

SUBMISSION TO THE INDEPENDENT BIODIVERSITY LEGISLATION REVIEW PANEL

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SUBMISSION

THEME 1: Objects and Principles for biodiversity.

- 1.1 The current objectives should be retained, but all Acts (and any new Act) should have an objective to maintain and improve existing habitat (excludes broad-scale clearing). Such objective is measureable, and also allows scope for a land manager to better defend genuine attempts at improving conservation (and also production) if challenged.

THEME 2: Conservation action

- 2.1 I have a registered (on title) conservation agreement. The initial intent for taking out such agreement was both to enhance the management (through having the cost of fencing the con area subsidised) of the arable high quality grazing land and to protect and enhance what we the landowners considered good quality bushland and water quality by removing grazing (except under certain circumstances).
- 2.2 The process was not easy and on reflection could be improved.
- 2.3 The current system is most certainly too focused on requiring private landowners to front the cost for protecting land. While there may be some scope in biodiversity banking, any thought of such approach would probably require most landowners to engage a consultant because of the detail required. Our agreement is for no grazing except if grazing for fire hazard reduction and that requires notification and approval from OEH, certainly not practical and shows little confidence in landowner's conservation intent. Such lack of trust by OEH in land managers stewardship must change and be reflected in any future legislation.
- 2.4 Conservation agreements I am aware of have not been taken out solely for the benefit of landowners involved but as a refuge for surrounding species as well. There is some economic loss with grazing exclusion, and even though there are grants available for improving the area/s they again are very specific and difficult to write up. Again little confidence is shown in landowners land management skills.
- 2.5 I have no concern in having conservation agreements to be used for offsets within the broader region. But the landowner with the agreement must be compensated. A good start would be to have rates waived or considerably reduced – I am presently paying ever increasing council rates and LLS rates on the conservation agreement area. I cannot

generate any income from the area but the broader community gets considerable biodiversity benefit.

- 2.6 There has never been a baseline study for any biodiversity, and no audit or monitoring. The agreement has been in place for 14 years – we have seen the difference we wanted in protecting the area and can manage the property better but although the OEH wants such agreements and send information, there is no effort to assess the success or otherwise of the agreement. Planned audits with landowners would be beneficial.

3 THEME 3 Conservation in land use planning

- 3.1 Existing strategic assessment processes appear to be adequate in ensuring biodiversity values are identified early. However, consistency in assessment procedure is essential, and any future change of legislation particularly relating to native veg and biodiversity must reflect the intent of planning assessment.
- 3.2 The effectiveness of strategic planning should broadly reflect habitat modification/change and condition from a baseline assessment with detail as the legislation requires, followed by monitoring (have a visual record with fixed point photographs taken seasonally by the landowner (freehold and public land), as well as audits every 5 years.

4 THEME 4 Conservation in development approval process

- 4.1 The three current assessment methodologies are comprehensive, and provide outcomes as required by the principles and objectives of each Act. It should not be difficult however, to have a harmonised methodology applied particularly at a regional level, as biodiversity components will change with different regional locations.
- 4.2 If for a vegetation “type” the distribution, population, habitat value (including adverse impacts) and condition (degree of modification, loss of microhabitat components, introduced weeds/animals, past treatment) is known at a regional level (through accepted veg mapping), then there should be no difficulty in providing development approval (including broad-scale clearing) or otherwise for any location. There should be no reason why a regional planning group or govt agency cannot make such decisions of “go and no go” and/or trade off areas where the minimum data available does not indicate the proposed land management is a high risk to threatened species or populations.**
- 4.3 The assessment processes used should be improved with greater consideration of seasonal effects and grazing particularly on veg condition.
- 4.4 Application of the NVA assessment process for native veg grasslands is not satisfactory. Cropping, fragmentation and habitat modification particularly overgrazing has resulted in natural grassland areas changing in species diversity with a loss of more palatable species. The problem now is defining what a good condition grassland is eg in some cases reseeding after cropping is beneficial. Regardless, there must be greater recognition of the role grasslands play in biodiversity and the landscape. There must also be a serious review of how adverse modification impacts should be treated by penalty – particularly management needed to improve the grassland condition.
- 4.5 There are many situations where clearing (legal or illegal) has taken place or the present assessment PVP has allowed clearing, but following chaining pushing or thinning no further work has been undertaken to complete the job. The resultant INS regrowth (up to 10 times the original density pers.obs.) and timber debris, is the worst result possible if considering

the work was done to maintain/improve landscape values or economic gain. There may be an advantage to a potential buyer who wants to crop. Any approval for such clearing must have a sunset clause to have the work complete by the applicant.

- 4.6 The current regulatory system does provide for protection of habitat to allow species recovery through recovery plans either as part of a penalty or other reason. These normally require an area to be fenced out and not stocked for a period of time and allow natural regeneration. There are many examples of where such orders have been applied, and although natural regeneration of native species is generally successful, one or more species will become dominant without appropriate management and finish up a bit like 4.5 above. Regeneration orders following prosecution must consider the preferred habitat outcome and penalties should be applied where progression to achieving such outcomes are not met.

5. THEME 5 Wildlife management

5.1 The existing legislative mechanisms appear to work well. No matter what the framework for protecting wildlife there will always be an (illegal) demand for certain species. Apply higher penalties.

6. THEME 6 Information provision.

6.1 If approvals are to continue to be required for native vegetation clearing, there must be a better understanding of the current biodiversity status or at least the measureable indicators (eg veg maps) for a defined area (keep it regional). **There must also be valid reasons why conservation and offset areas are required for varying levels of clearing. Clearing (thinning, ringbarking, poisoning) may in fact significantly maintain or improve biodiversity.**

6.2 There has been considerable work done on habitat/species surveys in the contentious vegetation "types" (where INS are considered a problem) landowners claim need to be cleared to some degree to improve production whether by grazing or cropping/grazing. An example of significance for INS is the publication "Woody Weeds and Biodiversity in Western NSW" Dani Ayres et al sponsored by West 2000 in 2001. A broad interpretation of the survey results is that a reduction in shrub density would improve biodiversity. Such information should be readily available in a "Biodiversity Library" specific to spatial criteria eg for threatened species, threatened ecological communities, critical habitat, remnants, conservation and trade off areas, areas cleared, habitats modified.

7. GENERAL COMMENTS

7.1 It is relevant to examine any legislation that required clearing controls, their acceptance, ease of application, and consideration of socio-economic impacts prior to the introduction of SEPP46/NVA. Both the Western Lands Act 1901 (WLA), Forestry Act and to a lesser extent the Crown Lands Act may be used for such purpose. Prior to the repeal of sections of the WLA relating to clearing of native veg with the introduction of the NVA, regulation on the use of landuse including clearing in the Western Division was almost totally accepted because of the flexibility and discretion

allowed in the WLA by the Commissioners decision making powers, and the general rapport land owners/lessees had with a Pastoral Inspector/Rangelands Management Officer (RMO) for their area.

7.2 It was possible under the WLA for an RMO to issue a permit to clear timber and woody weeds (not broadscale) leaving a scattered tree landscape. The lessee could also obtain a cultivation permit to crop. Many clearing permits were issued, some for the whole property, but with rare exceptions, only small areas were ever treated because such work was economically unviable. It is difficult to understand why such provisions were not expanded from the WLA to the NVA.

7.3 There must be a recognition of appropriate land management (both private and public) to at least maintain the current level of biodiversity for any landscape or vegetation “type”.

7.4 If trade- offs are to be considered, then such areas should be identified by a regional approach using land tenure as priority ie.

1. existing public conservation areas – National Parks, Nature Reserves
2. Crown land (including LLS land), Forestry land, Water Corp land, Railway land
3. Local govt public land, commons
4. Private Conservation Agreements
5. Private freehold land

7.5 Trade off areas must be actively managed to maintain or improve their biodiversity values. This will require a change in conservation thinking, and allow management to include specific clearing, strategic grazing and use of fire. Trade offs must have base line assessments and regular audits – subsidised by govt.

7.6 If maintaining and protecting areas of high value biodiversity is required then the govt should contribute to achieving this. In most cases this should be enhancing expanding existing conservation areas, dedicating new areas, and better utilising public land.

7.7 Simplification of the approval process to managing native vegetation should be possible especially where the vegetation composition and structure has a low condition rating. Examples include dense growth of white and black cypress pine, dense shrubby western grey box and poplar box associations, and black box and coolabah that has had past treatment not followed up and is now stunted multi – stemmed restricting other species growth. Thinning such areas to a “standard” acceptable for improving habitat should be exempted from approval.

7.8 INS species should be listed on a regional basis as some species cannot be considered invasive if at the edge of their range.

7.9 The offences provisions of any new legislation must maintain the existing NVA penalty provisions particularly for cases of blatant broad-scale clearing. Remediation orders should have similar land management requirements to maintaining and improving trade off areas. Reliable sources indicate only 4 or 5 properties have serious unauthorised land clearing (woodland/open woodland to cropping) occurring over the past 4 or 5 years.

7.10 Much of the past land clearing has been on Crown timber land – some Crown land under tenure. Many present complaints relating to clearing restrictions apply to Crown land eg leases, licences, Crown roads, some of which is Crown timber land subject to the Forestry Act.

7.11 Any future legislation must address confusion/duplication of powers and responsible agencies where clearing and remediation is involved. At present other agencies apart from OEH can initiate prosecution under the NVA (legal advice). If clearing without lawful authority is proven on Crown land, OEH prefers Crown lands to take action under the Crown Lands Act (CLA), even though the NVA applies. However, there is no provision under the CLA to issue remediation notices. If OEH were to issue a remediation order on Crown land it would normally require the order be issued on the landowner (the Crown) which is clearly not satisfactory, and if the order were issued to the offender, then the offender would have get a licence to do the work under the CLA and both agencies would then have monitoring roles.

7.12 An Example of Regional Based Vegetation –Use Planning

Following gazettal of the NVA several Regional Vegetation Management Committees were established to develop regional plans for native vegetation use including clearing. The Northern Floodplains Regional Planning Committee was one such group, and got to the stage of producing a regionally accepted plan only for it to be shelved at the last minute.

The plan was largely based on vegetation mapping specific to the requirements biodiversity conservation and of landowners to “develop” country within the planning area. Over 3.5 million ha was mapped for vegetation both pre-clearing and existing. The mapping considers state significance, regional significance, land use capability. The mapping products and documents provide an easy to use reference for native vegetation-use planning, and the interaction between native vegetation, the long term sustainability of native vegetation in the landscape, and present and future land use.

The mapping process was continually reviewed by the community, and considerable advice obtained from many landowners. The mapping products generated clearly demonstrated the ability of the community to accept, modify, upgrade and use technical information related to vegetation.

The committee also used mapping products to identify and spatially portray the predicted distribution of plants of specific cultural heritage value to the local aboriginal community groups.

There is a high level of skill available to reasonably quickly upgrade any existing vegetation mapping to that required for the specific purpose of vegetation and land use.

RELEVANT BACKGROUND QUALIFICATIONS:

- Senior technician with CSIRO 1970 -90. Assisted in detailed research into woody weed (now INS) control in the western division of NSW. Included botanical surveys, manager of a grazing trial to reduce woody weeds using feral goats at Coolabah, large scale fire impacts on woody weeds, grazing impacts on soil surface/rainfall effectiveness, woody weed phenology.

- Rangeland Management Officer and district manager with NSW Western Lands at Walgett 1993 – 97 including overseeing the introduction of SEPP 46 and regulatory functions in arguably the states main hotspot.
- Seconded to the Northern Floodplains Regional Planning process 1998 – 2000. Led a regional vegetation mapping program and produced vegetation maps (as specified by the Northern Floodplain Regional Planning Committee) for approximately 3.5 million ha to assist the community in the management of native vegetation through Regional Vegetation Management Plans.
- Assisted in identifying native vegetation uses and significance to local Aboriginal tribal groups.
- Compliance Manager with Western Lands 2001 – 2009. Developed procedures and led investigations into alleged illegal clearing and cultivation. Led investigations into overgrazing.
- State Natural Resource Compliance Specialist Crown Lands 2009 – July 2014. Developed procedures and led investigations into alleged illegal clearing on Crown land, and other Crown Lands Act offences.
- Retired July 2014.
- Own and operate a property on NSW Northern tablelands, and have a registered property agreement for conservation purposes.
- Hold Bachelor of Management (Rural Resources) Sydney UNI.

No restrictions on publication.