" etc. This is a simple concept and should be explained clearly in plain language.
- The definition of highly modified vegetation (section 5.3.2; page 28) allows for multiple interpretations:

  "woody vegetation: Vegetation with a projective foliage cover of the over-storey that is <50% of the benchmark minimum for that vegetation community and in which <50% of the perennial ground cover is native species grassland or herbland: Vegetation in which <50% of the perennial ground cover is native."

  Confusion arises because the benchmark values are also expressed as percentages. The definition can therefore be interpreted as meaning the measured value needs to be below 1/2 of the benchmark value (e.g. 1/2 of a benchmark cover of 80% would be 40%), or it can be interpreted as meaning that the measured value needs to be 50% below the benchmark value measured on the same percentage scale (e.g. 50% less than 80% would be 30%). If the first interpretation is the correct one, then it would be clearer to replace "<50%" with "less than 1/2".

The second part of the definition, dealing with groundcover, also allows for multiple interpretations. The definition needs to state if it is to be calculated based on: a) the percentages of number of plants; or on b) percentage cover of native and exotic plants.

For example, a patch may contain 100 plants, of which 80 are exotic and 20 are native.

Based on the first interpretation this could be considered highly modified. The second interpretation would require the cover of the exotic and native species to be calculated to see if the cover of native species was less than that of the exotics.

If the second interpretation is the correct one, it could be expressed much more simply as the second interpretation is the correct one, it could be expressed much more simply as "… and in which the cover of perennial native species is less than that of perennial exotic species."

- Overcleared vegetation types are defined in section 5.3.4 (page 28) to be those for which more than 70% has been cleared. However, in the BioMetric Biodiversity Assessment tool, the percentage of which each vegetation type has been cleared is rounded to the nearest 5%. Thus the threshold for vegetation to be considered overcleared is effectively over 72.5%, because values less than this will be rounded down to 70%.
- It would be simpler to change the definition to "… 70% or more cleared."
- A common problem at the field trials we attended was the difficulty assessing officers had in matching the vegetation types found on the properties to one of the vegetation types in the BioMetric database. This can have important consequences, such as having to decide if the vegetation on site best matches a vegetation type that is overcleared or one that is not. Problems will also be encountered with reproducibility of results, and there are possible issues with fairness to landholders.

  Extra resources need to be allocated to expanding and strengthening the vegetation types in the database.
- Resources need to be allocated to collecting more benchmark data and to review the current data. This should be done for priority vegetation types before the new assessment process commences.
- On page 29 it is stated that the site value is scaled between 0 and 100. However, the formula as shown gives a maximum value of 96 per hectare. Version 1.3 of the BioMetric tool also seems to have a maximum site value of 96 per hectare. The constant in the formula may need to be altered.
- On page 31, point (ii) of "current site condition", it is stated that "the assessor allocates a score of 0–3". This is incorrect. The scores are allocated by the BioMetric software.
- On page 31 it is stated that "Site value following clearing is determined by: … using the information provided with BioMetric …". This information should be included in the Draft Assessment Methodology in the interests of having a transparent process.
- On page 32 it is stated that "Site value with offsets is determined by: … using information provided with BioMetric …". This information should be included in the Draft Assessment Methodology in the interests of having a transparent process.
- A glossary is provided on page 35 for the Biodiversity Assessment. It would be more appropriate for one glossary to be provided for all of the assessment components at the end of the Methodology.
- The same table of vegetation hierarchies is shown on pages 35 and 37.
- To use the Biodiversity Assessment tool accurately a vegetation map needs to be prepared by the assessing officers. The scientists who created the BioMetric tool say that a fine-scale vegetation map is needed, as neither the satellite imagery or predictive vegetation mapping is of a sufficient quality to supply accurate data for the tool. No vegetation mapping has been evident at field trials we have attended, nor do we believe assessing officers have been trained to do so.
- The regional value score is based on how much of a given vegetation community has been cleared. This does not take into account the original extent of the vegetation community. The system should be weighted so communities that originally had only a small extent are valued more highly.
- There should be scope in the system for CMAs to classify areas of important vegetation that cannot be cleared because their importance cannot not be offset. Such areas would include: areas identified in recovery plans, areas of regional, state or national significance, areas of high significance to fauna such as biodiversity hotspots, old-growth forests, centres of endemism and areas of importance to migratory fauna.
- From our observations during the field trials, there has been no replication of sample plots within vegetation strata. However, we have been told that internal guidelines state that one plot must be sampled for every 2 hectares, up to a maximum of 5 plots per stratum. With no replication of plots, the results become highly dependent on the subjective placement of the plot by the assessing officers. Furthermore, we have not seen any plots located randomly. The assessments are therefore neither objective nor repeatable.
- The Biodiversity Assessment and Threatened Species Assessment tools have been designed with the assumption that RAMAs or clearing of regrowth will not be allowed in offset areas. Conditions to this effect need to be automatically attached to the final PVP.

- The Biodiversity Assessment and Threatened Species Assessment tools have been designed with the assumption that offsets will be retained in perpetuity. If offsets for some PVPs are to be maintained for only 15 years or less, the assumptions and weightings within the assessment tools will need to be modified.

Threatened Species Assessment

- The definition of highly modified vegetation on page 39 (threatened species) is different from the definition on page 28 (other vegetation). We recommend that the definition is standardised such that the vegetation must be greater than 75% modified before it is considered highly modified.
- The Threatened Species Profile Database should contain sufficient information for a positive identification of a species to be made. If this is not possible, it should refer to appropriate keys and identification tools, and consultation with the CMA and DEC. A general description and photograph will not be adequate to identify many plant species.
- On page 40 it is stated that "offsets can only be used where the local population can sustain a temporary loss of individuals …, their habitat or … key habitat features …".
- This system does not take account of the size of the loss, or the size of the local population.
- On page 41 it is stated that "If there is more than one vegetation zone within [the] area proposed to be cleared …". This should refer to the offset area, not the clearing area.
- The threatened species database needs to be regularly updated. Resources need to be allocated for this.
- Standards and procedures need to be included in the Draft Assessment Methodology and threatened species database for the targetted flora surveys. For example, how much effort must officers expend before concluding that a given plant does not occur on a site?
- The ability of species to sustain a temporary reduction in population or area of habitat needs to be considered separately for highly modified and unmodified vegetation (for those species that can utilise highly modified vegetation).
- We recommend that endangered ecological communities or thickened stands of an endangered plants not be thinned. Rapid return to benchmark density may adversely affect natural regeneration processes.

Land Degradation (Soils) Assessment

- On page 43 it is stated that the proposal area must be divided into separate LSC zones, and the tool run separately for each zone. On the field trials we attended, the sites were not stratified on the basis of LSC zones. Lack of stratification will lead to subjective, non-repeatable assessments.
- How are "high run-on areas" (page 46) identified in the field?
- The tables in Appendices F and G contain management actions to minimise the effects of clearing or offsets. However, these tables are only relevant to clearing for agricultural purposes — they are not adequate to deal with clearing for other purposes for which the Developer will be used. This agricultural bias is most pronounced in the Land Degradation (Soils) Assessment tool, but also colours the rest of the PVP Developer.
- Information needs to be included to explain how the information required for the LSC tool is gathered. For example, in the mass movement assessment, how is it determined if there is a "concentration or impedance of seepage flows"? If the answering of such questions is left to the assessing officer's judgement, the assessment will become subjective and non-repeatable.
- The incentives score from the Land Degradation (Soils) Assessment contains no spatial weighting; that is, a proposal to remediate 1 hectare of land is awarded the same score as the remediation of 100 hectares. This seems illogical.

Recommendations

The following changes need to be made to the Methodology and PVP Developer assessment process as a priority:

- Coordinates such as eastings and northings or latitudes and longitudes are required on the final PVP maps.
- GPS equipment needs to be made available to assessors, and the Mapping tool needs to be modified to allow assessors to enter waypoints.
- The methods for collecting field data need to be incorporated into the Methodology document. We recommend that this section be a distinct chapter in the Methodology. This section must emphasis that random sampling with replication is to be used.
- Objective methods for measuring vegetation cover should be used instead of subjective estimates.

- The PVP Developer relies heavily on information that has been previously gathered and compiled into the underlying databases. Resources need to be allocated on an on-going basis to continually update and refine the information in the system. A feedback process needs to be established so the consequences of approved PVPs (such as area of each vegetation type cleared, amount and type of offset vegetation, amount of vegetation cleared in a the region, regional connectivity etc) can be used to update the underlying datasets. This information must be provided to DIPNR, DEC and the NRC.
- The Mapping tool needs to be modified to automatically draw buffers within wetlands and streams. The tool also needs to be able to accommodate streams and wetlands with variable widths.
- The water quality assessment should specifically address water quality by including consideration of factors such as slope, soil type and groundcover. Riparian vegetation should be mapped and assessed in the Biodiversity tool, but must not be cleared because of its importance for both biodiversity conservation and water quality.
- Guidelines are required to prevent the thinning protocol being used to completely remove trees from areas of a patch.
- Resources need to be allocated to increasing the number of vegetation types in the database, and to reviewing and collecting benchmark data.
- The Biodiversity Assessment and Threatened Species Assessment tools have been designed with the assumption that RAMAs or clearing of regrowth will not be allowed in offset areas. Conditions to this effect need to be automatically attached to the final PVP.

Appendix: Consultation Workshops summary

Workshop Location: Coffs Harbour
Date: 22nd November 2004
Attendance: 22

Issues Raised:

Catchment Management Authorities are not 'local'.

Given the time gap between permission to clear and establishment of any offset, it was suggested that landholders pay a bond.

Landholders are unlikely to take up incentives if it will reduce their options for clearing in the future.

Landholders are still using the 2 ha exemption in the coastal zone.

The PVP trial contains a lot of information to get across in one day. The boundaries of the vegetation communities are hard to define and communities show a patchy distribution.

There must be a public register.

Questions:

How will compliance for RAMAs be monitored and enforced?

If regrowth can be cleared, how will recruitment be protected or encouraged?

How will underscrubbing be controlled?

How will the regional impacts of the changes be monitored, and incorporated?

How will the cumulative effects of offsets be measured and monitored?

Will offsets be required to be in place before consent given to clear?

How will compliance of PVP conditions be assured?

How does the Act/regulation address the trash, sell, subdivide pattern in coastal NSW?

Is this regulation/Act is better than the former system?

Relationship with bushfire management, Rural Fires Act etc?

Pest animal control? What about pigs?

Can clearing occur in riparian areas? The information on the fact sheets is inconsistent.

What is the difference between clearing and selective logging.?

What is the status of regrowth following selective logging? ie regrowth within remnant.

What are the farmers main concerns?

What are the provisions for 3rd party involvement?

Workshop Location: Grafton
Date: 23rd November 2004
Attendance: 16

Issues Raised:

Comments:

PNF is a big problem on the north coast. There needs to be an immediate moratorium. There is a lot of preemptive clearing/logging taking place.

There is confusion between the bushfire and native vegetation legislation. The Rural Fires Act requires asset protections zones and strategic fire protection zones around buildings.

Lignum and other flora mentioned in the regulation must be defined by genus and species.

The groundcover assessment methodology is flawed. It reads as though a person must be qualified to throw a stick. An alternate method would be the point and step method – used by DIPNR since 1997, and widely supported.

There should be mandatory exclusion of cattle from all riparian zones.

Need to specify scientific names for species that can be thinned under 5.2 of the assessment methodology.

The methodology can not take into account fire management.

Questions:

What is the status of regrowth after legal hazard reduction burning post 1990?

44 Does the regulation limit the number of trees that can be removed on private land?

What are the limitations on 'underscrubbing' – especially for private recreational use eg horse riding, children's play areas?

How does a VCA effect a PVP? (The concern was that lands with a VCA can not apply for incentives through a PVP)

What is a garden defined as?

How is lignum defined?

How is seasonality built into the assessment methodology for groundcover?

Are RAMAs exempt in all vegetation communities? Endangered Ecological Communities?

What are the limitations for using offsets in riparian areas – especially of minor streams?

Can native vegetation (that was not planted) be lopped for commercial purposes without consent? Eg tea tree oil production?

What incentives are available for excluding cattle from riparian areas?

How will land clearing be monitored?

What is the statute of limitations in relation to prosecuting a breach of the Act and regulation?

Can materials for RAMAs such as for fence construction, be taken from any part of the property?

Are there any limitations?

Workshop Location: Tamworth
Date: 25th November 2004
Attendance: 25

Issues Raised:

What do you need to prove rotational farming practices to change the date of regrowth to an earlier date? It was felt that this loophole could potentially affect vast areas in the Tamworth district.

There is no environmental test for regrowth that has had its date changed due to rotational farming practices.

PVPs don't look at regional connectivity of bush.

Time of PVP duration – concern about enshrining bad management activities for 15 years.

Some threatened species e.g. birds move across borders/properties. How would you include them in the PVP developer? Threatened species lists will always be changing, how will this new information be incorporated into the developer? Will PVPs already signed off be required to be amended to include new threatened species information and therefore possibly come out with different determinations regarding clearing etc.?

Incentives. If money not available at the time farmers are looking for money to complete their incentives, this will discourage farmers

Scoring of Offsets – One farmer was able to get suitable points for an offset that still allowed grazing, where grazing and regeneration would be incompatible on the site.

Scoring system in PVP for grazing too coarse.

Bushfire: the *NV Act 2003* should cover hazard reduction, but doesn't.

If a landholder applies to rezone land with a PVP attached, the Council won't know about the PVP because that information is not contained on section 149 certificates.

It is necessary for the PVP to be on the title. There have been concerns that a PVP may devalue the land, but it is increasingly likely that a PVP may add value to property.

A PVP trial result required a benchmark of 500 stems per hectare of mixed age class. This was considered by the landholder to be too high to give any environmental benefit.

One of the local PVP trials showed problems with the threatened species component of the methodology.

Species that wouldn't be found in that area were displayed as likely to occur, and species that were known to occur on the land did not come up as part of the methodology.

What is the scope to modify the methodology at the catchment level?

Questions

How is a shed defined?

How is rotational farming activities defined?

What do farmers have to prove?

How is sustainable grazing defined?

Clearing for dams, how big can a dam be?

Clearing for personal injury and damage to property?

What does this mean?

Are clearing distances for RAMAs e.g. fences to the trunk of the tree of the edge of the canopy (i.e. potentially wider buffer would be cleared if to the edge of canopy)?

Does a PVP have to be over a whole property?

Can you have more than one PVP/property?

A PVP that doesn't cover the whole property could potentially miss the most high conservation level bush.

What is the point scoring for offsets?

Does a higher quality offset get lower points therefore discouraging its retention as an offset?

How will the money allocated be distributed?

If there is no public register of PVPs what about accountability of funds?

Public register of PVPs. How will a neighbouring farmer find out what is going on the next property if they think it is affecting their property?

How can the public report clearing breaches if there is no public register.

What is the definition of a bona fide purchaser?

How will DIPNR track compliance?

What are the penalties for a breach?

Who will take farmer to court for a breach of a PVP?

What about people that want to lock up their land for conservation? How can you do this through a PVP?

How will potential buyers know about a PVP if it is not physically attached to the title?

What about removal of non-noxious weeds?

Is it possible to get incentives for salinity mitigation- how does this relate to biodiversity incentives or clearing?

How is assessment area defined for the groundcover assessment?

How much information do DIPNR get from CMAs about Development Consents and Property Vegetation Plans to enable them to enforce compliance?

Workshop Location: Coonabarabran
Date: 29th November 2004
Attendance: 21

Issues raised:

Does the *NV Act 2003* cover mining activities? Exclusions under the Act for activities under other Acts allows big loopholes for clearing.

There is an inherent problem with the logic of the Act, in that the Act states it will stop broadscale clearing, and this leads farmer to believe that they can still carry on clearing on a small scale.

Incentives

Vegetation on farms that has been improved with Landcare monies is now protected regrowth?

Is the protected regrowth (from public monies) retrospective?

Farmers who have signed 10 year agreements with Landcare, are to understand that there are different rules concerning this vegetation?

RAMAs

Who will audit the clearing done for RAMAs?

What does the minimum extent necessary mean for clearing within RAMAs?

What happens if a fence is put through remnant vegetation and then removed?

RAMA limits are only as good as the compliance?

Large holdings in the central district have no buffer distances set for RAMAs.

Offsets

Are offsets in perpetuity?

PVPs

Do PVPs have to be changed when/if the developer is changed due to new scientific information entered into the developer?

PVPs may lock in bad land management activities for 15 years if the relevant practices change with improved information.

What documentation is needed to prove rotational farming practices that might be used to change the date of regrowth to an earlier date? Are PVPs available for third party inspection? Does an existing PVP stay with the property if the property is sold? Under some current CWVMA incentive schemes, land only has to be set aside for 5 years.

Is it possible to know who has a PVP on their property without seeing the PVP? How can you accurately report observed clearing on a property if you don't know if it is legal because you can't see the PVP? Are there going to be sub-catchment summaries of PVPs?

Assessment Methodology

Will changes to the assessment methodology include updating the scientific data? Changes to the methodology only requires the Minister to consult with the NRC not agree with the NRC? Is the assessment methodology on public exhibition?

Ground Cover

Contention over the methodology to assess ground cover.

The ground cover test should be removed. If a property owner hasn't done anything on that land for 25 years for e.g. then consent should be required to do anything on that land. Ground cover species possibly represent the greatest potential loss of biodiversity.

Threatened Species

What information on threatened species exists? Is the threatened species data regional? Concerns about the quality of threatened species data available, especially for the western division.

A nationally listed species should bring up a red light even if it is a modified community.

General Questions

How regular is the SPOT 5 coverage?

What does the SPOT 5 coverage look like, how good is it?

What if vulnerable land has not been mapped yet?

How are pest species defined? Lignum should be protected regrowth.

What is special category land? Concern for the low amounts of penalties.

Is the new Act going to change anything?

Those of good will, will continue to do the right thing and those who want to will continue to exploit the loopholes and therefore clearing on a large scale will continue to happen?

Workshop Location: Orange
Date: 30th November 2004
Attendance: 20

Issues Raised:

RAMAs

Is there a definition of the 'minimum extent necessary' for clearing within RAMAs?

Will the CMA recommended buffer distances for the central coastal districts be ready by February?

Buffer distances should be to the height of the fences in the area. Commonsense should apply when determining buffer distances for fences.

A code of practice is needed for bush fire zones in land management zones.

Are offsets in perpetuity?

PVPs

Is the $120 million going to be used up by PVP applications and rectified satellite imagery?

How does a new land owner go about changing an existing PVP, are PVPs set in stone?

Does a PVP have to cover a whole property?

Is there flexibility within the offset system?

There appears to be a lot of security for farmers through the PVP method but not much for native vegetation.

If PVPs are at a property scale how is the information going to be assessed at a regional level?

What is the potential for PVPs to pick up species that are in decline?

Will the CMA officer be sufficiently trained to pick up species/habitats that are in decline?

Is the PVP a public document?

Is there a penalty for not disclosing an existing PVP to a prospective buyer?

Concern whether the Assessment Methodology was actually a Regulation.

GENERAL

Is burning that takes out the understorey considered clearing?

It should not be possible for clearing to occur via hazard reduction burns that have been authorized under bush fires Act.

Assessment of ground cover has seasonality problems ie some species may not be visible in the winter etc.

Subdivision is causing a gradual loss of biodiversity. Loss of vegetation corridors through clearing on small holdings.

Concerns regarding the relationship of the native vegetation regime with the rural fires regime were raised.

What is the definition of unlawful clearing? There have been many hectares cleared unlawfully that have not attracted penalties.

Cultivation permits have been included in the clearing estimates.

What is sustainable grazing?

What constitutes rotational farming practices?

What about the 2 hectare rule?

Workshop Location: Blue Mountains
Date: 2nd December 2004
Attendance: 10

Issues Raised:

General

Has a protocol been defined of how sustainable grazing can be assessed on the ground? Can a 3rd party take legal action against clearing that is beyond the 'minimum extent necessary' in the case of a RAMA? What

training will the CMA staff have? What are the CMA staff going to be called? What areas around the Blue Mountains are covered by the Act? The Hawkesbury area should be included in the Act.

Vegetation across the State very complex. The vegetation mapping described in the assessment methodology is at a very broad scale, a lot of vegetation types especially small rare zones will be missed. Accurate data is essential for the Developer to be meaningful.

The single dwelling DA approval for clearing done by councils, doesn't guarantee that the clearing will be assessed under a good environmental test. It depends a lot on the Council and council staff as to whether they have good training and environmental standards.

New LEP standardisation could be problematic.

What are the continuing costs of the program? Gardens could include self-planted bush corridors, the regulation should put in a definition of what a garden is.

It is possible that bush could be included as a garden if you have planted into it.

Who/how is clearing of remnants ground cover going to picked up? Can a farmer go ahead and clear anything because they said there were pest animals in there? What other legislation will over ride the *NV Act 2003*? Much concern regarding the pointy stick method of assessing ground cover.

Clarification of penalty notices requested.

What happens when the $400 million is spent? Will we have to keep lobbying for to get continuing funds, has the Government thought of the long-term viability of the program beyond the 3 years? What are the on ground activities that the CMAs will be doing with the 80% of the $400 million? No definition of wetlands limits in the assessment methodology. In Western NSW many ephemeral wetlands, very hard to determine the limit when dry, but very important, eg lake bed cropping.

Stream buffers: how do you determine the nearest main channel? What about braided channels and complex rivers in these cases it is very difficult to determine the main channel. Definition is to simplistic in the assessment methodology.

Threatened Species

Is there any assessment of threatened species Habitat?

Is there any assessment for regionally significant species?

How will CMA databases concerning threatened species, vegetation maps, critical habitat etc be updated? Databases should be updated automatically across the state.

PVPs

Does the PVP belong to the land or the owner?

A 3rd party cannot look at a landholders PVP?

Must a farmer disclose that a PVP exists on the property to a prospective buyer?

Only CMAs will have access to PVP information?

Concerned conservation groups will not be able to information about particular PVPs effecting an area?

Who is checking compliance of PVPs and how often? Powers to enter a property have been reduced under new Act.

How will new knowledge of threatened species be incorporated into PVP developer?

How long does it take to complete a PVP?

How are the base maps for a PVP obtained, in what form are they?

What about the quality of data that has gone into the PVP developer, for instance vegetation mapping is poorly mapped across the State?

How does PVP vegetation maps link into LGA vegetation mapping?

Is the site assessment during the PVP following any scientific methodology?

If you consistently breach your PVP it should say in the regulation that you will be prosecuted rather than just continuing to receive penalty notices.

Does a PVP have to cover a whole property?

So new data that may have been recorded before the date of PVP but incorporated into the database after the PVP was signed off will have no effect on the PVP?

In determining offsets in a PVP is greater weighting given to offsets that will become part of a permanent conservation agreement?

That offsets are in perpetuity or as long as the impact lasts should be enshrined in the legislation.

Will PVP maps be geo-referenced?

How long will a PVP be archived or?

Native Vegetation definition needs to be tightened up to say that native vegetation is any species that was endemic to an area before 1788. Some species are native to one area but are weed species in other areas (eg Cootamundra wattle, QLD silver wattle).

Where did the information that is now in the PVP databases come from?

PVP time frame applies across the state but what if better data is developed for particular areas, eg threatened species. The PVP is locked in. Plenty of areas haven't been mapped well for threatened species. So potential for management practices in PVPs to become outdated and those practices locked in.

Workshop Location: Albury
Date: 6th December 2004
Attendance: 12

Issues Raised:

General

Why are the penalty notices so low?

What would constitute a major breach of the Act?

How does this Act sit with the Threatened Species Act?

A concern for landholders could be when they get a red light for threatened species habitat but urban development nearby is wiping out the same habitat. Urban habitat not subject to the improve or maintain test.

The emphasis in all this is on the clearing rather than looking at offsets and conservation first.

How do TPOs sit with the Act?

Does the Act apply to urban land? What about zone 7, public parks?

Why not include urban land under the Act, so if vegetation is cleared in urban land people have to buy an offset.

Will local government be responsible for approving DA's for clearing? Many CMA staff believe they will not be responsible for DA's.

Will CMAs deal with approvals for subdivisions? Grazing is not classified as clearing? Sustainable grazing should be explained in the regulation.

Is ground cover assessed by species or cover? If local government rezones from rural to urban do they have to go through the 'improve or maintain' test? What happens if some one cuts down a dead tree for firewood, dead trees very important for habitat? The previous Act was interpreted very differently by DLWC in different parts of the State.

How do pest animals and clearing work, some farmers will clear 10 paddock trees and say there was a rabbit under each of the trees?

A transparent State wide system should take away the terrible obvious differences in the way CMAs approve clearing now.

PVPs

How does subdivision and PVPs and offsets work?

Problems with PVP trials included some strange results from clearing scenarios. Green lights were obtained when a 200 hectare area proposed for clearing which got a red light was broken down into 4 x 50 hectare lots and offset with one hectare areas, these got green lights.

Landholders generally did not seem interested in the PVP process on trials.

Some landholders were taking the point value obtained in a PVP for an area of land as an absolute for that land, eg a real value that could then be traded. Landholders were talking about being able to trade 'points' between PVP modules in time and space.

Will the PVP appear on the land title?

What happens if a landholder doesn't disclose a PVP when specifically asked by a third party?

Attach the PVP to the section 149 certificate a good idea although there is a cost involved.

Section 10 states there is a 15 year period of certainty for the PVP, what if the minister says that there is now a threatened species in the area can they override the PVP?

Can a PVP be altered in the light of new threatened species info?

What survey effort is required for identification of threatened species when doing a PVP?

Seasonality is then a problem for threatened species and the PVP.

PVP does look at stewardship for the land beyond the 15 years.

Can you put offsets on other properties?

Can a PVP cover more than one landholder's property?

How area offsets evaluated against clearing proposals?

How will CMA officers be viewed when lots of red lights start coming on?

PVPs only looking at vegetation what about other components of the environment, what about PMPs?

PMPs are very positive management tools farmers get something for nothing, PVPs can offer the same thing.

Will the CMAs be using the same bucket of money they now have for incentives?

Can the CMAs change the assessment methodology?

LUOS doesn't cover this area, there are big gaps in the data.

The erosion tool is also lacking in data and can hopefully be improved.

Will changes in the data mean changes to the assessment methodology?

Can the CMAs get into the developer and change the algorithms?

BUSHFIRE

Fire protection is a big problem. A hazard reduction burn can wipe out all the understorey in woodland.

RAMAs

The definition of the 'minimum extent necessary' for RAMAs not clear.

What is happening re LEP standardisation, who will be the consent authority?

Will CMAs determine the same buffer distances regarding RAMAs in the central and eastern districts or will they be different in each catchment?

Ground Cover

Ground Cover assessment widely criticised for not taking seasonality into account. There are studies that have been done that show up to 40% difference in species diversity between seasons. The only way to truly assess ground cover is to do it several times over the course of a year.

What does an appropriately qualified person mean in regard to assessing ground cover?

Is it possible to make an initial quick assessment of ground cover to say yes I can clear this or do I need an expert assessment before I can tell if I can clear? Only in the extreme cases of very high amount of exotics or natives not in the in between cases.

Native grasses could be argued as a key conservation issue yet they are they hardest to assess.

Workshop Location: Wollongong
Date: 7th December 2004
Attendance: 9 Issues

Raised:

General

What is a penalty unit?

Which zones or areas of Wollongong are covered under the Act?

Why are the steep areas around Wollongong not State protected land?

Would DIPNR be the appropriate body to map the steep slopes around Wollongong?

How can clearing improve an environmental outcomes?

Does the Act cover urban land? Can good vegetation in urban areas can be cleared?

Are the 18 percent slopes protected now or is this a new rule under the new Act?

Bushfires

How will rural fires certificates for risk protection work under the NV Act? Discussion of *Rural Fires Act*, land management zones and NV Act clearing.

RAMAs

So Consent for clearing is not required for RAMAs and sustainable grazing?

Who is the consent authority for clearing applications under the new Act?

RAMAs include 5 hectare clearing a round a dam, is permission needed to build the dam?

PVPs

How will people from the CMAs be doing the PVPs? PVPs are voluntary so what is in it for the farmer? Who will be monitoring the outcomes of the PVPs, management activities, and compliance? The PVP developer will not pick up threatened species that were not recorded in an area before but may potentially be there.

Who will be trained and how and to what level for the on ground assessment? PVPs should be available to all third parties.

Because money for vegetation and threatened species mapping has been cut there is little chance of getting new critical knowledge into the PVP developer.

There are two kinds of 7c land in the Illawarra will the Act apply to both? There is a lot of panic clearing going on right now on the escarpment because of the development of the Escarpment Management Plan.

There are lots of lone cedars on farmland around the area that are being logged for money. How can this be policed when no one even knows their locations? Knowledge of threatened species is very poor especially in the western division.

There seems to be an understanding that threatened species knowledge is complete, this is definitely not the

case.

What happens to the Native Vegetation Management Plans that were developed under the old Act? Groundcover Pointy stick method of assessing ground cover widely criticized.

Who will do the ground cover assessment? What training will they have? Section 33(e) is not scientific, randomly throwing by eye is known to be a biased method.

We would hope that all the processes in the Regulation would educate landholders in better environmental knowledge and practice There are many ground cover assessment methods but they all require floristic knowledge for a proper assessment.

Much of the ground cover around Wollongong is definitely more than 50% exotic so a lot of land is potentially open to clearing.

Workshop Location: Bateman's Bay
Date: 9th December 2004
Attendance: 18

Issues Raised:

Does the *NV Act 2003* apply to Crown Land?

And what about Council owned or managed lands?

In relation to protected regrowth and where public funds are available for biodiversity purposes – what about other values (such as preventing erosion / salinity etc) is funding available?

Should it be? - how do these incentives interact with existing Landcare agreements because provision not retrospective and prior good works don't seem to be recognised?

What does "sustainable grazing" mean?

What is the process or interrelationship between dual and multiple approvals or consents?

How will applications be referred between different government agencies?

In relation to the improve and maintain test – how can clearing be seen to improve anything?

In relation to the PVP process – wouldn't it make sense for landholders to test the developer 1st with their own consultants before asking the CMA to assess the land? – will the model be available to others to use – eg: accredited consultants or even landholders themselves on the web?

There is a need for more training for CMA staff.

Problems with the biometrics of the model dealing with threatened species.

How does the PVP model deal with habitat values across the whole catchment – is it property specific or is their consideration of broader values? Where Landcare or other groups have already worked on a property and put good measures in place, these can't be used for offsets, seems unfair, system favoring those who haven't adopted good practices in the past, no incentive for the "good" farmers.

Are you required to exclude stock from riparian areas? – in video some grazing proposed – seems to be crash grazing. (PVP video) How will PVP compliance be monitored? How does spot 5 deal with native grasslands? Why are section 79C considerations excluded?

How will LEPs interact with clearing?

Should developers be required to get a PVP prior to subdividing land (more generally – has PVP model been tested regarding non-agricultural development – does it need to be?)

"Public Register" – how will the public become aware of the contents of a PVP – why isn't the register available to the broader community?

With RAMAs and utilities – what about where utilities such as powerlines are put underground?

Where the Minister is considering consent applications and assessment methodology under review – which version of methodology will be applied if the Minister significantly delayed in consideration?

Who does the groundcover calculation – what does "suitably qualified" mean.

Workshop Location: Newcastle
Date: 14th December 2004
Attendance: 28

Issues raised:

General

Is the clearing of native vegetation counted as a continuing farming practice? The collection of dead timber and firewood has been listed as a major threatening process for many species.

It is concerning that the assessment methodology is too complicated to be understood by environmentalists.

Has the assessment methodology been tested to see if a threatened species habitat were to be cleared it would get a red light? Around the Hunter region a lot of bush on the urban fringes is being degraded by the collection of firewood and other uses. The government should be subjected to the improve or maintain test on government lands.

What is going to be done about the degradation of urban bush in the Hunter? Do environmental protection zones that are included in urban areas come under the Act? How many single dwellings can you have per hectare? Careful consideration is needed to ensure the potential clearing for dwellings.

It is a big concern that the CMAs won't have the resources and skills to make this legislation work.

Protected regrowth

Protected regrowth is not protected until it is identified?

How is protected regrowth identified?

Are there any maps that show where protected regrowth is?

Who can identify areas of vegetation for protection?

The criterion for identifying regrowth as protected is an important issue. There appears to be no mechanism in the Act or Regulations to identify regrowth for protection for soil an/or salinity reasons.

Sustainable grazing

Can sustainable grazing be defined, as any type of grazing that doesn't include chopping down trees?

Subdivision

For large subdivisions of rural land, are the cumulative impacts of the clearing considered in a regional context?

PVPs

How does a Utility that might need information about clearing on property obtain that information from a PVP?

Is the data that underpins the PVP available to the public?

What if green groups want to get information about green corridors?

Will the CMA staff on the coast have the expertise to cope with the inevitable complexity of PVPs on the coast? It seems that there are very few absolute red lights and that these cases are biased towards floristics. There is very little that can't be offset.

Concerns were raised about the apparent fragmentation of information that is possible through PVPs as they do not have to cover an entire property and include everything that is done on the property.

What if a farmer clears land for a RAMA that destroys threatened species habitat and that is not included in the PVP? No one will ever know about it.

Are the management activities for offsets stated in the PVP?

NSW doesn't have adequate State wide mapping of vegetation. The NRC says that CMAs will be responsible for

maintaining the diversity of vegetation. How can they do this if there are no maps to start with? The information gathered from PVPs should be available to the CMAs.

Why isn't there a scientific name for lignum included in the Regulations?

Groundcover

The ground cover assessment may create a perverse incentive to grow weeds.

Does the ground cover assessment mean 50% of native species at one point in time or over the period of a year?

RAMAs

If an electricity utility needs to clear wider buffers than those allowed under the Regulations, what is the consent process?

Why are the western division buffers different to the rest of the State? 20 m either side of a fence line seems excessive.

The definition of the 'minimum extent necessary' for clearing of a RAMA is open for debate because it can't be defined? Can trees be cut for construction of RAMAs, fences etc?

Is there a difference in the definition of killing and clearing of vegetation for RAMAs for utilities?

Can you put RAMAs through offsets?

It isn't specified how many times you can lay a fence as a RAMA. A farmer might clear for a fence and then decide it was in the wrong place and then clear another corridor, which could effectively be clearing for more pasture.

The buffer distances for Utilities are unclear. Where it says 5 metres in the regulations it really means a corridor of 10m, 5m on either side. So where it says 15m is this in total or 15m either side. This would be very unclear to a contractor who could potentially interpret this as 15m either side and therefore clear a lot more bush.

Where the information that determined the buffer distances for utilities come from?

Who is going to be responsible for compliance and prosecution under the new Act?

Would the new Act and Regulations now allow for prosecution of Greentree for his clearing of the wetland?

Bushfire

How are the activities of the RFS going to be integrated into this Act?

PNF

Is private logging going to get some benefits from clearing for RAMAs?

Is the code of practice for PNF going to be statutory?

Phone Interviews (predominantly from the Western Division)

Date: Throughout exhibition period

Number interviewed: 5

Issues raised:

Section (2)(b) states any person with interest in the land prescribed by the Regulations must consent to submission of a draft plan – does this mean banks will have to sign off on PVPs?

Groundcover methodology should include a short groundcover identification test for farmers to sit in order to become assessors.

Regarding groundcover assessment, the word "perennial" must be included in the Regulation, not just the Assessment Methodology.

Over-cleared vegetation types (even when highly modified) must be an automatic red light when being assessed.

The sample PVP contains no reference form document to the map; no description of vegetation types in the plan; only 2 maps; and clearing area and offset area are different landscapes (good cropping land versus rocky slope). Offsets should be like for like.

Potential problems with compliance and monitoring Concerns were raised regarding requirements to audit of data Penalty notices should only be for minor breaches.

Concern regarding protection of riparian areas on unnamed tributaries flowing into the Hunter, Karuah and Manning Rivers. Since they are unnamed, they will not have the strict 20m vulnerable land protection.

Buffer distances according to stream categories (as outlined on page 7 of the methodology) are inadequate and will not adequately protect water quality. This is especially important for Lake Wallis, where so much effort has been put into cleaning up the system in recent years. This issue would apply to other major river systems.

The language of the groundcover methodology is not appropriate. Legal language in regulations needs to be easily understood by laymen.

For further information regarding this submission, please contact:

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References

1. Regulatory Impact Statement p4
2. Regulatory Impact Statement p5
3. ibid.
4. See DLWC "Regulating the Clearing of Native Vegetation" Auditor General's Report 20th August 2002: http://www.audit.nsw.gov.au/perfaud-rep/Year-2002-2003/LandClearing-Aug2002/LandClearing-Contents.html
5. It should be noted that the clearing of up to 2 ha per annum in the coastal zone has been prohibited since 26th March 2004 by the Native Vegetation Conservation (Savings and Transitional) Amendment (Coastal Areas) Regulation 2004 which amends the Native Vegetation (Savings and Transitional) Regulation 1998 clause 9.
6. As published in The Land, Thursday 9th December 2004.
7. "A New model for landscape conservation in NSW" Wentworth Group of Concerned Scientists, 2 February 2003, p5.
8. Section 3.
9. The clearing allowed for lignum is of particular concern as the *Draft Regulation 2004* does not specify the genus or species of lignum, where 2 of the 7 species are endangered.
10. http://www.rlpb.org.au/landholder_info/pest_animal_insects.htm. Foxes are not on the list.
11. As published in The Land, Thursday 9th December 2004.
12. It should be noted that the onus has rested on the defendant under traditional principles of planning law since the mid-1940s (with the introduction of the County of Cumberland Planning Scheme 1940).
13. As published in The Land, Thursday 9th November 2004.
14. Regulatory Impact Statement p6.
15. Regulatory Impact Statement p5.
16. DLWC and Murray Catchment Management Committee "Adding value to the natural assets of NSW" 1998 (Series 2: Managing Native Vegetation, 2.7 Grazing).
17. These principles are based on those outlined in McIntyre, McIlvor and MacLeod "Paper on Management for Sustainable Ecosystems" (2000).
18. 18 Ibid.
19. See http://www.wollongong.nsw.gov.au/Downloads/Documents/WLEP_1990_Master_Sept04.pdf.
20. A common concern raised at workshops related to pre-emptive clearing for future subdivisions.
21. See "Standard Provisions for local environmental plans in NSW: Discussion Paper", September 2004; and EDO Submission on the Discussion Paper, November 2004.
22. All page numbers refer to the Draft Environmental Outcomes Assessment Methodology.

/home/edoorg/public_html/edonsw/site/policy/draft_native_veg_regs050121.php on line **1843**

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