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Cc: Hon Ian Hunter MLC, Minister for Sustainability, Environment
and Conservation
Ms Sandy Pitcher, Chief Executive, Department of
Environment, Water and Natural Resources

29 August 2016

RE: Proposed Changes to the Native Vegetation Regulations 2003

Dear Ms Jenke,

I am writing to you in respect of the *Proposed changes to the Native Vegetation Regulations 2003* that are open for comment until 15 August 2016.

Conservation Council SA has previously made submissions to the Native Vegetation Council on the topic of Significant Environmental Benefits – in February and March of this year.

As outlined in those submissions, Conservation Council SA believes that much of South Australia's economy is based on the use of its biological resources and, thus, there is an ongoing essential need to maintain ecosystem services on private and public land. Our primary production systems require a biodiverse landscape to ensure effective pest and disease control/management, soil conservation, soil stabilisation, pollination, salinity amelioration, and water purification. However, South Australia's biodiversity is declining at an alarming rate. This was documented in the 2013 State of the Environment Report ([http://www.epa.sa.gov.au/soe_2013/downloads/SOESA-WEB-05Biodiversity-03\(29Aug13\).pdf](http://www.epa.sa.gov.au/soe_2013/downloads/SOESA-WEB-05Biodiversity-03(29Aug13).pdf)). Page 142 specifically addresses native vegetation and the threatened species which live there – and, inter alia, draws the following conclusions:

- “Native vegetation extent and condition is fair to moderate and declining”.
- “There has been an increase in illegal clearing”.
- “There has been a decrease in the area of revegetation since 2008.”

In respect of threatened species, the report goes onto say (also on page 142):

- “The status of threatened species and ecological communities is poor and declining”.
- “There has been a net increase in the number of endangered and vulnerable species and ecological communities since 2008”.
- “Climate change has altered fire regimes.”

These assessments are alarming: the very fabric on which South Australia's economy depends is in decline.

As a case in point: Conservation Council SA and its members can confirm the decline of South Australia's native vegetation under the current regulatory arrangements, including (amongst many other examples) the many exemptions which exist in sourcing sand, limestone or rubble and for the placement of houses and golf courses. These exemptions are often unnecessarily causing significant damage to native vegetation when alternatives may exist. Council is also concerned about current informal proposals to clear substantial amounts of native vegetation on Kangaroo Island including roadside vegetation and scattered trees.

The Objects of the *Native Vegetation Act 1991* under which the Native Vegetation Council operates, however, have a goal of **conservation and enhancement** of native vegetation. The first Object of the Act outlines the intended goal of the legislation and the purpose of the Native Vegetation Council:

“(a) the conservation, protection and enhancement of the native vegetation of the State and, in particular, remnant native vegetation, in order to prevent further—

1. (i) reduction of biological diversity and degradation of the land and its soil; and
2. (ii) loss of quantity and quality of native vegetation in the State; and
3. (iii) loss of critical habitat”.

Conservation Council South Australia's comments on the draft regulations have been made with the State of the Environment report and Objects of the Act in mind.

Furthermore Conservation Council recognises that many of the permitted clearances (exemptions) have been in place for some time and that this review has enabled a clearer understanding of exactly how many exemptions have crept in. This has highlighted trends and assumptions that underpin South Australia's direction in terms of native vegetation management which is both alarming and also not in the best interest of the State's long term future.

Our comments include:

1. The proposed regulations are in direct conflict with the purpose of the Native Vegetation Council, as outlined in its legislation (immediately above). In the *Guide to the draft Native Vegetation Regulations 2016* that accompanies the draft Regulations, three of the four approval pathways require **no** Significant Environment Benefit (SEB) as an offset at all. Only the fourth pathway contemplates such a Benefit. While Conservation Council South Australia understands the desire of Government to streamline procedures, it is clear from the lack of SEBs required for three of the Approval Pathways that the extent of native vegetation in South Australia **will reduce** if the draft regulations are put into place. The

implications of the draft regulations are that there will be **no** oversight of most clearances, **no** mechanism for public review of most clearances (e.g. to check ecological value of the area to be cleared), and **no** mechanism to review the policy in future (as no data is required on clearances for three of the four proposed pathways). **This will lead to an outcome which is in direct conflict with the legislation.**

Conservation Council South Australia recommends that even in a streamlined system, **all** clearances should be notified to the Native Vegetation Council and be available for public scrutiny; and **all** clearances (except for immediate public safety clearances) should attract an SEB charge. This would enable the Native Vegetation Council to keep an eye on what clearance actions were occurring while adding to the stock of funds for SEB offsets. Should a proponent overstep the mark, the reporting process highlighted above would provide the Native Vegetation Council with the base data to conduct random audits which could lead to fines, improved education and training, or revision of the regulations at the next review point for the policy.

2. There appears to be limited scrutiny built into the system contemplated by the draft regulations. Two of the Approval pathways appear to require no advice to the Native Vegetation Council at all of the clearance actions. The experience of self-assessment in many other arenas (e.g. media, animal welfare and management of contaminated sites) is that there are inherent conflicts where the proponent of an action is also the “beneficiary” of an action. There are practical ways of addressing this inherent conflict such that streamlining of actions can still take place. The simplest is a reporting and SEB cost recovery process as outlined above. Other mechanisms such as reference to NRM Board specialist staff or accreditation of specialist assessors are also possible. Conservation Council South Australia recommends that specialist assessors be compulsorily required for proposed clearance associated with significant commercial activities or where the clearance involves substantial areas or distances.

3. The mitigation hierarchy (in Clause 5 of the draft regulations) needs to be strengthened. Rather than “should” verbs, the “must” word is required. Again, this comes back to the purpose of the Native Vegetation Council as listed in the Objects of the Act. Conservation Council South Australia recommends that the regulations require that any self-assessment conducted under the draft regulations be documented by the proponent on a standard form (submitted online) and that this explicitly require the mitigation hierarchy to be addressed. This form could be submitted to the Native Vegetation Council as part of the self-assessment procedures. Thus it would still be a streamlined process, but would also provide the Native Vegetation Council with base data to determine whether education and training in self-assessment is required.

4. The draft regulations will create an ineffective and unstable regulatory environment. Currently none of the documents outlining the draft regulations indicate that there will be additional education, training, support or advice for those undertaking the assessment processes. This is at odds with good practice in public policy: where there is a clear public policy outcome (as outlined in the legislation), there is always a balance to be struck between oversight of a process and support for those undertaking the process e.g. if a

policy regime is relaxed and the level of oversight reduced, the public policy response is normally to ensure that the level of competence of those undertaking processes is **increased** as a counterweight.

In this instance, the draft regulations both relax the level of oversight **and** fail to either increase the level of training and support to landowners or tackle the issue of training by accrediting consultants whose expertise is a required element of the revised process. The resultant outcome is almost certain to be unsatisfactory for the Government, in terms of its responsibility for the Native Vegetation legislation, and for the community in terms of its concern for the environment. When the problems generated by these draft regulations are subsequently addressed fully, the Government will not, under the proposed draft regulations, have the base data to review the effect of its policy.

Conservation Council South Australia is thus very concerned about the resourcing of native vegetation monitoring and compliance. Conservation Council SA notes that the funding of native vegetation activities in government agencies has declined markedly in recent years – by at least 50% of 2013 resources. Conservation Council SA believes that monitoring and compliance activities are fundamental to the success of native vegetation conservation and recommends that adequate funding is provided for these activities.

5. The NRM Boards appear to have no role in the process. Conservation Council South Australia recommends that the draft regulations be changed to include a requirement that advice from NRM Boards is required before a management plan or significant clearance is approved. This will ensure that on-ground advice forms part of the decision-making process and that there are suitable checks and balances before clearance actions are undertaken.

6. The pathway for fire hazard reduction can lead to excessive removal of native vegetation. Conservation Council SA understands the importance of reduction of fire hazards to mitigate losses from bushfires. However, the mechanism described in Clause 9(2) in Division 3 and in the associated Schedule gives all the power to the SACFS and only requires the Native Vegetation Council to be **notified** of proposed clearances. There appears to be no mechanism for review of proposed clearances e.g. to consider whether clearances are reasonably required for fire prevention or control. Conservation Council SA recommends that all clearances undertaken for fire hazard reduction (except in emergency situations) should be subject to review by the NRM Board and/or Native Vegetation Council to ensure that significant native vegetation assets are not being lost.

To conclude, Conservation Council SA is alarmed at the proposed draft regulations and firmly believes that they are a major step backwards in protecting native vegetation – the basis of the biodiversity of South Australia. If they are implemented, Conservation Council SA believes that they will certainly lead to the report card in the next State of the Environment report showing a more rapid decline in native vegetation (and associated threatened species) in South Australia.

Conservation Council SA believes that there is a better way both to protect our native vegetation and achieve some of the streamlining benefits being sought by Government. Our members are prepared to work collaboratively with Government to achieve this.

Furthermore Conservation Council SA supports the call from Trees For Life for the Native Vegetation Council 'to develop a vision for native vegetation management for the State where native vegetation is retained and enhanced over the next 20 years: to position it to support our State's economic and ecological prosperity including our carbon commitments well into the future'.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Craig Wilkins', with a stylized flourish at the end.

Craig Wilkins
Chief Executive