

SOUTHERN MIDLANDS COUNCIL

SUBMISSION TO THE PRODUCTIVITY COMMISSION

Impacts of Native Vegetation and Biodiversity Regulations

14 August 2003

INTRODUCTION

Southern Midlands Council welcomes the inquiry into this most important issue forward for examination.

Southern Midlands Council represents one of Tasmania's most significant agricultural regions, with a substantial proportion of the State's superfine wool produced in the municipality and a reinvigorated cropping and stone fruit sector flourishing in the Coal River Valley along with and other areas of the municipality where irrigation water has been permitted to be developed.

The Council area is predominantly rural and the agricultural sector is a vital part of the municipality's economy.

The desire of the broader community for certain natural values existing on private land to be protected is acknowledged.

Significant progress has been made towards such ends through voluntary programs based on voluntary / partnership programs, such as Landcare. Council proposes that, in the future, this approach be exhausted before consideration is given to the introduction of non-voluntary regulation. In all cases extensive consultation with land owners concerned must be implemented.

Where legislation and regulations are introduced that remove land owners existing rights for the 'common good' and result in demonstrable adverse economic impacts, the community should provide adequate compensation. Each property is a commercial enterprise competing in a global market place and the impacts of new regulations on the economic viability of farms is too often not accounted for.

VOLUNTARY / PARTNERSHIP SYSTEMS

Council believes the majority of Tasmanian landowners endeavour to responsibly manage their land in ways that achieve the best outcome both for their families and for the broader community.

Landowners have continually demonstrated a willingness to participate in voluntary programs aimed at preserving natural and cultural values on their land.

In considering how to protect a particular natural or cultural value, the use of voluntary mechanisms should be fully exhausted prior to any consideration of the introduction of non-voluntary regulatory mechanisms.

Endeavouring to achieve the goals of protecting native vegetation and biodiversity by the focussing on the regulatory approach often does not achieve the best environmental outcomes and is an inefficient use of resources in comparison to voluntary mechanisms.

Government needs to focus on working in partnership with land owners to achieve these goals.

The Southern Midlands Landcare Program has achieved far more in a handful of years working in partnership with land owners than could have been achieved through a regulatory approach. Positive outcomes range from broad scale weed eradication programs to the protection of over 2000 ha of remnant native vegetation over hundreds of properties.

Landcare, the Natural Heritage Trust program (to date), the RFA private land conservation program are examples of successful voluntary programs that have achieved significantly more positive environmental outcomes than could have been achieved through a regulatory approach.

Council notes the unfortunate recent agreement between the State and Federal Government regarding future NHT funding, (made in a closed process), which commits the State to the introduction of certain non-voluntary regulations in regard to non-forest native vegetation. This is likely to significantly taint the previous good name and popularity of NHTs program amongst landowners.

LAND OWNERS RIGHTS

The 'right to farm' is a right that, say several decades ago, farmers clearly had. This included, for example, the right to develop and improve land for agricultural production without the need to seek approval from an authority. Gradually, this right is being reduced without compensation.

DEMOCRATIC ACCOUNTABILITY

Council submits that, in a democracy, it is only the democratically elected representatives of the people who should have the ability to remove the rights of citizens.

Elected representatives at the Federal, State or local government level make decisions and the bureaucracy in the appropriate tiers of government implement such decisions 'on the ground'.

Particularly where such decisions remove the rights of citizens there must be a clearly traceable link between actions 'on the ground' and the decision made by the elected representatives.

Within the Tasmanian planning system this is unfortunately too often not the case.

Tasmania's Resource Management and Planning System (the RMPS) has been lauded as an excellent land use planning and environmental management system. Structurally it is. However, a crucial design component remains largely missing: State Policies.

The overarching objective of the RMPS is ‘sustainable development’. However, what this actually means when applied on the ground to particular situations is unclear. The role of State Policies within the RMPS is to provide such direction in relation to particular issues. State Policies must be approved by Parliament and are therefore a suitable mechanism through which individual rights can be removed for the common good, if deemed necessary and appropriate by the elected representatives of the people.

In the nine years since the introduction of the RMPS, only three State Policies have been introduced, whereas arguable there should have been dozens by now.

In this policy vacuum, independent and non-democratically accountable bodies within the RMPS are forced to make ‘informal’ state policies. Such policies, on occasion, result in the removal of the rights of citizens. It is often highly questionable whether State Parliament intended such rights to be removed when it set the overarching ‘sustainable development’ objectives for the RMPS. In other words, too often there is no clearly traceable link between actions ‘on the ground’ that remove the rights of citizens and the intent of their elected representatives.

UNEVEN DISTRIBUTION OF ADVERSE IMPACTS

The introduction of native vegetation and biodiversity regulations has an uneven, and therefore unfair, effect on different land owners competing in the same markets.

For example, a regulation protecting certain forest types from being cleared will only adversely affect land upon which those forest types are located. It is not uncommon under such regulations that one land owner is prevented from developing land whilst a neighbouring land owner is not. In the absence of any equalisation through compensation, the latter has gained a competitive advantage over the former through luck only.

DECISIONS BASED ON BALANCED INFORMATION

Decisions must be based on balanced information inputs. Decisions to preserve natural or cultural values must be fully justified taking into consideration:

- real value to the community,
- real cost to the community, and
- real cost to individual land owners.

Costs and benefits should be analysed in terms of the three component objectives of sustainable development:- economic, social and natural.

COMPENSATION

The principle of adequate compensation in return for the removal of private rights for the benefit of the “common good” is unfortunately not strong in Australian society.

It is axiomatic that the introduction of new regulations that:

- limit agricultural production options, or
 - impose new application and approval processes,
- increase costs to the land owner.

If the community is the primary beneficiary of such regulation, and a clear adverse economic impact in individual farmers can be demonstrated then it is reasonable that the community compensate the land owner.

Compensation must adequately reflect the loss to the land owner over time. Lost future earnings must be properly accounted for.

CONCLUSION

Australia farmers are amongst the most efficient in the world and must compete against highly subsidised European and North American producers.

The trend in Australia towards European standard levels of protection for natural and cultural values without the accompanying European standard levels of compensation will have dire consequences for rural Australia if not addressed.

RECOMMENDATION

That the following process be considered for adoption:

1. In determining whether a natural value is sufficiently important to warrant protection:
 - 1.1 every effort must be made to ascertain the majority view of the community, and the views of minority groups must not prevail over that of the majority,
 - 1.2 scientific & expert evidence must be sought, where it exists, supporting various points of view so as to provide balanced scientific input into the decision making process,
 - 1.3 a cost/benefit analysis must be made taking into consideration all three aspects of sustainable development:- economic, natural and social,
2. Where it has been determined that a particular natural or cultural element is sufficiently valued to be warrant protection:
 - 2.1 clear objectives need to be determined,
 - 2.2 opportunities for protection of values on public land should be exhausted before consideration is given to protecting values on private land,

- 2.3 extensive consultation should be carried out with affected private landowners,
- 2.4 voluntary and partnership mechanisms should be favoured over non-voluntary, regulatory mechanisms,
- 2.5 regulatory, non-voluntary mechanisms should be considered 'last resort' mechanisms,
- 2.6 where regulatory mechanisms remove existing private rights for the benefit of the public good, adequate compensation must accompany the removal of those rights.
- 2.7 where private rights are removed, there must be a clearly traceable link to a decision by elected representatives of the people to the effect that it is necessary and appropriate that such rights are removed.