

Amendments to the *Native Vegetation Act 1991*

Submission

June 2024

Table of contents

Introduction	3
About the Local Government Association of South Australia	3
Background	3
Previous reviews and context	4
LGA Submission	5
Discussion paper and consultation documents	5
Recommendations: consultation documents.....	11
Broader native vegetation matters	13
Holistic review	13
Recommendations: holistic review	14
Road safety and function	14
Roadside Vegetation Management Plans	14
Road upgrades for safety and function	16
Roads under the care and control of the Commissioner of Highways	17
Rubble pits	18
Recommendations: road safety and function	18
Economic growth	19
Recommendations: economic growth	21
Conclusion	22
Appendix A – Black Sport funding.....	23
Appendix B – Case Study 1	24
Appendix C – Case Study 2.....	26

Introduction

About the Local Government Association of South Australia

The Local Government Association of South Australia (LGA) is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The South Australian *Local Government Act 1999* (LG Act) recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised in and has prescribed functions in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. As such, the LGA welcomes the opportunity to provide a submission to this consultation on the proposed amendments to the South Australian *Native Vegetation Act 1991* (the NV Act)¹.

This submission has been informed by existing policy positions, evidence-based research and consultation undertaken by the LGA with member councils during the first half of 2024.

The LGA notes the 'Amendments to the *Native Vegetation Act 1991* – Discussion Paper' (the Discussion Paper)² states that:

“The amendments to the Act are intended to improve and refine the administration of the Act and are considered to be policy neutral.

Importantly, there is no intention to reduce or weaken any protections for native vegetation. Equally, it is not proposed that the amendments will impose any new or increased barriers to obtaining clearance approval.”

As evidenced by extensive consultation with the membership of the LGA, and outlined in this submission, there are a broad range of ongoing issues being experienced by the local government sector which relate to the legislative framework currently provided by the NV Act.

Accordingly, this submission addresses the documents released by DEW for consultation, as well as a range of additional matters that nominally fall outside the scope of the current consultative process but are nevertheless important considerations as they impact the objectives of the NV Act.

Background

Native vegetation refers to any naturally occurring local plant species that is indigenous to South Australia, from small ground covers and native grasses to large trees and water plants. It also includes naturally occurring regrowth and in certain circumstances, dead trees. In some circumstances, the management of native vegetation is protected by legislation.

The NV Act provides for the management, enhancement and protection of native vegetation in South Australia. Local government plays an important role in the stewardship and management of native vegetation throughout South Australia from small and isolated patches in metropolitan Adelaide to larger swathes of native vegetation in rural and regional areas.

¹ <https://yoursay.sa.gov.au/native-vegetation-act-amendments>

² [Amendments to the *Native Vegetation Act 1991* – Discussion Paper](#)

The policy position of the LGA's membership in relation to native vegetation is that:

*"Local government supports retention and remediation of native vegetation outside of townships and that opportunities to expand or remediate native vegetation within townships should be fully explored. Councils shall adhere to native vegetation guidelines while maximising opportunities in all planning and development activities."*³

In general, while being proactive advocates of strategic native vegetation protection, South Australian councils voiced concerns there is an imbalance in the process, with the task of preserving remnant native vegetation often prioritised ahead of urgent and important objectives such as:

- enabling the provision of safe and functional access to road infrastructure and the corresponding cost-effective maintenance requirements
- undertaking economic development functions to allow our communities to develop, thrive and grow.

Our members have provided evidence that the weaknesses in the current legislative framework under the NV Act result in significant impediments to the delivery of councils' services and the provision of important infrastructure, with this particularly being observed in regional areas.

Previous reviews and context

The LGA notes that in October 2021, the Natural Resources Committee of the 54th Parliament of South Australia tabled its 'Review of the *Native Vegetation Act 1991* – Interim Report'⁴. While the Interim Report was tabled, a final report was not presented before the dissolution of Parliament ahead of the March 2022 State election. The LGA made a submission to this review in July 2021⁵ and in the main, recommendations made in that submission remain relevant in today's context.

The LGA also notes that the South Australian Government recently concluded a round of preliminary consultation on the establishment of a new Biodiversity Act⁶. Councils expressed concern that the development of a new Biodiversity Act would increase the complexity of the intersecting legislative frameworks and regulatory requirements, particularly for the local government sector. Feedback was also given that all the legislative frameworks need to be adequately resourced to fully achieve the stated objectives of the respective Acts.

³ LGA Policy Manual 4.1.5 'Native Vegetation'

⁴ Available under the 'Committee Files' section of the Natural Resources Committee: <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

⁵ LGA Submission to the inquiry into the *Native Vegetation Act 1991*

⁶ South Australia's new Biodiversity Act | YourSAy

LGA Submission

Discussion paper and consultation documents

In relation to the Discussion Paper and exposure draft of the proposed *Native Vegetation (Miscellaneous) Amendment Bill 2024* (the Bill), the LGA makes the following comments and recommendations.

Meanings and definitions

Question: Do you support the amended definition of substantially intact native vegetation?

Question: Do you support the inclusion of the mitigation hierarchy in the Act?

Question: Do you support moving the definition of significant environmental benefit from the Regulations to the Act?

The LGA notes the proposals to:

- Amend the definition of ‘substantially intact native vegetation’
- Include the mitigation hierarchy in the NV Act
- Move the definition of a significant environmental benefit (SEB) to the NV Act and provide additional detail about how an SEB will be achieved

As referenced earlier, it is noted that the State Government proposes that amendments to the NV Act are intended to be policy neutral. The LGA does not oppose the amendments to the definitions of substantially intact native vegetation and SEB, but seeks further assurances that these changes will indeed be policy neutral and there will be no unintended additional barriers to obtaining clearance approvals, or in the protection of native vegetation.

The LGA does note that, as the Bill is currently drafted, including the mitigation hierarchy in the NV Act itself may not result in a policy neutral outcome, as it will not “ensure a consistent approach to all applications for clearance of native vegetation”⁷. Requiring the Native Vegetation Council (NVC) to apply the mitigation hierarchy within the decision making process [at section 29(1) of the NV Act], and not make a decision that is ‘seriously at variance’ to ‘Schedule 1 - Principles of native vegetation clearance’ (the Principles of Clearance) of the NV Act, results in an addition to the existing requirements and extends the way in which the mitigation hierarchy operates.

Further, this change does not appear to address a major issue in the current system, which is the availability of parallel clearance approval pathways, through both the NV Act and the *Native Vegetation Regulations 2017* (the NV Regulations). The LGA understands that it is the existence of these parallel pathways that creates unnecessary confusion and administrative complexity within the system.

The LGA submits that a more effective scheme would involve one application and approval system which applies in all situations where NVC approval is required, along with a clearly defined list of circumstances in which NVC approval is not required.

Introducing the mitigation hierarchy as a tool for the assessment of clearance applications may be problematic in so far as it seeks, as the number one priority, to avoid clearance. Therefore, if the hierarchy applies to all clearance applications, it may have the unintended consequence of establishing

⁷ Amendments to the *Native Vegetation Act 1991* - Discussion Paper (page 9)

a de facto presumption in the minds of decision-makers that applications should be refused, except in exceptional circumstances.

Given these factors, the LGA argues that the current amendments process is not policy neutral and therefore maintains that a holistic review of the NV Act is required. Further information and evidence supporting this position is discussed in the 'Broader native vegetation matters' section of this submission.

Further, the feedback that the LGA has heard from the local government sector on matters related to SEB offsets and vegetation clearances is larger in scope than what is proposed for amendment in the documents put forward in this consultation. Further exploration about the broad range of challenges, barriers and opportunities for the local government sector is outlined and discussed in more detail under the 'Economic growth' section of this submission.

Expert based Council

Question: Do you support the membership of the Council being changed to be expert based?

The LGA notes and supports the objective to improve the skills base of the NVC by drawing in expertise from First Nations people in established cultural and spiritual practices associated with management of native vegetation. Further, that this facet of experience is not provided for within the current legislative framework for the composition of the NVC is an omission that must be rectified.

However, given the local government sector's important ongoing role in giving practical effect to the aims of the NV Act (for example, councils' active role in preserving and maintaining native vegetation within road reserves and on other land) these important perspectives could be lost or diminished in a move to a skill based NVC in which the LGA and other peak bodies lose the ability to provide a direct nomination. Along with the Conservation Council SA and Primary Producers SA, the LGA strongly opposes this change.

The LGA does support, however, the addition of a consultation period of 21 days with 'relevant bodies' (including the LGA) and a consultation process that enables meaningful input.

The LGA recommends that DEW reconsider the skills list for the membership of the NVC to also include a criterion relating to local government skills and experience. This understanding may be considered in conjunction with another skillset, such as primary production, as per the current legislative framework.

Expanded use of the Native Vegetation Fund and assistance to landowners

Question: Do you support the expanded use of the money from the Fund?

Question: Do you support the expanded purposes for which landowners can apply for financial or other assistance?

The LGA expresses concern that fees paid by applicants, including by councils, have been used to increase State Government cash reserves rather than to further the aims of the NV Act.

The LGA notes that, in February 2024, DEW published a 'Summary of SEB grants'⁸ and prior to this, the last version of this document was a 'List of SEB grants'⁹ published in October 2022. In addition, high level information on the financial status of the Native Vegetation Fund (NV Fund) may be found in

⁸ [SEB-Grants-Summary-2009-to-Feb-2024-003.pdf \(environment.sa.gov.au\)](#)

⁹ [SEB-Grants-Summary-2009-to-OCT-2022.pdf \(environment.sa.gov.au\)](#)

the NVC's Annual Reports¹⁰. In particular, the LGA notes that the Annual Report of the NVC for 2022-23¹¹ showed a total actual income of approximately \$7.3 million, while total actual expenses were only \$1.4 million. The LGA supports efforts to more effectively distribute these funds for actual on-ground programs and works to support the retention, remediation and management of native vegetation in South Australia.

The LGA has also heard from members that there is a desire to ensure transparent accountability over the use of the NV Fund for direct and local on-ground benefit. This needs to be clearly demonstrated and communicated, especially where a local government has spent ratepayer money on SEB payments for the development of community infrastructure or development projects. Noting that local governments are close to their communities, with an acute understanding of the local context, this could be considered and supported by greater integration and use of local governments in co-design and co-delivery of these activities. For example, in those areas where the relevant council has made a contribution to the NV Fund and where the council seeks direct involvement to provide an on-ground vegetation management program or activity for the direct benefit of their community.

In general, the LGA seeks an increase in transparency and accountability over the collection and expenditure of all funds collected by the State Government, including the NV Fund. Expanding the use of the NV Fund is not necessarily opposed by the LGA, on the understanding that it is desirable that the NV Fund (and in particular, the funds collected under SEB payments made by all applicants) is used to its full potential for the direct on-ground benefit of native vegetation retention, remediation and management in South Australia.

The LGA does not support the use of the NV Fund for general administrative purposes, nor an expansion of the legislative capacity for this to occur.

Conservation agreements

Question: Do you support the introduction of conservation agreements?

In general, feedback from the local government sector in relation to implementing a new type of agreement, a 'conservation agreement', is met with cautious optimism. If successful, a proposal for a more flexible approach to establishing term limited agreements to achieve more effective on-ground management, conservation, protection and enhancement of native vegetation is to be welcomed.

Some responses from the local government sector indicated that the current framework to achieve on-ground benefits is costly and labour intensive. Anecdotally, the LGA has been advised that it is on average 8-10 times the cost to achieve an on-ground offset benefit when compared to making a monetary SEB payment. This provides a significant disincentive to achieving a positive environmental outcome by managing land to the standards required to gain an on-ground benefit.

¹⁰ Department for Environment and Water - Annual reports

¹¹ [Native-Vegetation-Council-2022-23-Annual-Report-Tabled.pdf \(environment.sa.gov.au\)](#) (page 19)

Increase in fees and penalty provisions

Question: Do you support the increase in expiation fees and penalty provisions?

As one of the three tiers of Australian government, it is generally not appropriate for local government to be subject to the criminal justice system for breaches of legislation aimed at enhancing social and environmental outcomes. The statutory scheme should instead encourage parties to collaborate. If breaches occur, there should be a statutory mechanism for a council to rectify the issue rather than, for example, paying a monetary penalty.

Clearance of intact stratum

Question: Do you support the introduction of provisions to allow minor clearance of intact stratum in limited circumstances?

It would appear reasonable to permit the clearance of intact stratum in limited circumstances as outlined in the Discussion Paper. This aspect should also be considered in conjunction with the commentary made below about dual responsibilities of local councils to both comply with the NV Act and mitigate the effects of identified hazards (under the LG Act).

Consistent application process for clearance applications

Question: Do you support the relocation of circumstances from the Regulations to the Act to provide for a clearer and consistent application process?

The LGA notes the dual responsibilities that councils have, both to comply with the NV Act, and as outlined in section 7(d) of the LG Act¹², which states a function of council is: *“to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards...”*

Noting this, the existing application approval pathway already provides a barrier for the local government sector to provide effective and timely remediation of safety risks or ‘immediate hazards’ (e.g. foreseeable risk of injury or death) that do not fall within the established clearance envelopes outlined in the Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation¹³. Where these hazards occur, clearances must be applied for and approved separately prior to undertaking work to clear.

This already results in both an actual risk to the public, as well as a liability risk to the local government sector due to inherent delays built into the existing approval process. For example, even if the application process is running ‘on time’, council may wish or need to undertake immediate remediation works but must wait for approvals to be granted. Moving the clearance framework into the NV Act from the NV Regulations risks exacerbating and elevating this issue to a statutory level.

To address these actual and potential risks, the LGA seeks targeted amendments to the current statutory indemnities available to councils and local government employees. If agreed in principle, the LGA proposes meeting with DEW officers to confer on potential legislative solutions.

¹² Local Government Act 1999 (legislation.sa.gov.au)

¹³ Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation

Clearing when seriously at variance with the principles of clearance and consistent SEB Offset requirements

Question: Do you support consolidating the circumstances when the Council is able to consent to clearance which is seriously at variance with the principles of clearance?

Question: Do you support the proposed standardised SEB process in terms of the expectations and obligations?

Question: Do you support long-term protections and management of SEB areas through entering into a conservation or heritage agreement?

As identified elsewhere in this submission, on behalf of members, the LGA makes commentary on the current framework for the Principles of Clearance and SEB offset requirements that go beyond the scope of this consultation. The LGA is of the view that a holistic review of NV Act is required to address these systemic issues.

Aligned assessment provisions for PDI Act referrals

Question: Do you support the clarification of requirements for PDI Act referrals?

In general, the LGA supports moves to simplify, clarify and improve the flow of applications through the process of assessment under the NV Act. This includes the proposal to streamline and clarify the requirements for *Planning, Development and Infrastructure Act 2016* (PDI Act) referrals to avoid duplications.

However, in parallel with this NV Act amendment process, the LGA notes that in April 2023, the Expert Panel for the Planning System Implementation Review handed down its 'Final Report and Recommendations 2023'¹⁴ and in March 2024, the Government provided its 'Response of the South Australian Government to the Final Report and Recommendations of the Expert Panel for the Planning System Implementation Review'¹⁵.

The critical item relating to the intersection of the NV Act and PDI Act occurs at Recommendation 36, which outlines that a common theme that the Expert Panel heard about was that while improvements have been made under the new planning system:

"...it remains fraught with misaligned and/or overlapping requirements which make the intersection of the two (2) extremely difficult to navigate."¹⁶

And that the Expert Panel:

"... received suggestions as to what improvements could be made, including designing the system such that one (1) takes precedence over the other in all circumstances (rather than situationally) to avoid duplication of approvals and processes and stopping the application of the Native Vegetation Act at township boundaries."¹⁷

In its response, the LGA notes that the State Government accepted the findings of the Expert Panel and provided 'in principle' support to the:

¹⁴ Final report and recommendations 2023 - Expert Panel for the Planning System Implementation Review

¹⁵ Response of the South Australian Government to the Final Report and Recommendations of the Expert Panel for the Planning System Implementation Review

¹⁶ Recommendation 36 of the Expert Panel's Report (page 111)

¹⁷ Ibid

- Preparation and provision of coordinated guidance material, which would be co-developed by Planning and Land Use Services and the Native Vegetation Branch (NVB) at DEW, as a 'single source of truth' on how the interaction between systems works.
- Review and refinement of the intersection between legislation, noting this would be a complex policy reform process.

While noting the complexity of legislative reform, a review of where the native vegetation legislation applies under the NV Act and the current policy settings needs to be undertaken at state level to fully explore the challenges and opportunities available to ensure that South Australia is growing in the ways that best support biodiversity conservation, while providing much needed infrastructure and services to our communities.

In the interim, the LGA supports the findings of the Expert Panel and the State Government's response that, while larger policy and legislative reform is considered, the preparation of guidance materials should be progressed as a matter of priority.

Expanded compliance actions and a range of options

Question: Do you support the amendments to improve the compliance and enforcement options?

The LGA notes that it is the expressed intention that the State Government, through DEW, will continue to be responsible for the regulatory compliance functions under the NV Act, and this would continue under the revised legislative framework.

Notwithstanding, it is also noted that the Minister currently has the option, under section 33A(1) of the NV Act, to appoint Authorised Officers who are employees of a local council. The LGA is of the understanding that there are no current council employees who are Authorised Officers for the purpose of the NV Act.

Noting that local councils are independent decision-making authorities, the LGA does not have a position on whether council officers should perform the function of an Authorised Officer under the NV Act, as there may be individual cases where this is appropriate, depending on the needs and wants of the community a council serves. However, the LGA does support that a nomination of an Authorised Officer who is a person employed by a local council should only be undertaken with the express written permission of the administrative or elected body of that council; and be someone who has received adequate and appropriate training to perform this function.

Further, in general, the LGA's position is that if local council employees are engaged to perform functions as an Authorised Officer (as per authorisation pathways available under a range of other State legislation) the cost of undertaking these services on behalf of the State Government should be appropriately compensated or remunerated to the council providing these resources.

Expanding the available compliance actions and options as outlined in the proposed new sections 31E and 31EA of the NV Act does entail a risk to local councils if, in future, the Minister wished to exercise their ability to appoint local council employees to be Authorised Officers under the NV Act. For example, the new proposed section 31EA(3) of the NV Act insufficiently describes the term 'any reasonable time', allowing a broad interpretation to occur.

Regardless of whether these changes proceed, the LGA recommends consideration be given to including a statutory indemnity clause for local government to provide adequate coverage if authorisation of local council 'Authorised Officers' under the NV Act was to be considered in future. A

suitable example of an appropriate indemnity clause appears in section 260(6) of the LG Act¹⁸, which states: “*No civil liability attaches to an authorised person for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this or other Acts.*”

Recommendations: consultation documents

The LGA makes the following recommendations in relation to matters outlined in the consultation documents:

1. The LGA does not oppose the proposal relating to definitions of ‘substantially intact native vegetation’ or ‘significant environmental benefit’ on the basis that this consultation indicates that these policy changes would be ‘policy neutral’.
2. The LGA does not support the inclusion of the ‘mitigation hierarchy’ in the NV Act as it does not address the major source of inconsistency in the current system, which is the parallel clearance approval pathways. The LGA submits that a more effective scheme would involve one application and approval system which applies in all situations where NVC approval is required, along with a clearly defined list of circumstances in which NVC approval is not required.
3. The LGA does not support the loss of local government expertise by removing the ability for the LGA to nominate a representative to the NVC. However, the LGA supports a consultation period of 21 days with relevant bodies for all nominees and increasing the skills diversity to include First Nations representation.
4. The LGA advocates for an increase in transparency and accountability over the collection and expenditure of all funds collected by the State Government, including the NV Fund. It is desirable that the NV Fund (and in particular, the funds collected under SEB payments made by all applicants including councils) is used to its full potential for the direct on-ground benefit of native vegetation retention, remediation and management in South Australia.
5. The LGA does not support the use of the NV Fund for general administrative purposes, nor an expansion of the legislative capacity for this to occur. Rather, for the purposes of general administration and policy functions, conducted by DEW officers, these functions should be funded from general appropriation.
6. The LGA provisionally supports the proposal to introduce the option of a new ‘conservation agreement’ type, noting these would have the ability to be term limited. If this amendment proceeds, their effectiveness in achieving the objects of the NV Act should be reviewed after a period of operation.
7. In relation to increasing fees and penalties, for the local government sector, the LGA suggests that the statutory scheme should encourage parties to collaborate. If breaches occur, there should be a statutory mechanism for a council to rectify the issue rather than, for example, paying a monetary penalty.
8. In relation to allowing minor clearances of intact stratum, the LGA recommends considering this in conjunction with the commentary outlined around the dual responsibilities for local government under both the NV Act and the LG Act (i.e. taking measures to mitigate the effects of hazards).

¹⁸ [Local Government Act 1999 \(legislation.sa.gov.au\)](http://legislation.sa.gov.au)

9. In relation to codifying the clearance application framework in the NV Act, if this insertion proceeds, to address actual and potential risks, the LGA seeks targeted amendments to the current statutory indemnities available to councils and local government employees. If agreed in principle, the LGA proposes to meet and confer on potential legislative solutions.
10. The LGA provides in principle support to the findings of the Expert Panel for the Planning System Implementation Review, which stated that further investigation is required into the intersection of the NV Act and PDI Act and that while larger policy and legislative reform is considered, the preparation of appropriate guidance materials should be progressed as a matter of priority.
11. Regardless of whether the expanded compliance options changes proceed, the LGA recommends consideration be given to including an indemnity clause for local government officers to provide adequate coverage if authorisation of local council 'Authorised Officers' under the NV Act was to be considered in future. A suitable example of an appropriate indemnity clause appears in section 260(6) of the LG Act. Again, the LGA proposes to meet and confer on potential legislative solutions.

Broader native vegetation matters

Holistic review

As briefly stated earlier in this submission, the LGA notes that Natural Resources Committee never completed its work on a holistic review of the NV Act. The LGA made a submission to this review in July 2021¹⁹ and in the main, recommendations made in that submission remain relevant in today's context. These recommendations included:

- Role of the NV Fund and whether operation could be improved to better support research, preservation, enhancement and management of native vegetation in South Australia.
- Simplification of regulated tree regime to ensure that the community understands the application of the policy in a practical setting.
- State and local governments, strategic stakeholders and landowners should seek opportunities to work together to develop more practical arrangements to manage roadside native vegetation including cost sharing arrangements.
- Consider alternative offset options to support regional economic growth. [This aspect is arguably even more significant today as the housing and affordability crisis deepens around the nation.]

The LGA is also aware that several member councils made separate submissions to this review addressing areas of particular interest to them. While individual councils made their own submissions to this review²⁰, there remained some common experiences and feedback provided on the practical operation of the NV Act. In particular, the following matters were raised:

- Consider enabling a framework to allow councils a greater say in self-determination around management of safe road corridors, within existing road reserves that have long been identified for this purpose.
- Responses noted improvements made by the stronger interaction of the NV Act and the revised PDI Act. However, greater clarity is required for all stakeholders, including landholders, developers and the general public, with respect to the requirements under the NV Act. There was a general perception across the sector that the requirements are complicated and where accredited consultants are required to provide advice, this provides a barrier to timely and efficient approvals and may in some cases result in unauthorised and/or illegal clearances where individuals do not follow the established framework²¹.
- Responses favoured a model where the State Government provides more proactive information and advice on native vegetation management and clearance approvals, noting that in some locations, the majority of native vegetation clearances are occurring on privately owned land. Education and awareness around actual and perceived fire risk profiles would also be of benefit to the community.
- General experiences cited that there appeared to be inadequate resourcing available within the NVB to support the objects of the NV Act. This manifested as either lengthy delays in assessing and determining whether clearances could occur, or in a lack of resourced ability to proactively

¹⁹ LGA Submission to the inquiry into the *Native Vegetation Act 1991*

²⁰ <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>: see Natural Resources Committee>Committee files>Completed Inquiries>2021 10.Review of the Native Vegetation Act 1991>Submissions, for details of all submissions made, including those from local councils.

²¹ This view has been borne out by Recommendation 36 of the above referenced *Final Report and Recommendations of the Expert Panel for the Planning System Implementation Review* (page 31)

investigate and expiate or prosecute small and medium breaches of the NV Act. This in turn reduces the ability to deter further instances of poor or illegal behaviour and practices.

- Some metropolitan councils which have localities that span areas where the NV Act both does and does not apply provided feedback that this overlay was patchy and inconsistent, resulting in over protection of areas of poor quality/priority vegetation and under or no protection of high quality or significant vegetation.

It is disappointing that the work of the Natural Resources Committee on reviewing the NV Act was not completed when the 55th session of Parliament resumed. This represents a lost opportunity to work collaboratively with all stakeholders, including the LGA and its members, on providing a more contemporary focus to achieve the objectives of the NV Act in preserving and maintaining native vegetation across the state, while unlocking the state's growth potential.

Recommendations: holistic review

1. The LGA maintains that a holistic legislative review of the NV Act is required, similar to that previously commenced by the Natural Resources Committee of the South Australian Parliament in 2021.

Road safety and function

Roadside Vegetation Management Plans

As highlighted in the LGA's previous submissions on the operation of the NV Act, the Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation²² (the Guidelines) still present issues to member councils in their practical application. While some metropolitan and peri-urban councils have dedicated staff that would have sufficient ecological or local botanical knowledge to interpret the Guidelines and advise their civil works staff on clearances permitted, this level of knowledge and skill would be out of reach for some of the smaller and/or regional councils. This inequity is compounded by:

- The significant lengths of roadside verges that rural and regional councils must manage to ensure road safety and function for all road users.
- The requirement to use 'low-impact methods' within the verge (which effectively stifles use of graders and/or other machinery) impedes rural and regional councils from undertaking timely and cost-effective native vegetation management activities for road safety and function.
- The overlay of where the NV Act itself applies, which in the main is concentrated outside of metropolitan Adelaide.

To undertake works outside the parameters of the Guidelines (e.g. clearances within the primary envelope, secondary envelope or verge) local councils have the option of developing their own Roadside Vegetation Management Plan (RVMP). However, it is unclear under what circumstances an RVMP that details work outside the parameters of the Guidelines would be approved by the NVC. The resourcing requirements to develop and consult on an RVMP are considerable and continued endorsement of an RVMP is dependent on an initial review three years after first approval, and thereafter at five-yearly intervals, which presumably also creates additional review work for DEW officers and the NVC.

²² Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation (September 2020)

In February 2024, the LGA secretariat sought information from the NVB about RVMPs, which:

- Confirmed that there are only two councils in SA with a current active RVMP.
- Advised that using existing clearance application pathways is likely to be much more efficient and effective for work that is to occur outside the parameters of the Guidelines.

The LGA is aware that some member councils and regional LGAs have previously made attempts to seek approval of their own bespoke RVMPs, without success. These attempts have sometimes included the at-cost engagement of NVC accredited consultants.

In the case of the Eyre Peninsula LGA, it is understood that some aspects of their draft RVMP were incorporated into the broader changes made to the Guidelines which were endorsed in July 2019 (with further amendments processed in September 2020). While some of the recommended aspects were adopted in the wider Guidelines, some matters were unable to be resolved, such as verge clearance envelopes and methods. For example, clause 7(d) of the 'Operating Requirements' section of the Guidelines, which states "*Any required tree-trimming must be performed in accordance with recognised arboriculture standards*" which is extremely challenging for councils that manage very large sections of road verges across a wide area, for example on the Eyre Peninsula (and without this particular skillset within smaller regional councils).

During consultation, the LGA also heard from some member councils which held a mistaken view that an individual RVMP was a legislative requirement under the NV Act (or other legislation that governs the sector, such as the LG Act).

Proactive information to councils from DEW on the use of the existing Guidelines and that individual localised RVMPs are not required would be welcomed. This could be supported by revising the introductory section of 'Part 4: Developing a management plan' in the Guidelines²³ to further clarify that this is an option only. The LGA can assist with broadcasting proactive messaging on this to member councils.

The LGA notes that the Guidelines state that "*... much of the state's remnant native vegetation is located on roadsides and in road reserves*". Notwithstanding this, feedback from member councils indicated that when it comes to managing native vegetation alongside road corridors, particularly in regional areas, councils need to be supported in the discharge of their primary care duties. These duties include activities to support:

- Increasing regional road safety outcomes by implementing proactive road safety treatments.
- Agricultural productivity and the movement of large machinery and equipment on our road networks.
- Bushfire overlay planning, such as the management of roadside native vegetation as part of an integrated fire break strategy.

One way to balance both the objectives to preserve/maintain native vegetation, while improving road safety and function is to ensure that the existing Guidelines achieve the highest level of quality in evidence-based action and outcomes. The LGA recommends that, at the earliest possible opportunity, the NVC and DEW seek to review the Guidelines in close consultation with an independent body specialising in road safety research and advice, such as Austroads or the National Transport Research Organisation (NTRO). Engaging in a continual renewal and improvement process for the general

²³ Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation (September 2020) (page 30)

guidelines issued by the NVC, including regular review and input by a multi-discipline panel of subject specialists with local government representation would provide a better pathway towards ensuring this document is current and fit for purpose.

Road upgrades for safety and function

Sadly, 2023 was one of the most dangerous years on South Australian roads, achieving the grim statistic of the highest number of fatalities since 2011 and the highest number of serious injuries and serious injury crashes since 2010²⁴. Indeed, from January to December 2023, there were 1,266 deaths on our roads nationally, which represents an increase of 7.3% when compared to the previous year²⁵.

Therefore, all levels of government need to be actively engaged in implementing the Safe System approach on our road networks. Safe Systems adopts a holistic view of the road transport system and the interactions between people, vehicles and the road environment, with four overarching pillars being Safer People, Safer Vehicles, Safer Speeds and Safer Roads. Safe Systems is supported by both the National Road Safety Strategy²⁶, as well as being reflected in respective state and territory road safety strategies and plans²⁷.

Local governments around the nation manage three quarters of the road network. In South Australia alone, local councils manage 75,000km, or 11 percent of the national network of local roads²⁸, has 7 percent of the population but only received 5.5 percent²⁹ of the federal Identified Local Road Grant funding. This represents a large responsibility for local councils, and particularly for South Australian councils an added cost pressure, to ensure that roads are managed and maintained to the highest standards possible, to assist in reducing road trauma under the Safe Systems pillar of 'Safer Roads'.

Given this responsibility, the LGA recommends consideration of a supporting framework under the NV Act where councils can be a trusted partner in delivery of road management and maintenance activities that achieve the dual objectives of road safety and function, as well as preserving road reserves, which often house much of the state's remnant native vegetation. In some cases, this may mean allowing greater scope for councils to determine when it is appropriate to undertake a clearance to provide a clear road safety outcome. Many regional members consulted indicated that maintenance cost pressures would effectively provide a form of 'self-regulation' from the risk of over-clearance during regular maintenance activities in road carriageway envelopes.

In addition, for road project specific clearances, there is also a need to streamline assessment approvals for the benefit of the community. For example, in cases where eligibility for Black Spot funding has been determined, this funding is often time critical as reactive treatments make up most of the current eligible funding allocation. To be eligible for Black Spot Funding, a five-year history of casualty crashes³⁰ must have been recorded as follows:

- For individual sites such as intersections, mid-block or short road sections, there should be a history of at least three casualty crashes over a five-year period.
- For lengths of road, there should be an average of 0.2 casualty crashes per kilometre per annum over the length in question over five years.

²⁴ SAPOL - Traffic statistics (police.sa.gov.au)

²⁵ Statement on the catastrophic number of road fatalities in 2023 | Ministers for the Department of Infrastructure

²⁶ National Road Safety Strategy 2021-30 | National Road Safety Strategy

²⁷ South-Australias-Road-Safety-Action-Plan-2023-2025.pdf (thinkroadsafety.sa.gov.au)

²⁸ LGA Guide-to-a-Local-Government-Road-Safety-Strategy-and-Action-Plan-6.9.19.pdf

²⁹ SA Local Government Grants Commission – 2023-24 Information Paper (insert)

³⁰ Black Spot site eligibility | Infrastructure Investment Program

The LGA is aware of several councils that have been successful in receiving approval for the Black Spot program, only to have approvals for native vegetation clearances delayed or not approved in their original submitted form. See the example from the Adelaide Hills Council, provided in **Appendix A** that appeared in 'The Courier' on Wednesday 21 February 2024.

Another example, where similar native vegetation clearance constraints apply, was provided by the District Council of Lower Eyre Peninsula (DCLEP), with full details of this case study available at **Appendix B**. In this example, it is understood that DCLEP was recently advised by the state Department for Infrastructure and Transport (DIT)³¹ that a long awaited and planned for overtaking lane proposed for the Tod Highway was recently assessed by the NVC, which found the proposal to be 'seriously at variance' with the Principles of Clearance and was not supported.

Unfortunately, at great disappointment to DCLEP, the project has now been shelved by DIT as all funding for improvements to road infrastructure through the Eyre Peninsula Network has been committed. This is a blow to the local community in the wake of the February 2019 decision to close key rail freight lines on the Eyre Peninsula, which has increased freight traffic travelling along the Tod Highway and continues to impact the community today.

Given the current road safety context and above examples from the sector, the LGA seeks an opportunity to work proactively with the State Government on streamlining these clearance approval processes for high value road safety treatments. Further suggestions for this are outlined under the recommendations outlined at the end of the section.

Roads under the care and control of the Commissioner of Highways

In addition, the LGA notes that the Commissioner of Highways (the Commissioner) has responsibilities under the *Highways Act 1926* (Highways Act) for the care, control and management of roads (highways) and, in the main, DIT discharges this responsibility. The guidance for how to manage these road corridors is provided in the DIT Operational Instruction 20.1³² (OI 20.1). The current available online version of OI 20.1 is listed on the DIT website, and is marked as last being updated in June 2008. The LGA notes that the scope of OI 20.1 is broader than relating just to the native vegetation context and is not a document controlled by DEW. However, the document is widely used by the local government sector in interpreting care and control of vegetation along both local and state controlled roads, including native vegetation where present.

Given the interactions between the NV Act, the LG Act, the Highways Act, the interpretation of OI 20.1 is of keen interest to the local government sector. The local government sector has responsibilities for verges and corridors outside of the primary carriageway on state-controlled roads and these responsibilities have a financial impact to councils for managing roadside utility³³.

Member feedback from the sector has shown that the dual responsibilities of DIT and local councils in maintenance of vegetation along state-controlled roads sometimes yields an inconsistent approach as there are times when an holistic approach to tree management is not occurring because a tree may span multiple areas of responsibility.

For example, OI 20.1 states that "*The Commissioner will not remove a tree without consultation with Council unless an immediate hazard exists to road users, e.g. a tree is in danger of falling onto the*

³¹ [Agenda of Ordinary Council Meeting - Wednesday, 21 February 2024 \(lowereyrepensinsula.sa.gov.au\)](#) (page 39)

³² [Road Maintenance & Operation - Care Control & Maintenance of Roads by the Commissioner of Highway \(dit.sa.gov.au\)](#)

³³ [LGA Policy Manual - 4.1.3 - Verges and Corridors](#)

roadway.” Clarity of purpose on what constitutes an ‘immediate hazard’ would benefit all within the chain of responsibility and ensure a more consistent approach to tree management.

Furthermore, a review of OI 20.1 by DIT would be welcomed, particularly in light of inconsistencies such as:

- The document displaying out of date clearance envelope information (5 metres as opposed to the current DEW Guidelines³⁴ which state 6 metres)
- The 2021 repealing of the DIT ‘Vegetation Removal Policy’³⁵ which is referenced in OI 20.1.

Again, a periodic review process for OI 20.1 will provide genuine opportunities for collaboration of subject matter specialists from a range of stakeholder groups, including DIT, DEW and local councils and is likely to create a more contemporary, user friendly and workable document for all parties.

Rubble pits

Councils in regional areas articulated issues with accessing rubble pits for suitable road base for road construction purposes. To ensure cost benefit ratios are achieved, these need to be suitably located within a reasonable distance of the end location for use. The cost of transporting road base material for roads over long distances is prohibitive and significantly increase the cost per kilometre of road building and maintenance.

In some areas, such as the Eyre Peninsula, most remaining suitable road rubble is located under remnant native vegetation, with most arable land already in use and not containing material suited to this purpose. SEB offset payments are increasingly making the material cost prohibitive to extract and use. Feedback indicated that some additional regard to native vegetation clearances for this purpose should be considered. The LGA seeks amendments to the scheme that facilitates the use of rubble pits, with native vegetation considerations taken into account in an efficient manner.

Recommendations: road safety and function

1. Given the cost and resources required for councils to develop their own individual RVMP, it is recommended that DEW provide proactive information and guidance to councils regarding the existing Guidelines. The focus on this information sharing should be on encouraging a less resource intensive localised assessment on whether it is in the best interest of the relevant local council to use the NVC provided Guidelines or develop a bespoke RVMP, and that it is not a legislative requirement for a council to develop their own RVMP. The LGA can assist in spreading this message to the sector.
2. Review the Guidelines with expert input from an independent road advisory group (e.g. Austroads or NTRO) and the local government sector, to harmonise road safety and function more closely within the requirements to manage and maintain native vegetation in roadside verges.
3. Consider a greater role for councils to be a trusted partner in delivery of road management and maintenance activities that strike an appropriate balance between road safety and function, as well as preserving road reserves, which often house much of the state’s remnant native vegetation.

³⁴ Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation (September 2020)

³⁵ Repealed - DIT Vegetation Removal Policy (dit.sa.gov.au)

4. Establish a framework for streamlined assessments of native vegetation clearances for road safety purposes, where road funding allocations have been committed for high value road safety treatments. This could include:
 - More timely provision of investigative information and advice about proposed road treatments and native vegetation interactions; to ensure that available funding allocations are not lost in areas of identified high need.
 - More proactive information sharing and identification of areas appropriate for road safety and function treatments, particularly where issues are identified (e.g. rail closure on the Eyre Peninsula).
 - Collaborative approach to establish appropriate common parameters where councils submit applications for vegetation clearances for high value road safety projects, to ensure consistency in application review processes.
 - Use of these parameters to prioritise and expedite applications for assessment through the NVC.
 - Work constructively to seek all available avenues to move toward resolution which enables a positive road safety outcome for the community, while preserving and maintaining as much native vegetation as possible within the allocated road reserve. Include consideration of ways that foster active collaboration between DEW, DIT and local council partners to achieve this objective.
5. It is recommended that DEW consider supporting the LGA's position that the DIT Operational Instruction 20.1 be reviewed in consultation with subject specialists from across DIT, DEW (where required) and local government to modernise and update for the current operating context.
6. The LGA seeks amendments to the scheme that facilitates the use of rubble pits, with native vegetation considerations taken into account in an efficient manner.

Economic growth

In general, member councils particularly in regional areas, voiced concerns that the task of preserving remnant native vegetation was often prioritised at the expense of desperately needed opportunities to undertake economic development functions to allow our communities to develop, thrive and grow.

Economic development and native vegetation issues should not be determined in isolation from each other. The LGA submits that it is the role of State Government to develop legislation that enables competing policy aims to be prioritised and coordinated in the most efficient manner possible.

What is required is a consideration at State Government level about how best to achieve the vision and the objectives of the growth agenda outlined in the South Australian Economic Statement³⁶ of being 'smart, sustainable, inclusive'. Further, what are the barriers in some of our regions to achieving these goals, given they are some of the areas which, over the coming generation, will bear a heavy load in providing growth opportunities for the State. For example, through projects such as the Spencer Gulf Northern Water project and other significant regional projects.

Native vegetation overlays need to be considered as part of a strategy to seek proactive engagement within current regional planning processes being run by the State Planning Commission, in partnership

³⁶ [SA-Economic-Statement.pdf \(premier.sa.gov.au\)](#)

with the local government sector. The six regional plans (Kangaroo Island, Yorke and Mid North, Eyre and Western, Far North, Limestone Coast and Murray Mallee) will set the direction for future planning and development of South Australia.

Part of this engagement and review could also consider whether to provide an exclusion of the application of the NV Act in a 'township' (as defined in section 4 of the LG Act)³⁷. This approach would need to provide adequate protections:

- For preserving and maintaining existing areas of strategic remnant native vegetation within townships.
- Against rezoning of townships for the purpose of avoiding the native vegetation overlays.

When considering regional growth potential and the intersection of native vegetation, the case study from the Tatiara District Council at **Appendix C** demonstrates the constraints that councils are under in providing essential services to growing communities. This case outlines the ultimately-failed proposal to develop a medical hub in Bordertown, adjacent to the existing Bordertown Memorial Hospital.

While the Tatiara District Council case study is one example of issues encountered, widespread consultation by the LGA in the first quarter of 2024 indicates that this experience is not an isolated one. Many of our regional members expressed similar concerns and examples where the native vegetation overlay has prohibited unlocking growth potential for housing and key infrastructure where the community need and demand is clear. In some cases, the barriers have been too great for developers (or council acting in this capacity due to 'market failure') and they simply cannot proceed despite the urgent pressing need for these developments to occur.

This issue is further highlighted by the City of Port Lincoln in their Housing Strategy 2024-2029³⁸, which was recently adopted at their 20 May 2024 meeting³⁹. In this document, the City of Port Lincoln outlines their advocacy position to seek a review of where the NV Act applies and to collaborate with Plan SA to developing a strategic approach to managing native vegetation within identified urban growth areas. LGA's consultation with members indicates that this position is a common theme for our regional membership.

Although not addressed in the Tatiara case study, the LGA is also anecdotally aware that assessment delays can occur on other projects where there is a wait time to seek the services of appropriately qualified consultants. What the Tatiara case study does show is that even where a consultant is engaged, it is not guaranteed that the landowner will find a solution that is amenable to the NVC without substantial compromises, or development prohibitive delays affecting the outcomes for communities.

What the case studies in **Appendix B** and **C** demonstrate is that, while the objectives of the Principles of Clearance and the documents provided by the NVC to assist in understanding the SEB policy⁴⁰ and calculating SEB payments⁴¹ provide a certain kind consistency in the application of the NV Act, there does not appear to be any flexibility within the assessment process to consider or weight holistic community need or benefit.

³⁷ It is noted that this feedback was also provided by the Eyre Peninsula Local Government Association in their submission to the 2021 Parliamentary Review of the NV Act, which is available through parliament.sa.gov.au

³⁸ City of Port Lincoln – [Ordinary Council Meeting Agenda 20 May 2024](#) (Housing Strategy 2024-29, pages 86 – 118)

³⁹ City of Port Lincoln – [Ordinary Council Meeting Minutes 20 May 2024](#) (motion carried - page 13)

⁴⁰ [Policy for a Significant Environmental Benefit - 1 July 2020](#)

⁴¹ [Guide for calculating a Significant Environmental Benefit - 1 July 2020](#)

The current framework:

- Requires most applications to be assessed by experts who are accredited by the regulator, being the NVC (with administrative support from DEW). This could arguably be seen as stifling the ability for those experts to provide frank and fearless advice about the true context and value of the respective individual parcel of land with remnant vegetation, for the risk of removal of accreditation for this purpose.
- Effectively prohibits the NVC from making a decision which is 'seriously at variance' to the Principles of Clearance [section 29(1)(b) of the NV Act], even where it may arguably be of most holistic community benefit to do this.
- Provides no ability within the NV Act itself for an appeal or review process, leaving applicants with limited options to attempt to reach a resolution.

The LGA submits that a regulatory system under the NV Act would work more effectively if it was simplified so that decision-making about whether a clearance should or should not proceed, could be undertaken by appropriately trained and experienced officers, with clear and simplified guiding documentation/instructions. What this would do is enable greater confidence in the system that it is working to both achieve the objectives of the NV Act, while providing avenues for legitimate developments to proceed where a clear community benefit outcome is certain.

Further, in the case of the local government sector, a simplified process would enable these outcomes to be more readily understood by local government elected members, administrative officials and the communities they serve.

Recommendations: economic growth

Considering matters outlined in this section, and the case study outlined in **Appendix C**, the LGA recommends the following:

1. Consider how the economic growth agenda could be achieved through more coordinated State and local government partnerships. For example, cross-government collaboration through the *State Development Coordination and Facilitation Bill 2024* as well as the implementation of the proposed State/local government Accord including the new roles of a State and Local Government Coordinator. The LGA is already working actively with the Department of Premier and Cabinet and the Minister for Local Government on this matter, and note the latter's recent public comments in relation to fact that this is a high priority for the State Government to work towards implementing later in 2024.
2. Whether the current setting of where the NV Act itself applies remains appropriate in the current local, national and global setting. With regional areas needing to bear some heavy loads in providing growth opportunities for the State, consideration should be given to reviewing any barriers to regional economic growth goals that centre around our regional townships.
3. Include reviewing native vegetation overlays as part of a strategy to seek proactive engagement within current regional planning processes being run by the State Planning Commission, in partnership with the local government sector. This includes considering whether to provide an exclusion of the application of the NV Act in a 'township' (as defined in section 4 of the LG Act).
4. Ensure there are an adequate number of regionally qualified NVC accredited assessors available to provide reports (in accordance with section 28 of the NV Act and Regulation 18 of the NV Regulations) and to conduct the work in a timely manner.

5. Consider a simplified and transparent approach to assessing the Principles of Clearance, and the policy application and calculation of SEBs so that there is greater buy-in and understanding of the process around assessments that factor in holistic community need.

Conclusion

With this submission and the case studies identified in the appendices, the LGA does not seek to minimise the importance of the work undertaken by the NVC in assessing and making recommendations in relation to native vegetation preservation in South Australia, nor the requirement for DEW and the NVC to comply with the NV Act itself.

However, what this submission does demonstrate, is that this is a complex and multifaceted issue, requiring nuanced and innovative solutions to achieve both native vegetation conservation as well as support the needs of our growing communities, particularly in regional areas. Whilst the LGA accepts that such a solution will be difficult to achieve, our aim is, nonetheless, for a scheme that can be understood and practically applied by officers in the field.

The LGA's submission demonstrates a need to undertake a wider review of the holistic operation of the NV Act, as commenced but unfinished by the Natural Resources Committee of the South Australian Parliament in 2021.

In addition, there is an urgent and pressing need for a more collaborative approach to be taken across State Government agencies, and with local government partners to determine how the State is best placed to develop and grow, sustainably providing for our communities well into the future.

Appendix A – Black Sport funding

Work to start on notorious junction

The Courier
Wednesday 21st February 2024

Work to start on notorious junction

JOSEPH MOORE

A notorious intersection near Birdwood will receive a long-awaited safety upgrade, with the Adelaide Hills Council to begin construction from next month.

Using \$780,000 in Federal Government black spot program funding, the intersection of Warren, Lucky Hit and Martin Hill roads, which sits on the border of Birdwood, Cromer and Forreston, will be converted into a “tear drop intersection”.

The use of tear-drop medium strips forces motorists to veer to the left of the lane as they approach Warren Road, in order to deter them from ignoring give-way signs and driving straight through the intersection without appropriately slowing.

Some corner vegetation will also be cleared to improve sight lines.

The council, which is undertaking the upgrade on behalf of the State Government, was forced to delay the project three times over the past year to receive approvals for native vegetation clearance and land acquisition.

However, council chief executive Greg Georgopoulos confirmed last week that everything was now ready to proceed.

“Council has received Native Vegetation Council approval to remove the required trees and has also received support



The notorious Lucky Hit, Martin Hill and Warren roads intersection near Birdwood will receive a long-awaited safety upgrade, with the Adelaide Hills Council confirming that construction will begin by early April.

from the adjoining land owners, where required, to allow the project to proceed,” he said. “Survey set-out occurred in December and other preliminary works,

such as service location and minor alterations to property accesses, will be occurring soon.

“Construction on the offset tee/

tear drop intersection is planned to commence with earthworks in March.”

There were more than two dozen road incidents at the intersection since 2014.

Appendix B – Case Study 1

Tod Highway – District Council of Lower Eyre Peninsula

The Tod Highway on the Eyre Peninsula is road under the care and control of the Commissioner of Highways and managed by the SA Department for Infrastructure and Transport (DIT). However, it is of significant local interest due to the impact of the February 2019 decision to close rail freight on the Eyre Peninsula.

Background

Around the time of the closure of rail freight on Eyre Peninsula, the Federal Government committed road funding to major road projects under the 'Roads of Strategic Importance' (ROSI) program. This program effectively acknowledged the likely effect of the rail freight closures in regional communities and that regional road networks are critical to being able to connect regional businesses to local and international markets. Noting that it is heavy vehicles that do most of the damage to road networks, while light vehicles do very little damage⁴².

Correspondingly, this impacts locals who also use the road to travel about their communities, e.g. children getting to school, as they are increasingly sharing the road with more freight vehicles seeking to get their goods to market.

State Budget

The ROSI program allocation is reflected in the following State budgets:

- 2019-20 Budget Measures Statement⁴³ which stated that major regional highways were to be upgraded and included an allocation of "...\$32.0 million for other road improvements on the Eyre Peninsula".
- 2022-23 Budget Measures Statement⁴⁴ which stated that the "...initiative provides additional funding of \$20 million over two years from 2021-22 to undertake additional targeted highway upgrades for the Roads of Strategic Importance — Eyre Peninsula road upgrades project."

Eyre Peninsula Regional Transport Strategy

In their 2020 Regional Transport Strategy⁴⁵, the Eyre Peninsula Local Government Association (EPLGA) identified the discontinuation of the rail network to transport grain to Port Lincoln as a 'critical and emerging issue' for the region:

*"The increase in the road freight task from the centre rail corridor (ie; Wudinna, Lock and Cummins) will largely be carried by the Tod Highway and then the Western Approach Road to the silos in Port Lincoln. These roads are under the care and control of the Commissioner of Highways."*⁴⁶

⁴² Potholes and pitfalls: How to fix local roads (grattan.edu.au) (page 29)

⁴³ [2019-20 budget measures statement.pdf \(treasury.sa.gov.au\)](https://www.treasury.sa.gov.au/2019-20-budget-measures-statement.pdf) (page 69)

⁴⁴ [2022-23-Budget-Measures-Statement.pdf \(treasury.sa.gov.au\)](https://www.treasury.sa.gov.au/2022-23-budget-measures-statement.pdf) (page 80)

⁴⁵ [EPLGA - 2020 Regional Transport Strategy](#) (page 24)

⁴⁶ Ibid (page 25)

Further, noting the ROSI funding allocation, the EPLGA identified that investigations were being carried out to provide upgrades to strategic roads within the region to manage the anticipated increase in the freight task.

These upgrades included investigating:

“New overtaking lanes to improve safety for freight and commuter vehicles bound for Port Lincoln. New lanes on Lincoln Highway (Tumby Bay to Louth Bay), Tod Highway (South of Cummins), Western Access Road (New West Road to Pine Freezers Road) and Flinders Highway (extension of acceleration lane at the Tod Highway junction) are priority locations.”⁴⁷

Interaction with the Department for Infrastructure and Transport

The LGA is advised that the District Council of Lower Eyre Peninsula (DCLEP) has been corresponding with DIT, for several years, on the design and placement of the proposed overtaking lane for the Tod Highway. It is understood that, further to lengthy discussions, a number of possible locations were identified as potentially accommodating an overtaking lane between Cummins and the termination of the Tod Highway (at Flinders Highway). However, for a range of reasons including ecology, road safety and site geometry, DIT identified that the preferred location remained at a site just north of Edillilie, identified as TOD-S1.

Current status

The most recent correspondence provided by DIT was tabled at the 21 February 2024 DCLEP meeting⁴⁸. In this letter, DIT advised that:

“The Native Vegetation Council has formally advised that an overtaking lane at TOD-S1 would not be supported due to its impact on significant native vegetation. The Native Vegetation Council advice stated that an overtaking lane at this location would be seriously at variance with Principle of Clearance (sic) 1b – Wildlife habitat, Principle 1c – Threatened flora species and Principle 1e – Remnancy. It would also impact on substantial populations of State and Commonwealth-listed flora species.

Based on this advice, the Department has decided not to progress an overtaking lane at this location. Further, given that the Eyre Peninsula Network funding is now fully committed, the future provision of an overtaking lane on the Tod Highway will need to be assessed against other competing priorities.”

Understandably, given the rail freight closure in 2019, increase in the road freight task, impact to the local community, and the time taken to reach a conclusion in this case, the DCLEP is deeply disappointed by this outcome. It is expected that DCLEP will likely continue advocating to seek the provision of adequate road treatments, promised under ROSI, to minimise and offset the impact of the mode shift of the freight task from rail to road on the Eyre Peninsula.

⁴⁷ EPLGA - 2020 Regional Transport Strategy (page 26)

⁴⁸ Agenda of Ordinary Council Meeting - Wednesday, 21 February 2024 ([lowereyrepeninsula.sa.gov.au](https://www.lowereyrepeninsula.sa.gov.au))

Appendix C – Case Study 2

Bordertown medical hub – Tatiara District Council

Tatiara District Council (Council) and community conversations about the building of a new medical centre begun more than a decade ago. With the district's prosperity and success comes a need to provide infrastructure, health and community services to meet the growing needs of the community. Of most concern to Council, businesses and the community, was the need to improve access to medical services within the district, and in particular access to medical specialists.

Council is also conscious of the need to protect remnant native vegetation, having entered into agreements to preserve other sites within the Council area, for example in Mundulla. However, as outlined in this case study, the site identified for development of this project is in the heart of Bordertown, adjacent to the existing Bordertown Memorial Hospital (BMH). When combined with the consideration of co-location of medical services in a 'hub' style arrangement, and the expected significant health, community and economic benefits that this project would bring to the township, it is Council's view that these aspects tend to outweigh the environmental benefit of retaining the relatively smaller number of significant trees in this location, which were identified through a native vegetation assessment process.

Background

Brief timeline of events:

- In 2012, Council initiated a process to purchase land adjacent to the BMH (east side) on South Terrace in Bordertown.
- In September 2015, resolution of Native Title and other legislative processes meant that Council was able to acquire the relevant land parcels from the State Government. At around this time (February 2015), the State Government (and Native Vegetation Management Unit) made the following recommendation:

"It is important for Crown Lands to understand that disposal of the parcels in question could lead to their full clearance.

*The Native Vegetation Management Unit does not object to the proposal, but requests that consideration be given to protecting selected mature trees from clearance by placing them under a Land Management Agreement with Tatiara Council or the South East Natural Resources Management Board."*⁴⁹

- From 2015, Council commenced the lengthy process of revocation of the land's classification as 'community land', including public consultation, considering a petition and seeking ministerial approval, so that it could be developed for medical purposes.
- In July 2016, the Tatiara Medical Clinic opened in an alternative location. With these additional facilities, Council resolved to establish a working party that would review previous business cases and designs, identify medical needs, and design and cost an appropriate medical centre on the site

⁴⁹ Tatiara District Council (2022). Ordinary Council Meeting Agenda – 10 May 2022 - Native Vegetation Clearance - Bordertown Medical Hub South Terrace Bordertown (page 314)

east of the BMH. Council received the working group's feasibility study in April 2020, however COVID-19 priorities dominated that year and this project was unable to progress.

- In May 2021, following a formal expression of interest process for development of the site, Council resolved to accept the expression of interest from Dr Remona Pungutan to develop a medical hub on this site.⁵⁰

Challenges to the development of the Medical Hub - native vegetation

Council and the medical hub proponent (Dr Pungutan) resolved to work collectively to subdivide and develop the site. The initial proposal was to subdivide the existing two blocks into three as follows:

- A new northern allotment, which would be sold.
- A new southern allotment, which would be purchased by the medical hub proponent.
- A new central allotment which would be retained by Council and developed for car parking, partly to service the medical hub and any future approved development on the northern block.

Council engaged a native vegetation consultant, Jackie S Ayre and Associates to prepare a data report seeking clearance under Section 28 of the *Native Vegetation Act 1991* (NV Act), for the development of the Bordertown Medical Hub, and a summary of this report was tabled at a Council meeting on 10 May 2022⁵¹. Various amounts of significant environmental benefit (SEB) were postulated in the Council report, from \$174,000 for whole site clearance, to breakdowns for each of the sites (\$70,000 for the northern site, \$28,000 for the carpark site and \$31,000 for the medical hub site)⁵².

The full report prepared by the consultant was considered by the Native Vegetation Council (NVC), which provided a letter response and 'pre-application advice' to Council on 24 May 2022⁵³. This letter stated that Native Vegetation Assessment Panel (NVAP) had considered the report:

- Noting the land contained 54 native scattered trees.
- It was expected of these 54, 12 would be removed entirely, 8 may potentially be impacted to some degree with 28 potentially exposed to future impacts due to being within 10 metres of a building.
- Finding that clearance would likely be 'seriously at variance' with the following Principles of Clearance under the NV Act:
 - 1(b) – Wildlife Habitat;
 - 1(e) – Remnancy; and
 - "potentially" 1(g) – Amenity.

Based on their assessment, the NVAP stated it was unable to provide support for the proposal at this time given the significance of the trees that will potentially be impacted. The NVAP suggested to explore the use of a site to the west of the BMH as that "appears largely to contain revegetation". This

⁵⁰ Tatiara District Council (2021). Confidential Special Council Meeting Agenda – 25 May 2021 – Expression of Interest to Develop a Medical Hub on Section 924 & 925 South Terrace Bordertown. (Page 8)

⁵¹ Tatiara District Council (2022). Ordinary Council Meeting Agenda – 10 May 2022 – Native Vegetation Clearance – Bordertown Medical Hub South Terrace Bordertown. Page 311

⁵² Ibid

⁵³ Tatiara District Council (2022). Ordinary Council Meeting Agenda – 14 June 2022 – Native Vegetation Clearance – Bordertown Medical Hub South Terrace Bordertown. Page 128

point is interesting if considered in parallel to the earlier advice, provided to Crown Lands in February 2015⁵⁴, about the site in question to the east of the BMH, which also stated that:

“A desktop assessment of the vegetation was undertaken using aerial photography, departmental GIS layers and Google Maps Street View.”

and

“The vegetation is unlikely to be providing habitat for any fauna species of conservation significance, but provides roosting, feeding, and nesting sites for a number of common birds.

When considered in the context of the broader parklands which include more mature trees and some remnant understorey, the site has relatively low significance.”

The report from Jackie S Ayre and Associates assessed the site against all Principles of Clearance under the NV Act, and the “scattered tree scoring” indicated a ‘seriously at variance’ outcome related to Principles 1(b) and 1(e) only. However, the report also questioned the value of the remnant vegetation in its current state and made commentary regarding its “extremely limited” prospects to increase in value without significant intervention, which was unlikely.

While Council appreciated the NVAP’s concerns outlined in their letter of 24 May 2022 and its suggestion, Council was not in a position to simply consider the alternative site as it both did not own the site to the west of BMH, but also considered it may inhibit future development of the BMH itself. In addition, given the substantial amount of time (10 years) it had taken to get to this point, along with the steps outlined above, Council considered the response of the NVAP to be disappointing.

However, Council noted that there remained some limited options to continue with the development of the identified site and resolved to work collaboratively with the Native Vegetation Branch and private providers to continue progressing this site development. What followed was a period of further consultation, including with the Limestone Coast Regional Landscape Board, which provided additional natural resources expertise and information.

By August 2022, it became clear that the original proposal to develop three allotment sites was untenable as the ‘seriously at variance’ Principle relating to item 1(e) – Remnancy could not be resolved, and therefore the proposal was not supported by the NVAP. In particular, the Council identified its disappointment that Principle 1(e) does not differentiate between the rural landscape and land within a township.

A rescope proposal to develop two allotments was devised, which provided substantially less impact on the remnant native vegetation, with only 3 trees with a biodiversity score above 7 needing to be removed. The rescope proposal was accepted by Council and the proponent, and supported by the NVAP. The final total SEB offset payment to be made to the Native Vegetation Fund (NV Fund) for the site in its revised development plan form was \$44,866.89⁵⁵. This payment has already been made, and on the understanding that if clearance is not actioned within two years, the funds are eligible to be returned.

⁵⁴ Tatiara District Council (2022). [Ordinary Council Meeting Agenda – 10 May 2022](#) - Native Vegetation Clearance - Bordertown Medical Hub South Terrace Bordertown (page 314)

⁵⁵ Tatiara District Council (2023). [Ordinary Council Meeting Agenda - Tuesday, 10 October 2023](#) – Bordertown Medical Hub (page 143)

Current status

Unfortunately, Dr Pungutan advised Council in August 2023 that she could no longer proceed with the development of the medical hub at the site identified to the east of BMH. This withdrawal is likely due to significant external factors such as the increase in infrastructure development costs, including a tightening labour market in the regions, along with ongoing supply chain issues, transport costs and rising interest rates. However, the matters relating to land preparation and native vegetation have now been resolved on this site, meaning that Council does have the opportunity to return to the market at a future point in time to develop the medical hub or other similar project.

Council estimates that the interactions with the NVC added an extra 4 months to the development process, which had already experienced a long lead time to reach resolution. In addition, there were significant additional costs in having to undertake a full building redesign to fit with the revised native vegetation assessment outcome. Along with future projected costs, these were likely causative factors in the proponent not proceeding with development.

Once the decision regarding the native vegetation requirements on this site was made public, Council reports receiving significant community feedback expressing frustration regarding the NVAP's decision to prioritise the remnant native vegetation, over the health needs of the local community.

148 Frome St
Adelaide SA 5000

GPO Box 2693
Adelaide SA 5001

T (08) 8224 2000

E lgasa@lga.sa.gov.au

www.lga.sa.gov.au