FAXED 17.9.2007

Mr Simon Johnston
Principal Council Officer
Standing Committee on State Development
Department of Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Johnston

Re: Inquiry into aspects of Agriculture NSW

Please find enclosed a proof with minor corrections. Also attached are responses to the additional questions raised by members of the Committee, along with the completed questionnaire.

If you have any further matters which you wish to raise, please do not hesitate to call me on telephone 9995 5610.

Yours sincerely

RICHARD SHELDRAKE
DEPUTY DIRECTOR-GENERAL

17.9.7

The Department of Environment and Conservation NSW is now known as the Department of Environment and Climate

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NSW Legislative Council

Standing Committee on State Development

Inquiry into Aspects of Agriculture in NSW

Question on Notice

Hearing 29 August 2007:

The Hon. MELINDA PAVEY: On another issue which is an enormous opportunity for agriculture—carbon trading and greenhouse—I notice that private native forest arrangements have just come into force. Where else in Australia or in the world do we have in existence guidelines for farmers to meet when undertaking private forestry? Or are we world leaders?

Answer

Australian Approaches to Regulation of Private Native Forestry

NSW is not unique in the regulation of Private Native Forestry in Australia or worldwide. Most countries and individual states have some regulation that affects private native forestry. The most common regulation is the protection of water quality and prevention of soil erosion. A code of practice, either compulsory or voluntary, exists in many countries and Australian states.

The NSW industry is mixture of large and small forestry operations and the Code attempts to set requirements that can be met by all levels of operations.

Regulation of private native forestry by codes of practice or similar exist in Queensland, Victoria and Tasmania. The mechanism of how each jurisdiction works varies.

Tasmanian regulations apply to all forestry activities regardless of tenure. Forestry activities are regulated under the *Forest Practices Act* 1985 and associated Forest Practices Code 2000. Forest operations require a Forest Plan developed by a certified person. The Forest Practices Code sets outcomes and some specific conditions in terms of habitat trees and riparian protection. Operations and the Forest Plan are audited against the Act and Code conditions.

The **Queensland** Private Native Forestry Code of Practice, introduced in 2005, sets outcomes and specific conditions. The emphasis is on the protection of soil, wetlands and hollow bearing trees and prevention of erosion. No approvals are required but logging must be carried out according to code conditions.

Victoria extended its code of practice to include private native forestry in 1993. Although most of the goals and guidelines contained in the Code apply equally to forests on public and private land, there are instances where the way they are applied on private land and public land vary. The emphasis is on silvicultural prescriptions, protection of soil and prevention of erosion and is outcome specific with few other specific conditions. Operational conditions for each timber harvesting operation are set out in a Timber Harvesting Plan for private land. The goals and guidelines set out in the Code need to be considered and responses explicitly documented in the Timber Harvesting Plans. Penalties for non-compliance will apply if operations are not in accordance with the Code.

Australian Capital Territory, South Australia and **Western Australia** have very little private native forestry areas and as such no codes of practice have been developed in those jurisdictions.

International Approaches

Other countries, excluding the USA and Finland, have predominately voluntary codes or voluntary codes within a regulatory framework. Examples include:

- Canada - Ontario has a voluntary code whilst Novia Scotia has a compulsory code for Crown land which is voluntary on private land.
- Belgium and New Zealand have voluntary codes based on a regulatory framework to protect water quality and soil erosion.
- Guyana has a voluntary code.
- Philippines has an Industrial Forest Management Agreement that deals with reafforestation of logging in concession areas and protection of rural water supply.

Other voluntary codes have been developed by various organisations, examples include:

- American Logging Council
- Ireland, individual landowners and the Government
- Food and Agriculture Organization of the United Nations for the Asia/Pacific region.

Finland's Code of Practice puts a positive responsibility on private owners to harvest their forests and sets up conditions to protect soil and water.

In the **USA**, forest practice regulatory programs are predominately state initiated activities, although a number of local governments and some federal programs regulate the application of forest practices. Some states prohibit forest practice regulatory initiatives by local governments.

Depending on the forestry objective being considered, state-wide forest practice regulatory programs can be said to exist in as few as 16 percent to as many as 54 percent of states. Such regulatory programs are most commonly used to protect forests from wildfire, insects and diseases, and to protect the habitat of rare and endangered species.

State wide regulatory programs are most commonly used by states in the northeast and the far west, and least commonly in the south. Population growth and related urban pressures since 1985 have caused dramatic increases in regulatory programs in north-eastern states. Erosion prone soils, steep terrain and public interest are among the many reasons that have fostered development of complex regulatory programs in parts of the USA.

USA regulation can be relatively comprehensive in nature (eg. California, Maine, Oregon), involving a single administrative structure that is responsible for developing and enforcing forest practice standards. They can alternately be "multi-authority" in design (eg. Florida, Maryland, New Hampshire), involving numerous agencies implementing a variety of regulatory statutes.

The implementation of USA regulations may involve;

- Permit-inspection systems (eg California). Landowners must notify their intention to harvest and may begin harvesting operations only after appropriate inspections are conducted and permits issued.
- Notification systems (eg Montana, Oregon) require landowners to notify the agency of their intention to harvest, but then may proceed with harvesting if no state response is received within a specified period of time.

- Contingent systems (eg Virginia) stipulate that failure to comply with forest practice standards can result in enforcement action.

Certification and licensing of professional foresters and timber harvesters is an important part of most states' regulations. Nearly all USA regulation involves monitoring activities. Most commonly, compliance audits are used to determine if forest practice standards are being applied in a field setting.

Some states also engage in effectiveness monitoring in order to determine if forest practice standards actually protect important forest resources such as water quality and wildlife habitat.

Conclusion

NSW is not a world leader in the regulation of private native forestry, but has the most comprehensive regulatory framework of the Australian states, reflecting the nature of the NSW private forestry industry.

Question 2

Can you explain the interaction of the *Native Vegetation Act*, the *Catchment Management Authority Act*, and the *Environmental Planning and Assessment Act*? Is the duplication in responsibility between local government and Catchment Management Authorities making it more difficult to get approvals for development, and what is being done to address this? (Please refer to comments of Mr Stephen Low, Vice President, Local Government and Shires Association, in transcript pages 14 and 15, attached).

Answer

The Interaction between the *Native Vegetation Act 2003* (NV ACT), *Catchment Management Authorities Act 2003* (CMA ACT) and the *Environmental Planning and Assessment Act 1979* (EP&A Act) needs to be broken down into its component parts to be understood.

The CMA Act has as its objects:

(a) to establish authorities for the purpose of devolving operational, investment and decision-making natural resource functions to catchment levels,
(b) to provide for proper natural resource planning at a catchment level,
(c) to ensure that decisions about natural resources take into account appropriate catchment issues,
(d) to require decisions taken at a catchment level to take into account State-wide standards and to involve the Natural Resources Commission in catchment planning where appropriate,
(e) to involve communities in each catchment in decision making and to make best use of catchment knowledge and expertise,
(f) to ensure the proper management of natural resources in the social, economic and environmental interests of the State,
(g) to apply sound scientific knowledge to achieve a fully functioning and productive landscape,
(h) to provide a framework for financial assistance and incentives to landholders in connection with natural resource management.

The NV Act has as its objects:

(a) to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State, and
(b) to prevent broadscale clearing unless it improves or maintains environmental outcomes, and
(c) to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation, and
(d) to improve the condition of existing native vegetation, particularly where it has high conservation value, and
(e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation,

in accordance with the principles of ecologically sustainable development.

The EP&A Act has as its objects:

(a) to encourage:
    (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and

(ii) the promotion and co-ordination of the orderly and economic use and development of land, and
(iii) the protection, provision and co-ordination of communication and utility services,
(iv) the provision of land for public purposes, and
(v) the provision and co-ordination of community services and facilities, and
(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
(vii) ecologically sustainable development, and
(viii) the provision and maintenance of affordable housing, and

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Interactions between the Acts

CMA Act and the NV Act
The NV Act is delivered in a partnership between Catchment Management Authorities and the Department of Environment and Climate Change. The Authorities deliver assessment and approval services to landholders while the Department manages the compliance, science and policy aspects. Effectively the CMA Act establishes the institutional arrangements for the delivery of native vegetation approvals by the Authorities.

CMA Act and the EP&A Act
The CMA Act establishes Catchment Management Authorities and is essentially administrative in nature. It is in the area of strategic planning that the CMA Act interacts with the EP&A Act.

The planning function of the Catchment Management Authorities complements arrangements under the EP&A Act. There are no provisions for approvals or consents for development under the CMA Act and therefore no conflict with other legislation. Decision making under the CMA Act deals primarily with incentive funding allocation, community based programs and the direction of Government Agency effort.

NV Act and the EP&A Act
It is in the area of approvals for the clearing of native vegetation that the NV Act and the EP&A Act interact.

The NV Act is focussed on the management of native vegetation on rural lands. Vegetation in urban areas is excluded from the NV Act and all local government areas in the Sydney region are excluded from the NV Act given their predominantly urban character.

The NV Act does not override any requirement to obtain consent from a local council where a Local Environment Plan (LEP) requires approval for the clearing of native vegetation. Council controls apply in addition to the requirements of the Act. However, once a Property Vegetation Plan (PVP) is approved or Development Consent is granted under the NV Act, any subsequent change to an environmental planning instrument cannot prohibit, restrict or otherwise affect the approved PVP.

The EP&A Act establishes a consents and approvals framework that can be applied to all lands through a hierarchy of planning instruments. In the case of vegetation consents the most usual instrument is the local environment plan (LEP). It is unusual for an LEP to control vegetation management in rural areas.

At the rural / urban fringe (for example in rural residential zones) consents may be required under both the NV Act and the EP&A Act, depending on the provisions of the LEP. A situation of dual consents is not desirable. To resolve this issue a dedicated working group with representatives from CMAs, the Local Government and Shires Association and state agencies has been established. Over the past 18 months the Group has prepared a number of options for resolving the issue. These options have been field tested and discussed with key stakeholders. Final recommendations are expected to be submitted to the Minister for the Environment in October that will streamline the approvals process.

It is worth noting that when drafting the NV Act the issue of dual consents was identified and the Government moved to reduce the potential for this by creating a deemed clearing approval for the construction of a single dwelling that has Development Consent from council. This deemed clearing approval extends only to those activities that are subject of the council development consent for that single dwelling which might include for example, road access and the installation of power lines. The NV Act requires that such clearing be to the minimum extent necessary.

In the case of rezoning Mr Low appears misinformed as to the interactions of the Acts. There is no formal assessment under the NV Act for the rezoning of land. Local Government has a responsibility to consult with CMAs when considering a rezoning. The CMA may use the assessment tools developed under the NV Act to frame its advice to Council about the impacts of the proposal but there is no requirement for the Council to adopt the specific advice provided. What is the usual practice is that the NV Act assessment tools are used to assess the potential impacts of a proposal, model strategies to minimise impacts and provide an objective basis for Council to make a decision.

Finally, where land is rezoned so that it is subsequently excluded from the NV Act, any agreed PVP, including approved clearing, offsets and management actions that applied to that land continue to be binding on future owners. This is the case as these offsets were agreed to by the original land owner in order to allow the removal (usually permanent removal) vegetation in another location. For the Government to meet its commitment to the nationally agreed 'no net loss policy' as well as its own commitment to 'improve or maintain environmental outcomes' from native vegetation proposals the retention of these offsets is required.

Question 3.

The DECC submission (p6) mentions a proposal by a group of farmers from Walgett, wishing to have their Property Vegetation Plans considered on a landscape basis across thirteen properties. Can you tell us where this is currently at and elaborate on the potential implications for other landholders?

Answer

The Department and the Namoi CMA have been working with 13 farmers in the Walgett district on a proposal to clear and thin native vegetation as well as manage invasive native scrub.

The proposal has presented some challenges to the existing assessment methodology. The Department is looking closely at how to maximise environmental as well as economic benefits from proposals of this scale. The Department continues to work with the Namoi CMA to field trial options to ensure a balanced environmental and economic outcome within the constraints of the existing Native Vegetation Act.

Any improvements to the assessment methodology that result from the case at Walgett will be able to be applied Statewide.