

Introduction

On Tuesday, 13 September 2011 the Minister for the Environment announced a 12 month review of the native vegetation regulations in NSW which would involve key stakeholders including NSW Farmers.

NSW Farmers has developed a green paper which outlines a substantial but achievable set of reforms of the regulatory framework for native vegetation in NSW. This briefing note summarises that proposal to allow members to provide feedback ahead of the review. Under the current proposal, the broad framework of the *Native Vegetation Act 2003* (the Act) would be maintained with minor changes however significant changes to the *Native Vegetation Regulation 2005* (the Regulation) and the way these instruments are administered would be required. Implementation of the reforms would also require consequential amendments to the *Environmental Planning and Assessment Act 1979* (the EPA Act) and the *Threatened Species Conservation Act 1995* (the TCA Act).

Local Landscape planning

The critical scale for biodiversity planning in rural areas is the local landscape – a land unit large enough to include complete ecosystems but small enough to enable true ownership of the plan by participating landholders. The current process of developing property vegetation plans (PVPs) in isolation forgoes the potential productive and environmental benefits which can be obtained through a collaborative model.

Single property plans are limited in their ability to deliver strategic trade-offs between high value conservation areas and high value farm land. We envisage landscape plans will be developed by landholders with access to CMA assistance and the best available data, resulting in real ownership of the plans by local farmers.

The landscape plan would ideally become a statutory instrument under the EPA Act, giving the CMAs a formal role in the statutory planning process for land zoned rural. This would see CMAs given sole

jurisdiction over biodiversity and natural resource outcomes— removing the need for

environmental zonings in Local Environmental Plans. Local Government would retain its consent functions with regard to the built environment and subdivisions.

Amendments to the EPA Act would need to prevent LEPs and other planning instruments overriding the policy objectives and specific permissions of the landscape plans. The NSW Government is currently reviewing the EPA Act and NSW Farmers has already made early approaches around the relationship between the EPA Act and Native Vegetation Act.

Strategic subdivision

To achieve strong environmental outcomes, we recognise that development of rural landscapes for agriculture must be offset by the strategic setting aside of areas of the highest biodiversity value and land where reforestation can achieve connectivity outcomes. A triple bottom line approach, however, demands that this exclusion of land from production should be detrimental to the social and economic interests of landholders and their district.

To ensure landholders' property rights are protected, where high value biodiversity assets are earmarked for conservation there should be a legal right for the landholder to sell that area to a buyer of last resort. This process would be administered by CMAs in partnership with the Nature Conservation Trust and local government. Of course this would remain at the option of the landholder.

It is envisaged that the Nature Conservation Trust would use its revolving fund to purchase subdivided land, pending the establishment of a stronger private conservation market. A more streamlined process for delivering these assets to market through the regulatory framework is crucial to ensuring farmers can realise the public value of these assets.

Definitional change

Despite the common understanding of the term 'broad-scale clearing', it is defined under section 8 of the Act as being '*the clearing of any remnant native vegetation or protected regrowth*'. The current definition captures the removal of single plants, which is outside the intent of the Act and unnecessarily confusing.

NSW Farmers is proposing that the definition be amended to read '*indiscriminate clearing of large areas of remnant native vegetation or protected regrowth*'. This amendment would provide clarity to landholders who need to remove individual plants with no real environmental consequence and distinguish those activities from true broadacre clearing of remnant and protected native vegetation.

Redefining regrowth

There is some confusion among CMAs around the interpretation of the term regrowth. Some CMAs are only classifying vegetation as regrowth where it has regrown *following clearing activity* post the regrowth date. This prevents farmers from managing seedlings and suckers that have emerged post the regrowth date on land that was previously open. NSW Farmers is also proposing a change in the regrowth date to create uniformity across NSW. Currently the Western Division date is set at 1893 and the rest of NSW is set at 1990. The drought, fires and floods during the period of 1980 – 1984 caused widespread emergence of new vegetation across productive agricultural areas. Management of this vegetation was curtailed by the introduction of SEPP 46.

Setting a uniform regrowth date of 1983 would overcome the issues being faced by landholders in managing this early-1980s vegetation and improve environmental outcomes.

Changes are also being sought to the impractical evidentially requirements CMAs are currently imposing on farmers seeking to exercise the change of regrowth date provisions in the legislation.

Further reforms

Woody Weeds

Landscape Plans would need to take a fresh approach to management of invasive native species, particularly in Western NSW. This would require cost efficient restoration of degraded land to improve production, biodiversity, soil carbon and land restoration outcomes.

Changes to exceptions

Section 25 of the Act contains a lengthy list of exclusions based on requirements imposed by other legislation. NSW Farmers supports the current exclusions and believes they should be extended to include clearing of native vegetation necessary to meet obligations under the *Occupational Health and Safety Act 2000*.

NSW Farmers supports the provisions of the Act which allow for routine agricultural management activities, however the Green Paper recommends that the restrictions imposed on these through the Regulation should be deleted.

Enforcement

NSW Farmers submits that current enforcement provisions are excessive and disproportionate to the offences involved. The punitive approach taken by the Act rivals offences which endanger human health and alienates the farmers who are meant to be working in partnership toward conservation outcomes.

For a complete copy of the Native Vegetation Green Paper please contact NSW Farmers on 1300 794 000 or visit www.nswfarmers.org.au.