I am a Conservation Partner, having entered into a CA to protect the high biodiversity of a large part of my property [redacted], in the Lower Hunter. I am also a (largely retired) senior barrister & solicitor with extensive experience in planning and environmental law.

Sadly, forgive the scepticism of an old lawyer, but I no longer have any confidence in the capacity of State governments to manage biodiversity conservation or land use planning. So I won't directly address your nominated issues but raise a brief selection of my own.

ICAC proceedings have laid bare the widespread corruption in both major political parties. From my professional experience in both the Hunter and the city I know that the reality is in fact much worse than recent disclosures would suggest.

The current government and NSW Planning Minister have not demonstrated any capacity for change. The latter is singularly unqualified for her role. Indeed, the unsustainable financial position of the States and teetering local government will ensure systemic corruption even if outright party political bribery can be curbed. Major constitutional reform is required to break the cycle and no politician since Nigel Bowen in the Hawke government has shown any appetite to tackle the inherent structural weakness that is destroying what little public faith remains in government.

Governments that have become dependent on gambling and mining receipts are simply incapable of acting in the public interest and are reduced to the status of clumsy, ill equipped players and factotums.

The recent murder of an EPA compliance officer demonstrates one aspect of widespread public cynicism and contempt for government. The violent political language of the Shooters and Fishers/miners/loggers lobby is symptomatic of the decline in political debate where posturing has become irrational and extreme. However, contrary to the hysterical hyperbole from the ideologues there have in fact been very few prosecutions under the Native Vegetation Act and those cases that have occurred make interesting reading. Only the most egregious cases of wilful broad scale clearing can be prosecuted. The recent amendments will make even these cases difficult to mount.

Just like dealing with terrorists, you cannot mollify idealogues. When govts follow a populist path they cede leadership authority.

Local government has neither the resources nor the capacity to assess major development and regional panels won't work for the same reasons. CMA's also lack the basic expertise and resources to fulfil a regulatory role.

As a result of these weaknesses, what we are seeing is the widespread retreat of government in pursuit of virtual Facebook popularity.

Similarly, recent signature amendments to the EPAA to facilitate mining by elevating the economic significance to the State are completely misconceived. A clearer demonstration of systemic corruption would be hard to find. The changes arose from industry lobbying as a result of Rio's Mount Thorley Bulga failure. The irony is that Rio failed precisely because it could not demonstrate that the mines' touted economic benefits would outweigh the social disruption and environmental destruction of one of the biggest holes in NSW. They failed on every aspect, including basic planning and mine management principles. Their economic

modelling was so bad it raised questions about the need for further reform of the Expert Witness Code of Conduct. Even a thoughtfully constituted Court of Appeal couldn't help overcome these fatal defects in their case.

Nevertheless, the government ultimately danced to the coys' tune and amended the Act. When transnational coys and foreign governments start drafting Australian legislation, things are seriously awry.

I admit, I don't like this particular coy. I worked in PNG trying to sort out the mess they created after the first Bougainville war. Then it happened again. Both then Prime Minister Somare and head of the army Brig. Singirok have gone onto the Court record in US proceedings detailing the murderous activities employed to defend the coys' 'economic interests'. The result did not benefit Rio's shareholders nor any of their Australian cheer squad, either. They are unlikely to ever operate in PNG again. Their activities in Irian Jaya demonstrate the same contempt for human rights. And they call the shots in Macquarie Street. Their payroll is quite extensive and sometimes surprising.

Having worked for & agin' many large transnational coys, I know that they should all be treated, politely, as Visigoths and Vandals.

A few general observations: Conservation Offsets have become fraudulent. They are hard to check, sometimes don't exist at all or are already Crown land and never 'like for like'. You can never offset the extinction of a species or ecosystem, no matter what the proponent asserts.

Voluntary planning agreements, like conservation agreements could be more widely used provided certain safeguards are put in place. They would be more popular and effective if the resources were put into overcoming the cynicism and distrust of government that are their main impediment. When I negotiated my CA I was able to negotiate some significant changes to the standard template that enhanced effectiveness and were legally more palatable – not just to me, but I believe to future landholders as well. OEH Conservation Partners would benefit from an experienced senior in-house lawyer to facilitate this, rather than having to go to the Crown Solicitor, who generally takes ages to come up with an underwhelming response of questionable relevance.

It is worth noting in the expertise context that only Marcus Ray, senior Legal Officer at DOP is accredited as a specialist in planning law by the NSW Law Society. Despite a bewildering proliferation of junior lawyers, govt generally lacks the high level legal expertise it needs and this costs taxpayers more in the long run.

Similarly, the PAC will continue to be a pathetic 'fig leaf' until it has the resources and true legislative independence to assess the schemes thrown at it. Until then, automatic appeal rights are essential.

Conflict over land use, direct action, civil disobedience and violence will increase until government realises that conflict resolution is not a One Way street heading in the direction it variously dictates.

There is an old fashioned partial remedy to ineffective regulatory compliance regimes – known generically as 'access to justice'. Wider 3rd party appeal rights should be seen as a

relatively cheap and effective compliance mechanism rather than the Mineral or Property Council's worst nightmare. (Incidentally, neither of these organisations serve their industries at all well) S.123 of the EPAA is the best developed tool for achieving just resolution of conflicting land uses and helps inoculate the community from the desperate extremism that can so easily erupt over land.

One final point about Conservation Agreements; the Valuer General should be asked to do an assessment of CA property values (b4 & after). In Queensland, a small study along these lines produced some fascinating results that could point to a new direction in Conservation planning.

Warwick Biggs

Warwick Biggs
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[redacted]