From: [redacted]
Sent: Thursday, 23 August 2012 1:33 PM
To: EHPP Landscapes & Ecosystems Section Mailbox; Dianne Nolan
Subject: Review of Native Vegetation Regulations 2005 including the PNF and PVP

To: native.vegetation@environment.nsw.gov.au; dianne.nolan@gmail.com

Subject: Review of Native Vegetation Regulations 2005 including the PNF and PVP

Attention: Hon. Robyn Parker MP

Dear Robyn,

In response to the following review:

'On 13 September 2011, the Minister for Environment, the Hon. Robyn Parker MP, announced the commencement of the review of the regulations for the Native Vegetation Act 2003. This will include a review of the Native Vegetation Regulation 2005, the Environmental Outcomes Assessment Methodology (EOAM) and the Private Native Forestry Code of Practice (PNF Code).'

Many pieces of legislation impact the management of native vegetation in rural NSW and landowners need the services of both bush and town lawyers to get up to speed when something goes wrong. It must be stated that Private land owners have been disadvantaged when compared to Public land owners. One example is the NSW State Forests operations which are able to clear compartments to have but 6 pencil thin saplings left standing in a hectare as in [redacted]. This is not the case when using the NVA prescriptions on private land.
Regarding the Native Vegetation Regulation 2005, I wish to draw your attention to the following:

This Regulation makes provision with respect to the following:

- development consents for clearing of native vegetation,
- the form and content of property vegetation plans (***PVPs***), variation and termination of PVPs and a register of PVPs,
- routine agricultural management activities, particularly their extension and limitation in certain cases,
- broad scale clearing (including the adoption of an Assessment Methodology for assessing and determining whether proposed broad scale clearing will improve or maintain environmental outcomes and special provision for long term environmental benefits),

- special provisions for vulnerable land and State protected land,
- special provision for the clearing of native vegetation for the purposes of private native forestry in accordance with a code of practice approved by the Minister,
- savings and transitional provisions,
- miscellaneous matters (including calculation methods for clearing of groundcover, and prescribing offences as penalty notice offences).

The dual consent requirements of local government and either Catchment Management Authorities or Environmental Protection Agencies is causing confusion, expense and delay, and must be sorted out so councils such as Kempsey Shire Council has a ready reckoner to answer peoples enquiries . Also from the above list, several issues exist, namely:

1. Currently the Native Vegetation Act 2003 (NVA) allows a minimalist approach, one dwelling and minimal vegetation removal. This is a problem because the height of the trees should be the distance that vegetation can be cleared as part of clearing that does not require approval, and clearing around all structures must be allowed for safety of people and stock including: houses, sheds, garages, children's play equipment, wood heaps and orchards. This expands the current regulation which allows only for clearing to be 'permitted ...[for a] minimum amount of native vegetation needed to comply with a current Development Consent for the construction of a single dwelling.' There needs to be a greater allowance for clearing than which currently exists. One personal example was last week, my grandson and I were getting the wood from the wood heap and a gust of wind came through and two limbs from a nearby tree made me grab him and take him over 30 meters to safety. The tree was approximately 25 meters high. The existing homes, sheds, paths, and outside areas of use to people do not get to be cleared under current NVA management rules. So, the regulation should allow for safety clearing measures at existing homes. The issue of offsets requires some extensive input by those who have a PVP of FOP and given the size an offset must be for a small logging operation it is like taking a bucket of water out of the river and making the owner leaves the rest in the river. I believe it is wholesale locking up of large areas unnecessarily and must not continue in the ratio it currently is.
2. The form and content of property vegetation plans (***PVPs***), variation and termination of PVPs and a register of PVPs. The form and content of property vegetation plans is currently seen as a prescriptive determination, before the landowner has any input. In years gone by the farmer had a great deal more input about everything to do with the landowner's property, and any vegetation on it. This current prescription is completely the opposite of the depastureing requirements of 180 years ago where clearing had to be undertaken for land to be acquired, by purchase, from the government of the day. Both government extremes are not helpful and miss the opportunity for participation before the prescription is applied. Thus, a greater participation rate which allowed input from the landowner, which is missing in the current NVA prescription, is not really corrected by landholders signing up for PVP's on their current form. So, landholders have lost the right to use their purchased vegetation and are now required to agree to plan and invest in it, in a legally binding way (even when

the land is sold), without any income to do so coming from the vegetation in question. Legal devices have been expensive to create and implement and even more expensive to defend or ensure compliance.
Landowners/landholders may be triple wronged by the form and content of the PVPs. Variation and termination of PVP's has not been identified as an issue to me but I believe some concerns will increase as time goes by. The registration of PVP's is not yet much of an issue, but the maps that are produced of the PVP's as a collective are in limited hands and this should be addressed. If a landowner has a PVP, then the collective PVP map is something that should be provided to them as a means of information sharing and encouraging PVP landowners to communicate with one another. The dispute resolution information in a PVP is small and it only refers the landowner to section 30 of the NVA and clause 11 of the Native Vegetation Regulation 2005...could this be improved.

3. Routine agricultural management activities (RAMA), particularly their extension and limitation in certain cases. The issue here is that clearing for the purpose of RAMA's may still need other approvals such as the Environmental Planning and Assessment Act (1979). There needs to be no duality and any RAMA should be able to be carried out without fear of reprisal from another governing body such as local council or the EPA compliance officers. Thus, it is necessary for the review to recognize that RAMA's are essential to agricultural activities under the NVA and as such must be allowed under all other agencies rules and guidelines regarding vegetation. So, RAMA's should have priority across multiple legislation and the regulations which stem from them.
4. Broad scale clearing (including the adoption of an Assessment Methodology for assessing and determining whether proposed broad scale clearing will improve or maintain environmental outcomes and special provision for long term environmental benefits). Broad scale clearing has been used by NSW State forests for over a century and this practice continues. Thus, private forestry operations are overly restrained when compared to public operations, in that public operations which do not come under the NV legislation or the PVP code of practice.
5. Special provisions for vulnerable land and State protected land. The definitions of vulnerable land and State protected land are not found in the glossary of the PNF Code of practice for Northern NSW, nor are they defined in the PNF field guide for northern NSW. So, these special provisions are somewhat cover in the literature supplied to PNF operators and this content should be identified to the people who are in the field.
6. Special provision for the clearing of native vegetation for the purposes of private native forestry in accordance with a code of practice approved by the Minister. No comment at this time.
7. Savings and transitional provisions. No comment at this time.
8. Miscellaneous matters (including calculation methods for clearing of ground cover, and prescribing offences as penalty notice offences. The current penalty is $1,100,000 per offence it seems to me that this is an extreme penalty particularly given the likelihood that most single offences in other settings such as criminal activity has the opportunity to be given a bond rather than a fine. So, suspension of monetary penalties seems a necessary step to be somewhat more just and fair to the logging industry, and their workers.

With regard to the Environmental Assessment Methodology (EOAM), please be advised:

1. The EOAM is applied using an objective, computer-based decision support software known as the Native Vegetation Assessment Tools (NVAT). The NVAT is not necessarily landholder friendly, in that it is computer based and only used by assessment officers. Thus, the opportunity exists to make an interactive version so landholders can themselves assess their land's vegetation and any plan to change it by similar means. A low tech version would also be useful for those who do not have a computer or reliable internet as is the case in some areas of the Macleay Catchment. So, having some landholder assessment tools for decision making is necessary, and perhaps the Participatory Rural Appraisal (PRA) method may be helpful to design it.

Also, the Private Native Forestry Code of Practice raises many concerns and some are here detailed for your consideration.

1. PNF is the sustainable logging of native vegetation on private property. Currently the restrictions in the PNF have cost landowners their income be it by restricting land development for agricultural practices, their livelihoods as forestry and logging are pseudo partners in vegetation legislation, and has removed the superannuation investment land holders have in vegetation especially timber harvesting as the economics of traditional operations diminish and aging forces miniscule income out of farming operations. Thus, The major concern is that the land one has purchased is now unable to be used for that which the landowner needs. So, please remove the logging component from the vegetation act, then equal the playing field by allowing public and private forestry to be conducted under the same rules, and ask landowners what they individually need compensation for and how the legislation can be made to benefit them in the short, and long term, to remain viable agricultural producers. Additionally, the logging operators and staff who are excised from their operations for wet months of the year and are unable to relocate their operations, are significantly affected and should be compensated. So, private native forestry logging operators should have priority access to NSW state forests in a nearby area, where the wet months prevent private operation. Compensation must be paid to landowners who invested in vegetation for superannuation purposes and compensation must be paid to landowners who have been restricted from harvesting in the way the public harvesting model is doing. There is need to recognize the detriment the NVA and PNF has done to the landholders, particularly in NSW and especially in the three wet areas mapped in NSW which all fall in the north east of the state. If the same map was mirror reversed to tie up south east NSW the sound of complaints would be deafening. It could be said that the PNF has been more detrimental to the marginalized locations and groups within the state.
2. The PNF Code of Practice document needs to be user friendly like the PNF Field Guide. The language and terminology within the different documents is causing concern. If legislation uses a term say single tree selection it needs a definition, then the same term should have the same meaning in all other documents. Also, the code should indicate the need to check with the specific

CMA covering the location. A feed tree retention scheme is needed. The specified species need to be identifies as nocturnal/not nocturnal and diurnal at least. Old growth needs a better definition. Photos or drawings of the threatened species should be part of the threatened species list. If the PNF code of practice is to be the Bible of private forest operations, please give it an index and show all cross references, and identify necessary contacts and legislation locations. Some legal assistance would be helpful for a majority of landholders who consider what benefit a PVP or FOP may have for them and the land they govern.

3. Some species of vegetation require an expert to identify them. Landholders would need a CSIRO specialist to identify some species and how is it possible for this to occur in the field. Symbols used for identifying vegetation and harvesting can be confused such as when H is for habitat or heritage, and H is for harvest. Likewise when marking is used to retain, or to extract, can be better sorted. Also, a dead standing tree is not in the habitat list nor is it vegetation.

Some 20 percent of Australia is forest (ABS 1997) and sustainability has environmental, economic and social indicators. The Natural Step (TNS) framework for sustainability may not have been used to develop the NVA or PNF but perhaps it could have been. Much needs to be done to improve vegetation identification on private land and using PRA would be a better micro management approach than what the NVA and the PNF have done so far. The economic penalties on landholders from reduced use of owned land, reduced superannuation funds, increased legalities and compliance hamper agricultural outcomes in all but a few cases. Add to this the severe penalties and court costs for anyone who did or did not know they were breaching one or more environmental or local governance legislative implements and the result may be retirement of many that will not occur, the work of many is restricted and the cessation of livelihoods such as farming will be due to an absence of needed compensation and may signal the death of some farming operations due to penalties associated with vegetation court cases. If beneficial change is not forthcoming from the current review of the NVA and PNF there is likely to be a reverse tree change and people could be expected to move back to the city and avoid the struggle of land management in current times and the costs which come with land ownership not the least of which is government regulated like pest and weed control requirements.

Native vegetation has a changing demographic and public forestry operations ensure a continuation of that change for public benefit. Private vegetation is just that, private, which means someone other than the crown, bought it, inherited it, owns it. Private vegetation is a commodity that private owners have traditionally used and legislation which removes the right of private owners to do so is unjust and removes a resouces from the owner and imposes a legal burden upon many owners and their families in addition to their trials in maintaining a livelihood. Prior legislation which took away a landowners rights has drawn the attention of Constitutional lawyers for the section pertaining to the Commonwealth's right to take from private hands...what the NVA and PNF do is place the landowner outside of past compensation cases by making the state responsible for the removal of rights but the removal is still illegal if the land is purchased prior to the commencement of the Commonwealth of Australia. What is then an issue is that some have the right to sue and some have to find an avenue that is

legally divined to allow the landowner some compensation for loss of rights. It would be prudent for the removal of the PNF from the NVA and for an owner's rural appraisal method to be encouraged. Then some benefits could be found for how vegetation and primary production can be micro managed by the private owners of the land rather than the NVA and PNF prescriptive forcing detrimental outcomes on almost all landowners.

Thank you for the opportunity to comment and although some of the above comment is off the cuff due to time limits, it is provided with the best of intentions. It would have been nice for landholders to have transected their properties, and noted the vegetation, and supplied this information to the relevant authorities such as the CMA. The fact that legislation comes into being and force a reactive stance among some of the most resilient people in Australia is a concern. However, what is done can be changed and may this review receive many comments and helpful suggestions about how to benefit the landowners in the protection of native vegetation.

Bye for now

Dianne Nolan