



Native Vegetation Council

Contact: Principal Advisor, Adam Schutz
Email: [REDACTED]
Phone: [REDACTED]

81-95 Waymouth Street
Adelaide SA 5000

13 December 2022

GPO Box 1047,
Adelaide SA 5001

Mr John Stimson
Presiding Member, Expert Panel
GPO Box 1815
ADELAIDE SA 5001

Ph | 08 8303 9777

nvc@sa.gov.au

c/o: DTI.PlanningReview@sa.gov.au

Dear Mr Stimson,

Re: Planning System Implementation Review

The Native Vegetation Council (NVC) is pleased to contribute to the review of the planning system given the critical importance of the system for the management and protection of native vegetation in South Australia.

The NVC is an independent statutory body, established under the *Native Vegetation Act 1991* (the NV Act) to administer the provisions of the NV Act. The NVC monitors the overall condition of the state's vegetation and makes decisions on a wide range of matters concerning native vegetation in South Australia. In particular, the NVC is responsible for assessing and responding to applications referred to it under the *Planning, Development and Infrastructure Act 2016* (PDI Act). Referrals are received in relation to the Native Vegetation Overlay and State Significant Native Vegetation Overlay in the Planning and Design Code (the Code).

The NVC has considered the Discussion Papers and the questions posed by the Expert Panel and provides the following responses.

Firstly, the NVC wishes to acknowledge the improvements stemming from the new planning system. Specifically, as a result of the inclusion of the Native Vegetation and State Significant Native Vegetation Overlays, the NVC has noticed an increased awareness of native vegetation, ensuring it is addressed early in the planning process. This provides clarity and certainty for applicants through a more coordinated and timely assessment approach. It is generally during the development application stage, when the proposed use of the land, location and design is being considered, that impacts on native vegetation are most appropriately considered and addressed. For this reason the requirement to refer certain applications to the NVC has resulted in the avoidance and minimisation of impacts from new development on native vegetation and reductions in the Significant Environmental Benefit (SEB) required by applicants.

For example, a recent application for a hotel development in Mount Barker initially proposed the removal of 19 trees. The referral of the application prompted early engagement with the applicant, allowing the NVC to negotiate an amended proposal resulting in the retention of the 5 trees with the highest biodiversity value and consequently a reduced SEB offset was required. In comparison to the previous system, where this

opportunity would not have been afforded to the NVC, the reforms have improved the outcomes for native vegetation and the applicant.

The NVC agrees with the Expert Panel's summary that, prior to the introduction of the Code and the establishment of a spatially represented referral trigger, there was limited consideration given to native vegetation in the planning process. To support relevant authorities in executing their statutory referral functions and clarify the intent of the native vegetation provisions within the Code, the Native Vegetation Branch recently undertook training sessions with development assessment staff in all local governments and for staff in the Department for Trade and Investment – Planning and Land Use Services (PLUS). The NVC has noticed an encouraging trend in accurate referrals and engagement from relevant authorities.

Turning to the specific questions posed by the Expert Panel, the NVC provide the following responses.

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?

There is significant confusion in relation to the Significant and Regulated trees provisions within the *Planning, Development and Infrastructure (General) Regulations 2017* (PDI Regulations) and the interaction with the NV Act. There are areas of metropolitan Adelaide and Hills townships where both the regulated and significant tree controls and the NV Act apply. It is appropriate that this overlap occur because the controls and the requirements are in place for different outcomes. The way the two pieces of legislation interact is clarified in the PDI Regulations (Regulation 3F(4)(d)) which states that a tree which requires clearance consent under the NV Act cannot be considered a significant or regulated tree under the PDI legislation. So if the proposal involves removing native vegetation the first consideration is whether a clearance consent is required under the NV Act or Regulations.

Where the tree does not require clearance consent under the NV Act or Regulations (e.g. via an exemption or the tree is not native vegetation) and the tree is of significant or regulated size, a development application for tree damaging activities is required under the PDI Act. For example, a native Eucalypt located less than 10m from an existing dwelling is exempt from requiring clearance approval under the Native Vegetation Regulations (Regulation 8(1)). However, assuming the tree meets the size requirements, it is considered significant or regulated under the PDI Regulations and an application for tree damaging activities must be sought prior to clearance.

Anecdotal feedback from relevant authorities indicates that in order to work out what controls apply, a general understanding of the application of the Native Vegetation Act and Regulations is needed. This may be unfamiliar to planning staff as the legislation is outside the normal planning assessment process. This can lead to misinterpretation about when a development application is or is not required. To provide clarity for relevant authorities and applicants, there would be benefit in amending the legislation or releasing a Practice Direction together with preparing supporting material that clearly explains the relationship between the two controls.

One of the functions of the NVC is to encourage research into the preservation, enhancement and management of existing native vegetation. With an estimated 3% of remnant vegetation remaining in metropolitan Adelaide, it is critical that this vegetation is protected to contribute to addressing habitat loss, biodiversity decline and the impacts of climate change. While the majority of the State's vegetation is within the NVC's remit, the metropolitan Adelaide area is not subject to the controls of the NV Act. For this reason, the

NVC appeals to the Expert Panel to consider firmer measures in the PDI legislation to protect and manage urban mature trees, particularly in relation to native tree species.

The NVC wishes to highlight the diverse and important value of mature trees in our society; from the ecological and biodiversity benefits to providing a shaded microclimate and functioning as a landscape feature which contributes to urban amenity through to the cultural values and physiological benefits provided to people.

More broadly across the State, mature non-native and planted vegetation is not protected under the PDI Regulations. To avoid incremental loss of mature trees, it is suggested that the Expert Panel considers the merits of expanding the significant and regulated tree provisions to apply across the State. By restricting clearance of mature trees, the value of these specimens is reinforced and the benefits provided by these trees are afforded to future generations.

2. Are there any other issues connecting native vegetation and planning policy?

Referral timeframes – alignment with CFS timeframe

The NVC has identified issues relating to different referral timeframes between the NVC (20 business days) and the Country Fire Service (CFS) (30 business days). When development applications requiring clearance are referred, finalised CFS Asset Protection Zone requirements is essential information for the NVC to complete its referral response. However, this information may not be known prior to the NVC referral timeframe expiring as the statutory timeframes do not align. Extending the NVC's timeframes to 30 business days would:

- enable the NVC to align its response with the CFS advice;
- remove the need to formally request the CFS advice be incorporated into the Native Vegetation Data Report, which is the current work-around; and
- remove the need for re-referral to the NVC to cure inconsistencies in clearance extents once the CFS requirements are known.

Furthermore, PDI Regulation 41(4) allows two or more prescribed bodies to provide a joint response for the purposes of section 122 of the PDI Act. The NVC has not utilised this provision to date on account of the NVC being required to respond 10 business days prior to the CFS responding. To facilitate a joint response, the CFS would need to expedite its response which is currently operationally impractical. Aligning the referral timeframes would enable this provision to be utilised by the NVC and CFS to provide a holistic referral response for applicants, providing a more streamlined approach.

The NVC asks the Panel to consider amending the PDI Regulations to extend the time period the NVC has to respond from 20 to 30 business days to align with the CFS. The NVC note that by aligning the timeframe to that of the CFS, there would be no impact on the applicant as they are required to wait for the CFS and other referral responses prior to progressing the application.

Land division

The NVC has observed applicants interpreting land division proposals as distinctly separate from the future use of the land and subsequently not considering the likely impacts on native vegetation for example, establishing boundary fence lines through vegetation. In these instances, without consideration of the future development, the proposals contravene the land division provision within the Native Vegetation Overlay, resulting in an application which warrants refusal.

To illustrate this point, the NVC was referred an application for planning consent to subdivide land in the Hills Face zone in Onkaparinga Hills for rural purposes such as low scale farming, horticulture and keeping horses. The site includes a Blue Gum Woodland and scattered native trees and adjoins the Onkaparinga River National Park. The applicant completed the native vegetation declaration stating no clearance would be required. However, in the event the land division is approved, in order to establish the new allotment boundaries, provide access and infrastructure to each parcel, clearance and fragmentation of native vegetation would be the outcome. In addition, while no change in land use is currently proposed, residential development on each new allotment is permissible in the future which has the potential to further impact native vegetation. On this basis, the NVC is considering directing refusal as the proposal does not address the provisions of the Overlay.

The NVC wishes to highlight the merit of requiring land division applications to consider the future development of the land at the time of land division consent. This is suggested to ensure the subdivision is appropriate in light of the potential impacts on native vegetation. Comparable to the Coastal Areas Overlay provisions which require applicants to consider "*the subsequent development and use of the land*" when applying for the land division, it is suggested that consideration should be given to how similar provisions may apply for native vegetation. In addition, the native vegetation declaration should be amended to highlight the potential impacts on native vegetation of the future use of the subdivided land, to align with the Overlay provisions.

Given applicants are required to address similar (but more broad) provisions under the Land Division General Development Policies when applying for consent, the NVC views this potential amendment to the Native Vegetation Overlay as a consistent and refined approach, rather than an additional requirement. The outcome for applicants is a provision and declaration which allows applicants to appropriately adapt proposals, early in the land division process.

Native Vegetation Declaration

There are likely still circumstances where applicants are not completing the native vegetation declaration correctly, particularly in relation to identifying if native vegetation is present or if the development (including land division) will impact it. To assist, we have extended our support to Council and State development assessment staff to determine the presence of native vegetation and potential impacts which has been readily utilised. However, to ameliorate these potential inaccuracies and to help applicants accurately complete the declaration we suggest the following:

- amendments to the declaration to clarify the requirements and to highlight potential impacts from land division (currently being drafted); and
- the provision of better links on the Plan SA portal to NVC factsheets and related resources.

It is relevant to note that where applicants provide a declaration of no clearance, when clearance is required, this could be considered as providing false or misleading information under section 217 of the PDI Act, which is subject to a maximum penalty of \$20,000. Any subsequent clearance of the native vegetation, without the consent of the NVC, would likely be a breach of the NV Act and subject to additional penalties.

General Development Policies dispensation

The NVC recently directed the Relevant Authority to refuse an application to remove River Red Gums to facilitate a development on the basis the clearance contravened the relevant Overlay provisions. The premise of the proposed clearance was on the grounds of achieving the vehicle parking rate provision stated in the DTS / DPF. This application

illustrates that, in practice, the specific outcome identified in the DTS / DPF provision appears to be the first option pursued by applicants, compromising native vegetation.

To resolve this in a native vegetation context, the NVC have considered existing dispensation provisions within the Code. The incentive within the Affordable Housing Overlay is an example of a provision which allows the zoned minimum lot sizes to be reduced to accommodate affordable housing. The NVC wishes to highlight the merit in applying dispensations to General Development Policies in instances where native vegetation can be further protected. For example, car parking requirements could be relaxed within the Performance Outcome where native vegetation could be retained. An alternate solution may be an elevated DTS / DPF standard within the General Development Policies which often result in clearance. For example, the maximum site coverage may be reduced to allow trees to be retained, negating the need for replacement trees or introducing maximum car parking rates instead of minimum requirements, promoting a Performance Outcome solution.

Biological data SAPPA

Given the reforms around native vegetation content within the planning system, there is an opportunity to incorporate native vegetation resources into SAPPA, such as Heritage Agreements, native vegetation mapping and threatened species records.

Ensuring biological data is available at a centralised location on SAPPA may assist applicants in better understanding their property when proposing developments, subsequently improving the accuracy of native vegetation declarations and the ability to interpret and address the native vegetation provisions within the Code.

Recommendations

To summarise, the NVC provide the following recommendations:

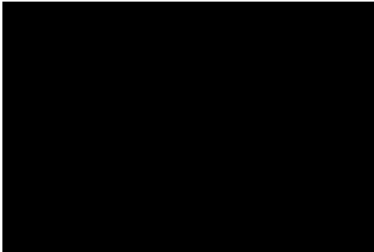
1. Clarify the relationship between the two controls for significant and regulated trees, considering there may be benefit in amending the PDI legislation or releasing a Practice Direction together with preparing supporting material.
2. Consider firmer measures in the PDI legislation to protect and manage urban mature trees, particularly in relation to native tree species e.g. expanding the significant and regulated tree provisions to apply across the State.
3. Consider amending the PDI Regulations to extend the time period the NVC has to respond from 20 to 30 business days to align with the CFS.
4. Require land division applications to consider the future development of the land, at the time of land division consent, through amendments to the relevant Overlay provisions.
5. Amend the native vegetation declaration to:
 - a. clarify how the declaration should be completed; and
 - b. highlight the potential impacts on native vegetation of the future use of subdivided land.

Provision of better links on the Plan SA portal to NVC factsheets and related resources would also assist applicants.

6. Consider the application of existing dispensation provisions within the Code to apply to General Development Policies to further protect native vegetation. An alternate solution may be elevated DTS / DPF standards which often result in clearance.
7. Consider the opportunity to incorporate native vegetation resources into SAPPA.

We would welcome the opportunity to discuss these matters further should this assist the Expert Panel. For further information please contact Principal Advisor, Adam Schutz by phoning [REDACTED], or via email at [REDACTED].

Yours sincerely,



Vaughan Levitzke PSM
Presiding Member
NATIVE VEGETATION COUNCIL