

Cause and Effect of Native Vegetation law in NSW: The essence and spirit of the Native Vegetation Act 2003.

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Overview:

There are moments in history when the opportunity presents itself for a fundamental overhaul of existing institutions to unleash a new paradigm. Such a moment existed in 2003 in the management of Australia's natural environment. The opportunity existed because over the previous decade there has been a quiet revolution taking place in rural Australia. Australians are learning about our continent, the adaptability of its biodiversity and the value of this natural heritage to the economic future of city and country people alike.

Today, there are thousands of farmers who have a vision for healthy landscapes and they are actively seeking to restore our damaged rivers and landscapes and create a new model of sustainability that would become the envy of other nations. These people have energy, commitment and ideas, but continue to lack adequate resources, scientific advice, regulatory and land use planning mechanisms which support the action needed to nurture the natural resource assets highly valued by society as a whole but which exist on their private land. The vast majority of this continent is managed by individual landowners (both black and white). They make decisions every day that either benefit or damage the long term future of our natural resource base. Natural resource assets on private land are by far the most important environmental assets that contribute to well being in society as a whole.

The real debate about land clearing is not about trees, it's about better management of native vegetation so that farmers can protect our rivers which produce fresh water, and manage our land so they can continue to produce the food we eat and the clothes we wear.

Fundamental to past and future success of such a model is simplifying the overwhelmingly complex structures that exist at present, to empower communities and landholders to take control of the problem, to back them with first class science and provide them with adequate public funds to deliver on-ground solutions on their properties.

In 2003 The Wentworth Group proposed in *A New Model for Landscape Conservation in NSW* (Wentworth Group, 2003) a radically new way of managing native vegetation. This model not only sought to resolve the conflict over land clearing in a fair and equitable way, it also looked at the bigger picture of an urgent need for a major investment in revegetation of over cleared landscapes. Their recent work on *Optimising Carbon in the Australian Landscape* (Wentworth Group, 2009) builds on this to show that within an emission trading scheme and appropriate regulation and planning there are new and emerging opportunities for progressive management of vegetation in the landscapes of regional Australia.

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The model was underpinned by tougher laws on land clearing, but was focused on providing farmers with investment security and the funding support they needed.

The Wentworth Model for Landscape Conservation has five interdependent components:

1. strengthening and simplifying native vegetation regulations, ending the broad scale clearing of remnant vegetation and protected regrowth
2. setting environmental standards and clarifying responsibilities for native vegetation management which will, over time, create healthy rivers and catchments
3. using property management plans to provide investment security, management flexibility and financial support for farmers
4. providing significant levels of public funding to farmers to help meet new environmental standards and support on-ground conservation
5. Restructuring institutions by improving scientific input into policy setting, improving information systems, and essentially building new arrangements to link community, government and industry at the regional level.

The Wentworth model is founded on simplicity and flexibility, it balances investment security with high environmental standards, and it removes perverse incentives and replaces them with economic incentives to produce better environmental results.

The NSW Government adopted these reforms in late 2003 and passed 3 new pieces of legislation, the *Native Vegetation Act 2003*, the *Natural Resources Commission Act 2003* and the *Catchment Management Authorities Act 2003*.

These reforms created 2 new institutions:

- Catchment Management Authorities (CMAs); and the
- Natural Resources Commission (NRC)

They were designed to provide both local decision making and transparent audited regional administration and delivery.

The CMAs were created to be:

- evidence based
- open
- transparent bodies
- operating to a consistent set of state-wide targets and standards for natural resource management.

The independent NRC was established to provide:

- process to establish state-wide targets and standards
- audit progress against them
- through the implementation of a Catchment Action Plan (CAP) approved by Cabinet on the recommendation of the NRC.

In a unique alliance, these packages of reforms were supported by both a consortium of NSW environment groups and the NSW Farmers Association. The essence and spirit of the *Native Vegetation Act 2003* (Cosier, 2004) was to create a means whereby landholders and managers would take responsibility for managing vegetation so to fulfil a vision for healthy and productive landscapes in NSW. This would be achieved through the creation of accredited property vegetation plans by landholders where resource security could be established for both the landholder enterprise and the long-term environmental values of a healthy landscape. The management of native vegetation within this framework seeks to provide at the property enterprise opportunity for flexibility and innovative solutions so that both productivity and environmental outcomes are maintained or improved for biodiversity, soils, water quality and salinity.

This is the underlying spirit of the reforms. There would therefore be an end to broad scale clearing.

The State government through an independent NRC sets and audits the environmental targets and standards. CMAs then convert these targets and standards into practical regional priorities through the CAPs. Farmers and landholders are then provided with scientific and financial support to implement these on their properties. Landholders are then encouraged to submit a single property vegetation plan for managing native vegetation on their property. Once this plan is certified as meeting the *maintain or improve* principles, landholders can get on with business knowing that financial incentives and assistance to facilitate adjustment towards farm practices that can maintain or enhance environmental outcomes will be set in place.

It recognises the need for sensible flexibility to allow landholders to efficiently manage their businesses. It recognises that cost of repair as a result of past mistakes is the responsibility of the whole community and it underpins these reforms by strong laws aimed at limiting any further damage caused by land clearing.

The policy principles which underpinned these reforms were as follows:

- the first principle, a very simple principle is to limit further damage to our landscapes by ending broadscale clearing unless it improves or maintains environmental outcomes
- the second, recognises that whilst our farmers and landholders are custodians of the majority of our land and seek to manage their land responsibly, it is not their responsibility to repair the damage that has resulted from past mistakes, many of which were driven by government policies of the time. It was not many years ago that farmers and graziers were given a subsidy to clear native vegetation. If we want our rivers and landscapes repaired, then the whole community will need to make their contribution to maintaining and improving environmental outcomes.

Twelve of the thirteen CMAs were established in 2004 and \$436 million of State and Commonwealth funds were redirected to these CMAs over the following 4 years. This has been allocated on the basis of rolling 3-year investment strategies. CMAs also benefited from an additional \$100 million of resources and staff transferred from the former Department of Infrastructure, Planning and Natural Resources, with \$36.5 million issued in 04/05 to fund recurrent CMA operations. Currently the NSW CMAs administer some \$147 million of which NSW contributes approximately \$41 million in base level operational funding, plus \$22 million of catchment action funding while the Commonwealth contributes some \$35 million in national priority funding. CMAs also receive approximately \$49 million for project based activity from a wide range of State and Commonwealth sources.

How are we travelling: some detail

The cornerstone to this new system is a Property Vegetation Planning approach. These Property Vegetation Plans seek to provide an equitable and transparent way to deliver incentives to assist farmers to protect and improve native vegetation on farms and to end broad scale clearing unless it improves or maintains environmental outcomes.

This was a radical new system that had to be built. The PVP developer tool, which sits at the heart of the methodology for the *Native Vegetation Action 2003* sought to apply the best science available (Gibbons et. al., 2009), but also recognised that the science is not perfect and will improve over time as our new CMAs begin to adapt it to better suit their local circumstances.

The system has therefore been designed to accommodate these improvements as they come to light, through a Ministerial approval process, rather than requiring lengthy statutory changes to the regulation as was required in the past.

Economic impacts and the need to optimise farm management flexibility have been built in to produce what is generally seen as a balanced package of reforms. Evidence obtained through the NRC audit process indicates that the new vegetation act and methodology has been successfully implemented.

In 2009 the NRC evaluated progress towards the target for extent and condition of native vegetation (Natural Resources Commission, 2009). The findings were that a trend for woody vegetation extent has been established, showing that there has been no net change in the overall extent of native woody vegetation across the state between 2002-2008. Analysis of satellite imagery of NSW between 2002-2008 detected that approximately 112,000 hectares of woody vegetation have been cleared. The losses due to clearing that have been reported within NSW have been offset by increases in woody cover in other areas. Between January 2006 to June 2008 the area approved for clearing under the *Native Vegetation Act 2003*, *Native Vegetation and Conservation Act 1997* and the *Plantations and Reafforestation Act 1999* was 8,923 hectares, whilst 3,654,264 hectares of vegetation were conserved, managed or restored under various Government initiatives. Analysis of the extent of Kyoto defined forests in NSW shows a 0.05% increase in woody extent between 2005 and 2006.

Some of the actions to assist this successful implementation were:

1. regrowth on farms was exempted from the “improve or maintain environment” test, giving farmers a perpetual property right to manage regrowth of woody weeds and invasive shrub. The Invasive Native Scrub modules of the PDP developer have evolved with further research and on ground trialling and experimentation in central western NSW
2. the impacts of clearing can now be offset by improvements elsewhere on the farm, on other farms or even on public land, to increase flexibility and maximise win-win outcomes
3. property Vegetation Plans give farmers a 15 year resource guarantee against changes to the Native Vegetation Act, the Threatened Species Act and Environmental Planning Instruments
4. over \$400 million has been shifted from bureaucracy to provide direct funding support to farmers and landholders
5. an extensive set of exemptions for routine agricultural activities still allows farmers to clear native vegetation without having to pass the “improve or maintain environment” test, recognising the need for farmers to be able to sensibly get on with managing their businesses:

- constructing rural infrastructure, such as fences, firebreaks, sheds, dams, pipelines, tracks and stockyards
- controlling noxious animals and pest animals
- harvesting native vegetation planted for commercial purposes.

Some New Ways Forward

1. Multiples Property Vegetation Planning and a whole of landscape approach to vegetation management

NRC was asked to advise government on whether it would be practical and beneficial for CMAs and private landholders to develop native vegetation management plans at the 'landscape scale' and covering multiple properties. This would be a change to the current system, in which CMAs and landholders develop vegetation plans at the scale of single properties or parts of properties.

The NRC found that in some important instances, the site-specific focus of the methodology developed to support the *Native Vegetation Act 2003* can restrict CMAs from making sound natural resource management decisions. CMAs need to have more flexibility and capacity to consider the broader landscape functions of vegetation when they assess the "improve and maintain environmental outcomes" test under the *Native Vegetation Act 2003*. It means giving increased attention to the regional vegetation planning mechanisms and strengthening the independent audit role of the NRC to ensure that the spirit and purpose of the vegetation reforms are achieved.

The NRC's recommendations to NSW government were:

- explicitly adopt a landscape approach as underpinning its natural resources policies and legislation (including the *Native Vegetation Act 2003*) and CMAs regional delivery of natural resource management in NSW
- encourage CMAs and natural resource management agencies to proactively use existing processes to refine the current Property Vegetation Plan (PVP) Developer over time so it can accommodate more elements of a landscape approach, including the capacity to appropriately assess proposed multi-property plans
- give CMAs greater flexibility (with appropriate accountability) to build on the strengths of the PVP Developer, but be better able to engage private landholders and regional communities in managing landscapes to deliver agreed environmental, economic and social values expressed in catchment and state-wide targets.

If implemented, these recommendations should better support CMAs to work with regional communities and other organisations to improve or maintain the health and (environmental and economic) productivity of landscapes in their regions and across NSW.

While the NRC was focused on multiple properties to gain larger scale benefits and conduct the "maintain and improve" test across multiple enterprises it is increasingly apparent from work by CMAs that further evolution is required in peri-urban areas where the native vegetation act applies. Rural subdivisions clearly need to be able to develop whole of subdivision plans that link to the regional vegetation plan and have provision to conduct the "maintain and improve" test for the subdivision as a whole and not at the scale of the block where opportunities to achieve the outcomes of the *Native Vegetation Act 2003* are greatly constrained. Opportunities need to be explored that

encourage community and other forms of titles being applied to land which preserve the native vegetation so that the rural residential amenity is secured for all into the future. This area of work deserves a great deal more effort and subsequent reform to the methodology and regulation in order to find better solutions. This is particularly important on the coastal lands of NSW.

2. Vegetation Management in Urban Areas

Whilst presently urban areas in NSW are exempt from the *Native Vegetation Act of 2003* Farrier et. al., (2007) draw attention to the inequity that falls on regional and rural landholders and their communities to manage native vegetation and the biodiversity of natural ecosystems for NSW.

The recent work by NSW government to establish *BioBanking* (NSW Department of Environment Change and Water (DECCW)) is a step towards finding new approaches to this problem.

Currently *BioBanking* is not mandatory. It is a voluntary scheme which establishes a market for 'biodiversity credits'.

Under the scheme, an agreement is entered into between a landholder and the Minister for DECCW. The agreement imposes management actions on the landowner to maintain and improve biodiversity values on its land in exchange for biodiversity credits from the biobank site. The number and types of credits that can be generated at a site is determined by the Assessment Methodology which takes into account various factors (for example: the condition of ecological communities and habitats and conservation measures currently being carried out on the site or that are required to be carried out to improve or maintain biodiversity values).

Credits are used to counterbalance (offset) the impacts on biodiversity values that are likely to occur as a result of development on other lands with similar biodiversity. The suitability of credits for offsetting a particular development is determined in accordance with the *Assessment Methodology*.

On 17 May 2010, Freehills put together Australia's first agreement. The agreement, entered into under Part 7A of the *Threatened Species Conservation Act 1995* (NSW) (TSC Act), involved 80 hectares of land at Douglas Park in New South Wales. Under the agreement, the landowner received biodiversity credits in exchange for agreeing to undertake management actions to improve the biodiversity values of the site.

The agreement paves the way for landowners interested in creating significant financial value from their land by agreeing to preserve its biodiversity. Developers can also use as a method to offset the impact of development projects on biodiversity.

BioBanking and the *Native Vegetation Act 2003* have a common conceptual framework. At the moment it is my view that the *BioBanking* methodology needs to have at its core the same rigour and science as does the methodology that exists with the *Native Vegetation Act 2003*. It follows that *BioBanking* should be mandatory for all urban development. This would treat urban and rural/regional communities in a much more equitable manner, and give greatly improved environmental outcomes for society as a whole.

3. Natural Resource assets on Private land: an issue for future resolution.

Achieving a working consensus on how to divide the costs of achieving environmental objectives between resource users and the general community is a key part of mobilizing the policy changes and

public resources required to address major resource management challenges in Australia and elsewhere (Hatfield-Dodds, 2006). The “catchment care principle” advocated by the Wentworth Group (2003), states ‘that individual resource managers have an obligation to avoid land or natural resource management practices that harm the long term interests of resource users as a whole’, and is interpreted as implying that resource management practices should not damage ecosystem integrity, while accepting that significant ecosystem modification might be consistent with maintaining a healthy working landscape. Beyond and above this level of care is the fact that farmers and landholders manage ecosystem services where the benefits flow to the society as a whole. This is particularly important for the majority of natural resource assets in Australia which are on private land and are central to the management of our land water and biodiversity for the common good of society.

Against this background the NSW reforms have tried to find a balance between:

- landholders and farmer’s rights
- their responsibilities to avoid land or natural resource management practices that harm the long term interests of society as a whole as well as other resource users
- benefits of ecosystem services managed by landholders and farmers that flow to the society as a whole.

The reforms also recognise that farmers must be able to manage their business with certainty in terms of resource security.

Conclusions

These reforms are not the end of the process. Not by a long shot. There is much more to be done.

My vision for agriculture is that farmers and all private landholders in the future will no longer be commodity producers of food and fibre alone, but also recognised and rewarded as custodians and managers of a range of ecosystem services that yield clean water, carbon sequestration, habitat for fauna and flora and native vegetation that prevent land and water salinisation. Commodities will be a core component, but on-farm income will also be sourced from payments for carbon credits and ecosystem services.

The future will therefore require a new vision for the role of agricultural enterprise in the landscape. The future form of sustainable agriculture can be discerned to require a mosaic of new and old agricultural enterprises that yield food and fibre coupled with native ecosystems that provide a suite of ecosystem services which are valued and paid for by stakeholders and beneficiaries.

For this to happen we will need to develop innovative and inclusive approaches that permit fair comparison of market and non-market values. Developing the concept of valuing and paying for ecosystem services as part of this process is will be increasingly important.

I see the native vegetation reforms in NSW as a first step establishing a framework of incentives and payments for farmers and landholders to deliver ecosystem services which benefit society as a whole.

A key function of agriculture in the future will be to manage the landscape, its rivers, wetlands and estuaries, in ways that produce ecosystem services for our urban societies above and beyond obligation to avoid land or natural resource management practices that harm the long term interests of resource users as a whole.

The agricultural community continues to be caught with declining terms of trade and can no longer be expected to produce cheap, clean food and fibre, as well as provide a free service to maintain all the ecological functions of the landscape that provide ecosystem services essential to urban societies. The services will need to be paid for and be recognized as a fundamental part of the economy.

The agriculture and private landholders overall in the future will be paid not only for the goods they produce but will receive increasing remuneration for the services delivered to society as a whole through its management of healthy landscapes, rivers, wetlands and estuaries. Agriculture certainly will be the first of private landholders who will broaden perspective to be seen by society as the custodians and managers of the life support systems for society as a whole. There is no way that public reserves alone can be sufficient in extent or ecological diversity to maintain and improve the natural resources and environmental assets upon which we all ultimately depend. Environmental assets on private land are critical to the common good. It is the whole landscape, consisting of public and private land, which must be managed in an integrated manner to achieve our goals of healthy and resilient landscape across NSW.

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