Submission
No 416

INQUIRY INTO MANAGEMENT OF PUBLIC LAND IN NEW SOUTH WALES

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Date received: 31/08/2012

31 August 2012

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TO THE GENERAL PURPOSE STANDING COMMITTEE NO. 5

LEGISLATIVE COUNCIL OF NEW SOUTH WALES

SUBMISSION IN RELATION TO INQUIRY INTO THE MANAGEMENT OF PUBLIC LAND IN NEW SOUTH WALES

This Submission has been prepared in response to the Terms of Reference (numbers 1 and 2) to the Inquiry into the Management of Public Land in New South Wales (established on 23 April 2012) conducted by the General Purpose Standing Committee No. 5.

TERMS OF REFERENCE NO. 1:

PROCESS OF CONVERSION AND THE ASSESSMENT OF POTENTIAL OPERATIONAL, ECONOMIC, SOCIAL AND ENVIRONMENTAL IMPACTS

Our comments concern the conversion process for agricultural land (which is crown land) into freehold land subject to protective environmental covenants (other type of conservation area). In summary, our view is that the current process is not transparent and is creating privatised national parks and eroding farmers' ability to use their farms for agricultural purposes.

Background

My wife and I are leaseholders of a farm, ' of 1,500 acres/ 607.04 hectares, being Crown Land subject to a perpetual lease (a Prickly Pear Lease). : is located under the Inverell Shire Council. Across the river from is Kwiamble National Park.

We purchased ! and associated machinery specifically for tobacco growing purposes (the soil composition was ideal for this crop production). We had been in this industry since 1970 when we migrated to Australia as part of the Australian Government's immigration program at the time to encourage Europeans to migrate and work in rural

Australia. [redacted] is zoned 1a (rural (agricultural) zone) and was used for tobacco growing from 1958 until 1994 when the NSW Government phased out the industry in this state. We were forced into early semi-retirement after the tobacco industry was discontinued because of the limitations of the land in its current form for alternative agricultural activities. Since then, we have used it for small scale cattle grazing and livestock production which generates a small income but needs to be supplemented with other income producing activities which are not generated from [redacted].

Conversion Process

We have had first-hand experience with the conversion process and can make comments about how unsatisfactory the process has been for us. On 6 September 2006, we lodged an Application for Purchase of Land Held Under Lease Under Schedule 7 to the Crown Lands (Continued Tenures) Act 1989 to convert our Prickly Pear Lease to freehold land (Our Application). Our Application was lodged in response to the "special purchase offer" by the NSW Government on 10 September 2004 to all eligible perpetual leaseholders to sell the State's residual equity or interest in the respective perpetual lease.

Based on our experience, we have serious concerns that the conversion process has the following significant flaws:

1. Incompatibility between restrictive environmental covenants proposed by the relevant state authority (in our case it was the Land and Property Management Authority for NSW (LPMA)) and farming activities/agricultural zoning of the land;

2. Lack of transparency in assessments conducted of environmental or conservation values on the land the subject of the application for conversion; and

3. Lack of understanding of the detrimental impact environmental covenants on the title have on the agricultural land.

We make the following comments to explain why we believe these flaws exist.

1. Incompatibility between proposed environmental covenants and farming activities/agricultural zoning

We clearly indicated on Our Application that the conversion would be for the (continued) purpose of carrying out farming activities. These would include any of the following: raising cattle and goats, sowing grain, crops or other feeds for livestock, growing and harvesting of vineyards (for grape and wine production). We had attempted alternative agricultural activities since the elimination of the tobacco industry in NSW. In response to Our Application, we were advised that a condition to approval was, the placing of land management covenants on the title to protect the environmental values in the form of a Restriction on Use. However, the Restriction on Use proposed by the LPMA to us did not support the intended use of [redacted] (as it placed restrictions on the most part of the land) and was not compatible with the Inverell Shire Council's agricultural zoning 1A.

The section 149 Certificate for attached to the Contract for the Sale of Land dated 27 July 1992 when we purchased the property provides the aims and objectives of zone 1a:

> *"The primary purpose of this zone is to encourage the use of rural land in this zone for agriculture and for uses compatible with agriculture. A further purpose is to encourage those land uses which would be in keeping with the rural character of lands within this zone. ..Particular objectives of this zone are: (a) to ensure that the long-term potential and viability of better class land, agricultural land is protected, in particular on land utilised for or with the potential for intensive agricultural enterprises; (b) To encourage the consolidation of rural holdings and to prevent the unnecessary fragmentation of those holdings..."*

This was clearly not taken into account by the LPMA and compared with the Restrictions on Use proposed for where the most part of the land would not be able to be used for farming purposes as the works (listed below) are prohibited. The response to Our Application from the LPMA dated 8 July 2010 stated that the following covenants were proposed to apply to our land on conversion to freehold:

- *"Native vegetation must not be cleared...*
- *Tillage or application of herbicide must not be undertaken...*
- *Non-native crops or exotic pasture species must not be established*
- *Standing or fallen dead timber must not be cleared or removed for commercial purposes...*
- *The removal of soil or inorganic material such as bush rocks is prohibited.*
- *Logging of native vegetation is prohibited."*

The response also stated that Zone A (approximately 1,350 acres) was to be subject to the covenants and Zone B (approximately 150 acres) was to be free of any restrictions on the title. Therefore, 90% of our land would be significantly impacted.

2. ***Lack of transparency in assessments conducted of environmental or conservation values on the land the subject of the application for conversion***

The NSW Crown Land Perpetual Lease Purchase Application Kit issued by the LPMA provides that "*Where the LPMA identifies **significant conservation values**, covenants are placed on the title to the freehold land to protect environmental values prior to the conversion to freehold.*" This is consistent with the advice provided by the LPMA to us prior to completing Our Application in relation to the conversion process. The response received to Our Application from the LPMA dated 8 July 2010 stated:

> *"...as part of the conversion process requirements, an environmental assessment had been completed in order to identify any environmental features that may be present on the lease that require protection by a covenant recorded on the certificate of title for this land if converted to freehold."*

From discussions with the LPMA to understand what environmental features had been located and comparing a similar response received from a neighbouring applicant earlier than ours (which was to be used as a precedent to all applications in our area), the findings appeared to have been from an assessment conducted outside of t ie. "*within 20km of the site*" or "*values associated with the Severn River*". It was clear that species which were either endangered or warranting conservation or protection had not been identified on the land, the subject of the Application. We requested copies of full reports prepared on the assessment of the environmental significance in relation to the precedent which was to apply to Our Application however, to date, we have not seen these.

The need to impose the restrictive environmental covenants has therefore not been justified. The obvious question also must be asked - why is there a need for protective covenants to be placed on the title when the following environmental protection instruments are in place in NSW:

1. Native Vegetation Act 2003
2. Environmental Protection Authority Act 1979
3. Environment Protection and Biodiversity Conservation Act 1999
4. Plantation and Reforestation Act 1999
5. National Parks and Wildlife Act 1974
6. Forestry Act 1916
7. Forestry and National Park Estate Act 1998
8. Fisheries Management Act 1994
9. Threatened Species Conservation Act 1995
10. Tree Preservation Orders
11. Irrigation Orders
12. Water Entitlements
13. State Environmental Planning Policy (SEPP):
    a. SEPP 14 Coastal Wetlands
    b. SEPP 19 Bushland in Urban Areas
    c. SEPP 26 Littoral Rainforests
    d. SEPP 44 Koala Habitat Protection

3. *Lack of understanding of the detrimental impact environmental covenants on the title have on the agricultural land.*

There has been an apparent lack of understanding or appreciation by decision makers of the impact the restrictive environmental covenants on the title i__ would have on the value of the property in terms of scaring away potential purchasers and decreasing market value. The LPMA response to Our Application stating Zone A (approximately 1,350 acres) was to be subject to the covenants and Zone B (approximately 150 acres) was to be free of any restrictions on the title would mean that effectively 90% of our land would be impacted by oppressive restrictions on the title. Our concern is that in practice, any farmer would consider . to have 90% unusable land and apply a market value on 150 acres of usable land for the entire property. Our land will effectively become a privately owned national park.

To date, any interest by potential purchasers i have been for the purposes of conducting an agricultural business however, on learning how much of the property is uncleared, appreciating the difficulties associated in changing this status, there has been a reluctance to take their interest any further. Under a Restricted Land Use on the title, the situation would be worsened as follows:

(a) Farming opportunities would be limited further – aside from the limited agricultural value of the land, the imposition of restrictions reduces farming activities further; and

(b) Covenants on the title would be a greater deterrence for potential purchasers who will most likely be looking to purchase with a view to farming the land for example, growing grain crops such as wheat (example of non-native crops), cattle or other livestock will not be allowed to graze.

It is essential that our state's agricultural properties be and remain attractive to current and future farmers as it would encourage ongoing agricultural activities which have social and economic benefits to local communities. Benefits would include helping to maintain the viability of farming businesses, maintaining the local population, creating a greater likelihood of the next generation of family members continuing on the land, generating employment and business opportunities, helping to support local shops, businesses and services. I make these comments based on the Ashford example when the tobacco industry was alive and thriving compared to what it has become since the end of the industry - a 'pensioners' town' which has subsequently lost its bank, bakery, cinema and a café which opens and closes way too often.

The Impacts of the Native Vegetation and Biodiversity Regulations Productivity Commission Inquiry Report No. 29, 8 April 2004 provided the following in relation to the impact environmental regulation had on property values:

> *"There are many factors that will determine the market value of farms. Current levels and future expectations regarding prices, weather conditions and technological change are all variables that affect property values. For those farms containing native vegetation that landholders may wish to clear now or in the future, native vegetation and biodiversity regulations will also have an impact on land values.*

Attributing any observed changes in property values to the effects of environmental regulations and to other factors can be difficult and contentious. Nonetheless, in the longer term, regulations like vegetation clearing restrictions that can permanently reduce a property's income-earning capacity, can be expected to reduce property values by the discounted present value of the future loss in net income, in the property's best available use.

As discussed above, the Commission has received numerous individual examples from most jurisdictions of significant permanent reductions in the net income that can be earned from rural properties as a result of restrictions on clearing native vegetation. In these cases, the property value could be expected to be reduced broadly in line with these reductions in returns."

The Commission found that farmers had lost income, properties had been devalued and little or no compensation had been received.

Based on our experience in dealing with the significant flaws with the conversion process as summarised above, we rejected the proposed Restriction on Land Use. We considered the proposed covenants to be too oppressive, unjustified and therefore unacceptable. To date, Our Application has not yet been settled and is still subject to negotiations with the LPMA.

TERMS OF REFERENCE NO.2:

ADHERENCE TO MANAGEMENT PRACTICES ON ALL PUBLIC LAND THAT ARE MANDATED FOR PRIVATE PROPERTY HOLDERS, INCLUDING FIRE, WEED AND PEST MANAGEMENT PRACTICES

The following issues[1] impact.

- My business relies on maintaining a feed base for grazing. Over many years I have seen regrowth reclaim what was once productive grazing country. Native vegetation restrictions mean that I can no longer manage those areas productively and my farm income will continue to diminish while the current laws are in place.
- Weeds are a problem on my property which requires ongoing, active management. Current laws which protect native groundcover mean that I cannot legally manage this problem effectively. This costs me financially as well as taking its toll on the environment.
- The productivity of my cropping activities is undermined by scattered trees and small clumps in my farming paddocks. These trees harbor weeds, reduce soil moisture and prevent adoption of more sustainable and efficient farming practices like tramlining or using wider machinery.

[1] Prepared by NSW Farmers Association for the purpose of submissions to the General Purpose Standing Committee No 5.

- Invasive native species pose a risk to my environment and production system. Despite the demonstrated increase in erosion, loss of groundcover, reduced biodiversity and reduced productive capacity - I am still required to undertake a lengthy approval process to remove invasive species or start a cropping rotation to stop the problem recurring.

- There are areas of my property which could be sustainably developed into farming country which would contribute positively towards my local community and global food security. I would be happy to take advice from the Catchment Management Authority to make sure my plans meet a certain environmental standard, but the current prescriptive rules set in Sydney undermine trust in Catchment Management Authorities and common sense outcomes.

- The government's decision to place a ban on "broadscale" clearing (noting that even removing a single native plant is classified as "broadscale" clearing) has limited my ability to market and sell the environmental services I provide by retaining areas of native vegetation. I believe that denying me the right to participate in carbon markets using vegetated areas on my land represents an acquisition of property which still needs to be compensated.

RECOMMENDATIONS

Our comments above have been made in relation to the current conversion process for agricultural land (which is crown land) into freehold land which is to be subject to protective environmental covenants (other type of conservation area). In summary, our view is that the current process is not transparent and creates privatised national parks, reducing viable, productive agricultural land.

In order to take steps towards resolving the issues raised above, we make the following recommendations:

1. Applications for conversation from crown land to freehold title in relation to agricultural land should not have restrictive environmental covenants placed on the title as the current multitude of environmental protection instruments in NSW and at Commonwealth level provide sufficient protections.

   This would therefore allow:

   a. The entire land to maintain the character of Agricultural zoning 1A in accordance with the section 149 certificate;

   b. The land value to be on par with comparable freehold properties in the district which are not subjected to restrictive environmental covenants; and

   c. The land to be attractive to current and future farmers which would encourage ongoing agricultural activities to be conducted in the area having social and economic benefits to the local community.

2. If environmental values are found on the land which is the subject of an application for conversion and they are determined to be so significant as to warrant conservation and protection, an offer for purchase should be made by the state of NSW to acquire the land for establishment of a new protected area or national park. Existing environmental instruments currently in place are more than sufficient to protect any environmental values which not deemed to be significant.