MY LAND – OUR FUTURE

Paying the price of public good conservation on private land

Submission by the NSW Farmers' Association
to House of Representatives Inquiry into the
Impact of Conservation Controls Imposed on Landholders

CONTENTS

EXECUTIVE SUMMARY

> *"I have no hesitation in supporting the view that any landholder whose rights are restricted or removed has a clear moral right to compensation, even if some of the States might argue they don't have a legal obligation,"*
> Hon Warren Truss MP Minister for Agriculture, Fisheries and Forestry[1]

The impact of conservation measures imposed by governments on landholders and farmers.

Growing community interest in environmental issues has increasingly led to restrictions being placed on the rights of landowners in order to conserve public goods such as biodiversity. Governments have been guilty of putting aside the moral rights of farmers in a bid to gain green credentials at low cost.

This growing trend represents a clear infringement on the rights of individuals and businesses as it limits current land use beyond limitations ascribable to a duty of care; reduces property values and offers nothing by way of compensation for this loss. In many cases (such as that of John Madden outlined on page 11) this causes enormous emotional stress to landowners and has often led to bankruptcy.

The 40,000 farmers of NSW should not have their rights reduced and be forced to carry the burden of conservation on behalf of the remainder of the six million predominantly urban-based people living in the State. The same moral imperative applies in every other State or Territory. Moreover, most farmers enjoy lower than average incomes and are unable to adequately resource the investment required to meet the aspirations of the urban majority.

How to establish the private and public good components of conservation

Although a range of private goods are claimed for conservation initiatives on private land there is a good deal of evidence (pages 14 to 16) that any significant setting aside of land reduces farm income. Agriculture improves the productivity of land through a number of processes. This can be seen looking at the vast increases in productivity over the last century. If farmers are forced to retain land in its natural state there is clearly an opportunity cost in terms of productivity.

Public good benefits are difficult to quantify, though some attempts have been made. However, as a point of equity, if the community demands a level of conservation for the public good then the community should meet the costs. It may be that the community is demanding action that is beyond their willingness to pay. In this case only by attaching a true cost to the measures will any optimal outcome be reached. Hiding the true costs by imposing them on a minority group will achieve little in the long term.

Farmers do not wish to deny their 'duty of care' however this concept implies avoiding actions that may damage another's property or person. Actions such as pollution control come under a duty of care but the preservation of biodiversity clearly does not. There

[1] Hon Warren Truss MP, Minister for Agriculture Forestry and Fisheries, Australian Financial Review, 'Federal attack on compo gets rise from States' 2 March 2000, p6

are many examples where farmers have acted beyond their duty of care and voluntarily made significant contributions of land (the farmer's major asset) to conservation. George Maynard's story on page 19 offers a good example. It is sad that these actions are rarely acknowledged and on occasion demands are simply made for a greater contribution.

International developments in ameliorating the cost of conservation for landholders

An analysis of relative levels of spending in different countries on incentives to farmers for the management of their land for public good conservation reveals that, despite having over three times the land area, NSW offers only a fraction of one percent of the total incentive payments available in the UK. There is no reason to suspect the situation is any different in other States.

It is also clear that in the USA and the UK the rights of farmers are better protected via legislation, which focusses on achieving conservation outcomes through incentive payments to compensate for productivity foregone.

How to equitably share the costs associated with conservation among all members of the community

At issue are the rights of farmers. In order to achieve conservation goals and protect these rights the community will have to pay farmers for the conservation services they provide in the same way they would pay for any other crop from the land. This can be achieved through either compensation payments for the loss of rights (based on reduced productivity or land values) or through well funded voluntary incentive schemes to purchase public goods.

In Australia the precedent has already been set. The forestry industry with 25 times less employees than agriculture has been offered compensation of $120 million for the impacts of conservation initiatives by the Commonwealth's Forest Industry Structural Adjustment Program in addition to significant State contributions.

There is enough experience of incentive programs that do and do not work to know that to work these programs should be voluntary, have clear measurable outcomes, minimise red tape, offer flexibility and stability, and should offer funds relevant to the problem.

Within these parameters there are many types of scheme. Different schemes will suit different circumstances and a variety should be made available. Many, such as Bush for Wildlife revolving funds and the Australian Bush Heritage Fund are already in existence and simply need more resources.

Government at all levels has a role in correcting this inequity. The Commonwealth has the fund raising ability. States can distribute money, ensure it reaches the landowners it is intended for and can ensure legislation does not impose public good burdens without access to equity payments. Local government also has an important role in planning of public good conservation and allocation of funding.

It is unhelpful to talk of sums of money required. If no money is raised then restrictions should simply be lifted. The community must pay for the goods it is demanding.

Farmers want to achieve conservation outcomes as much as anyone but are saying that enough is enough, as an industry they cannot go on footing the bill for everyone else in the community.

RECOMMENDATIONS

The NSW Farmers' Association recommends as follows.

1. **That all new Commonwealth or State environmental legislation or regulations that have an impact on private land must be subject to a Private Land Impact Review prior to being enacted, and this review should be conducted by an independent expert body that is empowered to recommend appropriate equity measures, which are binding on Government.**

2. **That within a five year period, all current Commonwealth or State environmental legislation that imposes controls on the owners of private land to achieve public-good outcomes must be subject to a Private Land Impact Review by an independent expert body that is empowered to recommend appropriate equity measures, which are binding on Government.**

3. **That a medicare style Commonwealth taxation levy be established to raise funds that are hypothecated to expenditure to offset the cost of public-good conservation measures on private land.**

4. **That State Governments should only have access to Commonwealth Public-Good Conservation funds where the State Government has complied with requirements to review and quantify the impact of all environmental legislation on private landowners.**

5. **That State Governments should only be be given access to Commonwealth Public-Good Conservation funds under an agreement that specifies that no more than 2% of any funds be retained by State Governments for administration and that the remainder go directly to pay landholders to offset the cost of public good conservation measures.**

6. **That an embargo should be placed on any further restrictions on the rights of landowners until such time as these mechanisms are in place.**

7. **That, wherever possible, incentive payments be paid through bilateral agreements between landowners and independent funding organisations and that existing organisations such as the Australian Bush Heritage Fund.**

A QUESTION OF RIGHTS

Human rights are a loosely defined concept, covering a range of rights that we all should have, irrespective of colour, sex, language, religion etc.

Some of these rights can be categorised as civil or political rights – such as rights to justice, free movement, privacy, religious practice and to vote for Governments. Others can be categorised as social and cultural rights. For example these might include rights to adequate food and water, health care, education, a clean environment etc.

It is interesting to look at what the United Nations and its members resolved in 1948, when the Universal Declaration of Human Rights was adopted. Article 17 of that declaration rarely gets championed and in fact is often ignored.

What about the rights of Ted and Marianne Richardson?

Ted and Marianne Richardson live in the far south-west of NSW. They were married in 1981, and purchased "Garnpang Station" a property about 180km from Mildura, that had been owned by Ted's father, and had been in the family for over 70 years.

In that same year, 1981, the Wran Government recommended to the Fraser Government that Ted's property and those of sixteen of his neighbours should be included in an area to be designated the Willandra Lakes World Heritage Area, under the United Nations World Heritage convention.

And so the heartache began.

Ted and Marianne only found out that their property was included in the World Heritage area when local newspapers carried the story. They were reassured by NSW Government officials that the listing would have little impact, and that a plan of management would be in operation within 12 months.

Little more was heard about the listing. Then suddenly in 1983, Ted and his neighbours were told they could no longer crop any of the land included in the Heritage area.

Not surprisingly, the landholders were very upset, and called for a socio-economic study to be carried out, which would be the basis of any compensation they might receive.

Finally in 1985 the Commonwealth and State Governments agreed that the study would be conducted. Despite the concerns of the farmers, nothing much happened. They became caught in a bureaucratic 'black-hole' where the Commonwealth and the NSW Government alternatively blamed each other for the lack of any action.

In 1989, eight years after the listing, a consultant was finally engaged to develop a plan of management for the area. That initial plan of management was rejected, and a subsequent plan was started in 1993. This resulted in what was called a "strategic issues document" being released in 1994. By this time the powers-that-be had decided the landholders could resume cropping !

By 1994, Ted and Marianne had 5 children. Their eldest child who wasn't even born when the area was listed was now ten years old, and still the landholders were in limbo.

During that year UNESCO visited the area, and recommended that almost half of the land should be removed from the listing, and the status of the rest significantly downgraded. This was vehemently rejected by the relevant scientific experts in Australia, perhaps because it would have cast doubt on the professionalism of their initial assessments.

Work progressed on the management plan, and the June long-weekend in 1995 was set down for its release. All the relevant State and Commonwealth bureaucrats, the scientific experts, and the landholders met over three days at Mungo National Park to consider the plan.

There was a lot of preliminary discussion until finally the time came for the scientists to put up the maps of each of the properties, with the areas of total exclusion outlined in red, and areas requiring special management in orange. It was clear to all that seven properties would have to close down.

After that meeting, work finally started on the socio-economic impact study that would determine the compensation each of the landholders should receive.

On an on went the processes – draft socio-economic study, consultation, arguments between Commonwealth and State, negotiations over compensation, even negotiations over who should pay the legal costs associated with the compensation.

Finally, the first of the landholders were paid some compensation for their properties in mid-1997, sixteen years after the area had been listed.

Settlement for the final two landholders was made in June 1999, eighteen years after the area was world heritage listed.

Ted and Marianne live in Mildura now with their kids, the youngest of whom is now ten. There is some irony in the fact that Ted now leases the bulk of his original property and runs sheep on it, and as yet no work has been undertaken to exclude the areas that were considered so important.

Article 17 of the Universal Declaration of Human Rights says "Everyone has a right to own property", and "No one shall be arbitrarily deprived of his property".

1. Introduction

Increasing community interest in environmental issues combined with the escalating demands of the conservation movement have led to a trend of rapidly increasing regulation of private land use in Australia. The call for restrictions to be placed on the use of land is primarily in the name of preserving biodiversity. This is manifestly a public good. Unfortunately, in our highly urbanised society, it has been too tempting for governments to impose the burden of the cost of this conservation on farmers. This has offered governments cheap green credentials but has caused considerable pain in farming communities and has resulted in a damaging rift between farmers and government.

The public's perception is too often one of farmers and the environment in conflict. Time and again farmers have witnessed policy instruments aimed at achieving conservation outcomes that have had a punitive impact on them and the response from the farm sector has created the impression that farmers are somehow anti-environment.

This paper sets out to show that this need not be the case. Society will achieve considerably greater progress towards the conservation outcomes it seeks through working with rather than against farmers. Farmers have an inherent incentive to manage their land in a sustainable manner. But they must be allowed the flexibility to do so, and it is important to differentiate between practices needed to make a farming enterprise sustainable, and the conservation demands of a largely urban society, which frequently go well beyond that.

> *"For most farmers their land is their entire investment. If they run the property down and it's not productive any more then their children lose their inheritence…..so they have a direct , vested interest in looking after that property"* Kathy Ridge, Executive Officer Nature Conservation Council of NSW[2]

The link between farm incomes and conservation must also be recognised. Measures that reduce the ability of farmers to realise the value of their main asset, their land, will impinge on farming incomes, and ultimately reduce the ability of farmers to invest in conservation measures. The interest and uptake of the farming community in Landcare and other environmental improvement programs is well documented. What has been less well documented has been the declining interest in these programs in NSW as a result of the imposition of native vegetation legislation.

In this submission, examples are offered where farmers have been helped to manage land for conservation benefits of which they are rightly proud. Examples are also provided where farmers are being driven out of business by what is effectively asset confiscation. In these situations the environment, farmer and local community are all worse off as a result. Unfortunately, in putting together this submission it has been far easier to find examples of the latter than the former. It is hoped that this inquiry will be a first step on the road towards reversing that trend.

[2] Kathy Ridge, Executive Officer Nature Conservation Council of NSW Sydney Morning Herald May 6 2000, 3s

Beyond these arguments lies a fundamental truth in the way in which measures to conserve public goods are implemented. Asking the 40,000 farmers of NSW to meet the costs of the conservation demands of the 6 million population is inequitable and unfair. In our modern Australian society, delivering a good to many by imposing costs on the few, seems fundamentally unacceptable. This is especially the case when the few in question are geographically isolated from the vast majority of our population, and typically enjoy below average incomes.

2.´ The impact of conservation measures imposed by governments on landholders and farmers

2.1 The impact of the NSW regulatory framework on farmers

In NSW SEPP 46 was imposed without warning or consultation in 1995 and has since been replaced by the Native Vegetation Conservation Act, 1997 (NVCA). This legislation imposed a system on farmers that effectively locks them out of large parts of their land. Farmers who had long farmed their land in a sustainable manner were penalised when the new regulation drew a line under current land practices and imposed stringent, complex and bureaucratic requirements on farmers seeking to gain permission to carry out practices that would have a significant effect on native vegetation. Some of the practices barred in NSW come under the heading of routine agricultural activities such as pesticide spraying and slashing.

For those whose land was already cleared the Act presented few problems. However, many smaller farmers who had been progressively improving and managing their properties saw both significant productive capacity stripped from them and the value of their land decline overnight.

Heron, Todd White, Surveyors who offer property valuation and advisory services across Australia are quite clear on the impact of conservation controls on private land holders. The following are extracts from 'The Rural Review' published by the company:

> *"the Native Vegetation Act is beginning to have an impact…..Although this country is suited to cultivation purposes with little additional clearing work under the Native Vegetation Act approval is required. There is no guarantee that this approval will be given and the process involved in obtaining such approval is relatively lengthy. This will have a negative impact on the marketability and value…"* September 1999[3]
>
> *"Sustainable practices are to be encouraged, however, it appears that a significant part of the cost is worn by the landholder without adequate consideration of compensation or provision of an alternative option to maintain and improve productivity"* October 1999[4]

It is no exaggeration to say that these impacts drove many farmers out of business and are continuing to do so. There is no similar example of any other section of the small

[3] Heron Todd White, The Rural Review, September 1999

[4] Heron Todd White, The Rural Review, October 1999

business community that has been treated with this sort of disdain by any level of Government.

Case Study – John Madden's story

John Madden and his wife Ann have four children and live on their property 100 kilometres west of Moree. John owns and runs the property in partnership with his sister.

Their property is just over 8,000 acres and is run as a mixed farm, comprising wheat, cotton, cattle and sheep. The Madden's only cultivate 2,300 acres of their property, leaving 5,700 acres under native vegetation. However, they need to work at least 4,000 acres to break even and upwards of that to be financially viable.

Unfortunately for the Madden's their application to farm another 700 acres was rejected under the seemingly ever-changing guidelines governing native vegetation.

The land in question contains some Coolibah trees but the majority of groundcover is scrub, thistle, roly-poly and weeds making it unsuitable for grazing. The Madden's had wanted to use the land to plant wheat to enable better crop rotation thus protecting current cropped land from over use. It has been difficult to achieve good weed control because of the problems with drift to surrounding crops and the high cost of chemicals.

John Madden will abide by the decision but he doesn't believe it is fair that his family carry the entire burden for the whole community.

"It's not right that someone sitting in an office in the city has the power to make decisions like this. Some property owners will get through and be given another chance, others like my family will have that opportunity taken away."

"We've been told not to use part of our land because it should be preserved and as a result we face the very real prospect of going broke," said Mr Madden.

Strangely, under the criteria for rejection, the response from the State Government stated that while the extra 700 acres would be beneficial economically to the Madden's and the local area, the economic benefit would be insignificant to the state and as such was one reason the application was turned down.

In this situation the current guidelines on clearing don't enhance sustainability and good land management practices.

Ann has travelled to Moree for the past 14 years to help pay the bills and educate their children who had to go to boarding school because there is no local High School. They are still supporting two daughters at university.

John Madden fears for the security of his family farm, a property that has been part of his family since 1896.

Many of the problems with the Act stem from the definitions used in the legislation. Under the Act an area of land is considered to be an area of native vegetation if more than 50% of the groundcover consists of native species (even if they are weeds, or introduced native species), and that area has not been ploughed in the past ten years. Ironically, the inclusion of groundcover in the Act means that management of grasslands to assist the proliferation of diverse species has effectively been prevented. The Act's

10 year regrowth rule offers farmers strong incentive to plough out regrowth after 9 years to avoid losing the right to manage the land.

Both conservationists and farmers are united in their assessment that the Act is not achieving its objectives. There is now increasing recognition that to truly achieve good conservation outcomes the enthusiasm of the managers of the land must be harnessed.

High country heritage being stripped away

Peter Spencer should be on top of the world. After decades of work off-farm he has finally managed to buy back part of his lost heritage in the high country of the Cooma-Monaro.

But he says: "To me public good conservation means chipping away at my heritage until nothing is left."
Peter only has use of about 10 percent of his property and he says that if he wanted to proceed with an application to utilise more of his land under the Native Vegetation Conservation Act it would cost him $300,000 with no guarantee of success.

"Who can afford that sort of gamble?"

Peter owns what is perhaps the highest farm in Australia reaching up 1600 metres into the sub-alpine snow belt and watered by the icy cold, pristine rivers that tumble down the mountain side providing the only natural trout breeding environment in Australia.

Sixty per cent of the land that makes up his farm was ring-barked and cleared back in 1918 as a part of the soldier settlement scheme. Since then much of the vegetation has grown back as scrub – what Peter describes as rubbish when he compares it to the glorious mountain ash forest that sits high on his land like a crown jewel.

Yet, when Peter wanted to develop some of this previously cleared land for agro-forestry, growing eucalypts and conifers to graze his sheep and cattle under, he was blocked by SEPP 46 and now the Native Vegetation Act, even though a massive agro-forestry farm plan had been previously drawn up and approved by the Department of Land and Water Conservation with the help of an international expert in agro-forestry.

He was also blocked for three years from breeding trout in a series of ponds he wanted to build as a part of a recreational fishing/tourist enterprise. Massive infrastructure costs were absorbed as he built his tourist accommodation and significant opportunities for tourist revenue were lost from the local community.

Peter Spencer is no Chardonnay-sipping greenie, but nor is he a rip it up and tear it down red neck.

He had planned his heritage carefully. He wanted his farm to achieve the proper balance between the environment and production – selective logging of his mountain ash, trout fishing and grazing fine wool sheep and hardy high country cattle amongst a new forest of soft and hardwood timbers.

"Instead I've been blocked at every point. If I was not fortunate enough to have had access to off-farm income, I would have gone broke long ago because of the restrictions the government has placed on me.

2.2 Trends in regulation

Although the Native Vegetation Conservation Act (1997) offers the most widespread case of conservation being forced on private land for the public good in NSW, it is far from an isolated example. In fact it reflects a worrying trend of government intervening in agricultural land management in order to achieve environmental objectives at minimal cost.

At present there is significant concern in the agricultural sector about the implications of the Commonwealth Environmental Protection and Biodiversity Conservation Act. This Act is full of potential for interventions but bereft of any provisions for providing equity measures where interventions are made for the good of the nation as a whole.

In NSW at present, a Regional Forest Agreement (RFA) process is underway that sets targets for remnant vegetation in reserves that cannot possibly be met on crown land. When this fact is pointed out to the relevant Ministers, they claim that the targets will only be met using timber on private land that is offered on a purely voluntary basis.

Unfortunately, the only mechanism available for achieving these targets with any certainty is the Native Vegetation Conservation Act, which is far from voluntary. The only funding available to introduce some equity to proceedings and spread the costs of conservation away from the farming community are State grants for fencing, for which the State Government has allocated a total of $15 million over three years.

When being told an asset can no longer be counted on for productive use, offering funding to fence it off is little consolation and does nothing to address the question of equity or the continued viability of the business.

Reserve targets being set by the RFA process send a clear message that the demands of society for conservation are increasing. This is a side effect of the increased affluence, education and urbanisation of society. However, there are genuine concerns in the farming community that if policy responses perpetuate this trend of cost imposition, then farming will cease to be viable in much of the State.

The sheer magnitude of issues with the potential to restrict landuse, such as dryland salinity, management of rangelands and wetlands and the meeting of Koyoto targets for the emission of Greenhouse Gases coupled with the wide range of demands on treasury funds suggest that these fears may be well founded.

The cessation of management of the land by agriculture would, in itself, constitute a major environmental loss. Many landscapes have been so modified since European settlement, that to walk away and cease to manage them would lead to species reduction and landscape degradation. Examples abound of native and introduced weeds choking out other vegetation and of single dominant species taking over due to lack of management. Moreover, issues such as dryland salinity require managed solutions. Simply ceasing to manage land will not deliver the ecosystems required to lower water tables without having significant and detrimental impacts on runoff to river systems. It is partially the recognition of this need to manage land that leads Europe to offer stewardship payments to farmers in less productive areas to ensure that landscapes meet conservation targets.

3. How to establish the private and public good components of conservation

> *"I see the issue as one of 'government failure' not market failure. Biodiversity protection and most land degradation problems are of a public good nature. It is the role of government to protect natural resources from abuse by markets. Amongst other things, this requires them to ensure that costs of biodiversity protection and controlling land degradation are shared appropriately"* Mike Young, CSIRO[5]

3.1 Benefits of Conservation to Farm Businesses

The conservation movement has long argued that there are such significant direct benefits to farmers from locking up parts of their land to preserve biodiversity that it actually makes economic sense for them to do so. In the vast majority of cases this is simply not so.

A brief examination of the purported benefits of biodiversity conservation for a private landholder shows that to a certain degree, the retention of native organisms assists some of the biological processes that result in nutrient cycling and soil formation. There are also benefits in shade trees and wind breaks, though farmers are well aware of these benefits. However, retention of an area of land in a relatively unimproved state means that less efficient species and biological processes are present, and the ultimate productivity of that land is limited.

The introduction of improved plant species, fertilisers and appropriate management has substantially improved the productivity of vast swathes of farming land in Australia, while retaining some of the elements of the original biodiversity. Such productivity improvement cannot occur without disturbing the original species present in the area.

Other benefits of biodiversity retention, such as the potential technological or medical advances that might be made as a result of investigating a newly-discovered species, or the cultural benefits to society in having unspoilt areas of bush to visit, are undisputedly public benefits, which are unable to be captured by an individual landholder.

More directly, in a major recent study [6] a detailed analysis was conducted of eight farms in south-east Australia that had significant areas of native grasslands. Four of the properties were in plains areas, and a range of conservation options were examined to determine their impact on farm business profitability.

Fencing out just 2.5% of the property for conservation resulted in losses of between $16 and $42 per hectare. Lighter stocking was also examined, but when compared with a

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[5] Young, M. Mining or Minding: Opportunities for Australia to improve conservation of remnant vegetation and to alleviate land degradation. Resource Futures Program, CSIRO Working paper series 97/12

[6] Crosthwaite & Malcolm. An economic analysis of native grassland on the Riverine Plain of south-eastern Australia. Univ. of Melbourne. Dec 1998

traditional cropping/pasture sequence, the results were not favourable. Planting of areas to native species such as saltbush was also examined, but the results were marginal and very sensitive to a number of management variables.

The authors conclude "*None of the actions which might maintain or improve conservation management …are unambiguously profitable. Conversely, cropping native grasslands is profitable on the two Victorian properties."*

For the four properties in more hilly areas, the results were not dissimilar. In all cases, the conservation options examined resulted in significant reductions in whole-farm expected operating profit, in comparison with a range of land development options that were identified.

Again, the authors conclude " *… if various development options are undertaken (on native grassland areas) .. all four farmers are in a much better position to pursue conservation management."* This is simply a restatement of the well-understood axiom – it's hard to be green if you're in the red.

A similar result arose from research at Charles Sturt University [7] that examined options to conserve remnant native vegetation. The conclusion was that conservation practices may not be economically rational in the short, medium or long-term, as the direct and opportunity costs associated with the conservation practices clearly outweigh the benefits. The report concluded that "*Any policy approach to achieve conservation objectives for remnant native vegetation clearly requires significant financial incentives for landholders to undertake conservation activities."*

These results will not surprise farmers, and in fact reflect the best-case situation for native species, as most of the studies involved native grasslands. In the case where the dominant native plants are shrubs or trees (which are less suited to grazing) the difference between returns from developed and undeveloped land would be substantially greater.

The situation has been summarised by Farrier.[8] He concludes "*Biodiversity conservation, particularly in relation to core areas, places much greater demands on landholders than land conservation, while at the same time offering little, if anything, in terms of immediate market rewards."*

It is acknowledged that, where dryland salinity is concerned there are, at times, demonstrable benefits for farmers in retaining more vegetation cover than would otherwise be the case. It would be a mistake, however to argue that this justifies the cost of conservation controls. Indeed, the spatially and temporally dispersed nature of the salinity problem means that cause and effect areas are rarely located on the same property. Plantings of native vegetation are usually in response to saline affected discharge areas, and in such cases, the replanting of both native and non-native salt tolerant species is a management response. This sort of planting would be unlikely to be covered by public good legislation. It is, however, an example of farmers working to

[7] Miles, Lockwood, Walpole and Buckley. Report 107 CSU. 1998

[8] Farrier, D. A role for Private Landowners in Conserving Biological Diversity. Univ. of Wollongong, 1996

protect biodiversity since salinity represents probably the largest single threat to biodiversity in Australia today.

The conclusion is that the private returns arising from additional areas of conservation on private land are, at best, negligible. Further confirming this, a recent report titled 'National Investment in Rural Landscapes' estimated that 100% of the benefits derived from land clearing controls and from the protection of rangeland biodiversity is public good benefit[9].

3.2 Establishing the Public Good Benefits

This submission has already considered some of the public good benefits accruing from the retention of native vegetation. These benefits can be broadly divided into use and non-use values. Use values are characterised by the potential for future medicinal applications, ecotourism, and sustainable harvesting of forest products. Greenhouse benefits may also come under this heading. Non use values are more difficult to define but reflect the feeling that current generations have a responsibility to conserve the environment for future generations, and also reflect beliefs about the intrinsic cultural value of vegetation and landscapes.

To attempt to objectively value these public goods is not necessary in the context of this inquiry. The fact that restrictions are being placed on land management practices to achieve them demonstrates a belief in society that these outcomes achieve a public good . If this is not the case, then why would conservation groups care and why would governments act? Simple principles of fairness suggest that if the whole community imposes these measures for its own ends, then it should meet the costs regardless of whether or not the actual public good benefit can be quantified.

It may be that the cost of controls currently being placed on landholders are in excess of the willingness of society to pay for the implementation of these measures. The fact that the costs are being borne by farmers alone means that the broader community has no indicator of cost. They merely call for controls and enjoy the results. One of the compelling arguments for farmers to receive equity payments for public good conservation is that these payments will force the community (represented by Government) to properly cost such measures and thus to reach more optimal outcomes.

Of course it must be acknowledged that farmers are part of the broader community. Everyone has a role in assisting with conservation measures that achieve public good benefits. The farming community is more than willing to accept this role, usually characterised as a duty of care. However, beyond this duty of care, the compulsory burden should not be significantly in excess of that endured by any other member of society.

[9] Madden, Hayes & Duggan (2000) National Investments in Rural Landscapes, a report prepared for the National Farmers Federation and the Australian Conservation Foundation.

3.3 Duty of care

The concept of a duty of care is increasingly used by Government and by the conservation movement to justify placing the burden of public good conservation on farmers. However, while duty of care is frequently referred to in discussions on this topic, it seems that interpretation of the concept is somewhat subjective and less well defined than it might be.

The general legal definition of duty of care [10] is;
"*There is a duty to take care in most situations in which one can reasonably foresee that one's actions may cause physical damage to the person or property of others. The duty is owed to those people likely to be affected by the conduct in question."*

Duty of care arises from the legal concept of nuisance, which is recognised as part of common law. Nuisance is defined as "*a state of affairs, created adopted or continued by one person (otherwise than in the reasonable and convenient use by him of his own land) which, to a substantial degree, harms another person (an owner or occupier of land) in his enjoyment of his land.* [11]

The legal definition is qualified with the use of terms such as 'reasonable', and also with the need for there to be some proximity (in time and distance) between the person causing the harm, and the person whose enjoyment of land is suffering due to the nuisance.

'Harm' has to be reasonably direct and able to be substantiated, and does not include things such as interference with the enjoyment experienced by those viewing a particular landscape. Even damage in the form of personal discomfort caused by smells and noise is downgraded in comparison with injury to property.[12]

Under common law, the burden of proof rests with those alleging the nuisance. (unlike the situation that prevails under the precautionary principle in environmental policies). As a result, courts have dismissed cases where a nuisance action was based on alleged damage to biodiversity. [13] The conclusion is that, under common law, a landholder's duty of care restricts that person from carrying out activities that may cause harm to another's land, but would not extend to restricting activities because they may impact on biodiversity on that land.

However, over the years legislation has moved the common law concept onwards to a point where " *.. it is becoming increasingly common to consider that land ownership entails a responsibility to ensure that the land is conserved for future generations, not*

[10] Oxford Dictionary of Law, 4th ed. 1997

[11] Hargrave vs Goldman (1963). Commonwealth Law Reports.

[12] Farrier, D. The Environmental Law Handbook. 2nd Ed. 1995

[13] Farrier, D ibid.

necessarily untouched but with a realisation of the importance of proper maintenance and good farming techniques."[14]

Even this level of responsibility on landholders does not extend to a requirement to only engage in activities that have nil or minimal impact on biodiversity. The above interpretation of duty of care recognises that even minimal management inputs will have some impact on the land, and there is a requirement on landholders not to degrade the land, even if such degradation has no impact on any other persons enjoyment of their land.

However, land management legislation aimed at securing conservation objectives sets a different, and higher standard. In such legislation, the question of harm to another persons' enjoyment of their land is not the basis of rulemaking. Rather, the concept of harm to any species or habitat on that land is increasingly the principle issue.

For example, under the NSW Native Vegetation Conservation Act, an application to clear more than 50ha of land on the Tablelands must be accompanied by information which includes maps and aerial photographs plus:

- an Aboriginal site search report;
- a flora survey report;
- a fauna survey report;
- a landscape survey report;
- an archaeological survey report;
- an economic survey report, and
- a social survey report. [15]

In addition, the landholder may be required to provide survey information relating to threatened species as defined under the NSW Threatened Species legislation.

Given the range of information required, and the fact that the consent procedures under the NSW Environmental Planning and Assessment Act are utilised, it is clear that the intention is not just to limit enjoyment of land such that nuisance to other landholders is avoided.

This is reinforced by responses that landholders have received to development applications. These applications have been rejected, even when evidence has been provided to confirm that the proposed development does not have any technical limitations, such as the potential to cause soil erosion or interfere with water-table levels.

In these cases, consent to develop the land has been refused due to the potential presence of habitat of a threatened species, or the presence of threatened native or migratory birds.

[14] Kincaid. Op cit.

[15] NSW Government. Guidelines and Application form for clearing vegetation under the Native Vegetation Conservation Act, 1997.

Rather than simply restricting landuse to ensure that other land is not damaged, this level of regulation could be considered, in itself, to be damaging the 'enjoyment' of private land ownership.

3.4 Beyond the duty of care

It is evident that 'duty of care' does not equate to locking away large proportions of a farmer's land for biodiversity conservation. However, many farmers have voluntarily done just that with large areas of their properties in recognition of the benefits to society. In many cases all they ask is for the flexibility to farm enough of their land to retain commercial viability. Land is the farmer's main asset. These are businesses willing to devote large parts of their asset base to the public good in return for being allowed to farm the remainder.

"Dream" conservation solution in mallee tradeoff

George Maynard knew he had to do something if he was to survive in the aftermath of the wool price collapse.

And he wasn't alone. Around 60 landholders in the Wentworth and Balranald districts of south western NSW realised that the key to their economic futures was in diversifying away from sheep and wool.

One answer was to dramatically increase the amount of land they farmed. Cropping seemed to have the future that wool was lacking.

But Government restrictions frustrated the attempts of individual landholders for a number of years.

Then around 6 years ago the 60 landholders formed the South West Land Management Group.

There was a germ of an idea.

Why not do a deal to turn over some of their productive land to conservation and in return be granted permission to open up more farming land.

The rest is history.

With goodwill on all sides, the landholders reached consensus with conservationists, Governments and local aboriginal groups.

As a result when the program is complete more than 150 thousand hectares will be returned to pre-1750 conditions with no grazing allowed and artificial water points removed. The conservation areas will be managed by the landholders.

Land developed as a result of this tradeoff will ensure future sustainability of the district.

According to George Maynard, it's a dream solution.

"For about $1.25 million in Federal NHT funding, the Government has achieved a massive conservation effort and increased the productivity of a large number of landholders.

"We are all very proud of the work we have done as a local community. Everyone will win out of the deal we have done.

"Farmers win, conservationists win and local Aboriginal people will win with access to this land for traditional hunting and medicine gathering.

"As well we hope the local Aboriginal people will be involved in the huge fencing job, giving them new skills."

George Maynard said the South West Land Management Group proved that landholders were conservation-minded and that trade-off deals on land management between local communities and government can work.

"It was a whole new ballgame looking at it from a conservation point of view, but we are very proud to have achieved what we think is a world first."

Two points emerge from this example. The first is that in a society that aspires to treat all citizens equally, the landholders should never have had to offer up such a large portion of their core business assets simply to be able to adopt enterprises that are more profitable. What they have had to do is akin to a small business such as a suburban newsagent being required to set aside half the floorspace of a shop for a community meeting room, in exchange for being allowed to introduce a new product line that is more profitable. This concept is clearly ridiculous in a suburban setting, yet demanded of rural landholders.

The second point to emerge is that, despite the above, the landholders have been prepared to make such concessions to achieve a public benefit. This is a clear demonstartion of the degree to which farmers will assist in meeting the conservation demands of society, if given appropriate incentives.

Unfortunately, in many cases, these compromises have not been enough to meet the demands of urban communities and conservation groups. In February this year the Walgett Regional Vegetation Committee voted to approve a plan to allow the clearing of 498,000 hectares of vegetation over a 10year period. The Minister quickly branded this decision 'excessive' and he urged the committee to reconsider its decision. A closer look at the facts of this case reveal that the plan involved farmers in the region volunteering to put aside an average of over 50% of their land assets for conservation in return for being able to manage the remainder productively.

Few would deny that for a business to voluntarily put aside over half of its assets for the preservation of a public good is far in excess of any duty of care. It is hard to think of any comparable sacrifice being volunteered in any other industry, and yet the Minister demanded more.

Without incentive schemes to assist farmers in the burden of conservation there will be no real progress. If society is demanding levels of vegetation retention that require setting aside significant proportions of a farm business' assets then they will have to find the resources to support those demands. Agriculture is simply not in a position to meet these demands alone, nor should it have to.

4 International developments in ameliorating the cost of conservation for landholders

4.1 Comparisons with the UK

In NSW the Government has made $15 million available for incentive payments to farmers under the Native Vegetation Conservation Act. These are the only payments specifically designated for farmers who manage the landscape on behalf of society. In the past two years since the inception of the Act, approximately $6 million of this money has been allocated.

The availability of Natural Heritage Trust (NHT) funding for community groups offered a further $48 million of conservation funding to NSW for the year 1999/2000. However, useful as NHT funds can be, they are not specifically available as a payment to farmers for managing land to achieve public benefit, and therefore are not considered as incentive payments. Indeed, there is evidence that only about 15% of NHT money is getting out of State Government Departments and into the community, making the actual amount available to farmers insignificant.

In the UK agri-environment schemes were introduced as part of a package of measures following the 1992 reforms of the European Community. These schemes offer annual payments for farmers to manage their land in an environmentally sensitive way. The UK made £169 million (approximately $A 457 million) available in 1998/9 alone, and this is to increase to £197 million ($A 532 million) by 2006/7. NSW has a land area 3.3 times larger than the UK and spends a fraction of one percent of what the UK spend on incentives to farmers for landscape conservation. Readers are invited to form their own conclusions from these statistics.

UK Agri-Environment Schemes

There are currently 9 agri-environment schemes operating in the UK covering all sections of agriculture offering incentives to farmers for environmental and conservation management. Those with most relevance for Australia include:

Environmentally Sensitive Areas (ESAs)
Launched in 1987, this scheme covers 22 sensitive areas where it is recognised that maintenance of the environment depends on traditional farming practices. ESA agreement holders receive annual payments in return for adopting measures designed to conserve and enhance the landscape, historic and wildlife value of the land under agreement. The scheme is entirely voluntary and entry of all or part of a property is for a 10 year period with a 5 year break clause. Payments under the scheme are tiered to allow higher payments for more restrictive management practices. Entry into a conservation plan also attracts financial incentives. Annual payments range up to £500 per hectare.

Countryside Stewardship
This scheme aims to protect, enhance, restore and re-create targeted landscapes, their wildlife habitats and historical features. It is open to any land manager and is not limited to farmers. This scheme is available across almost the whole country not covered by ESAs but is targeted at priority areas. Agreements last for 10 years and are individually negotiated with the land manager. Those in the scheme are offered both revenue and capital payments according to management prescriptions. Annual payments range up to £500 per hectare.

Farm Woodland Premium Scheme
Introduced in 1992, this scheme aims to encourage farmers to convert productive agricultural lands to woodlands by providing annual payments for 10 years for conifer woodland or for 15 years for predominantly broadleaf woodland to help offset agricultural income foregone. Annual payments range from £60 per hectare for unimproved land to £300 per hectare for arable land.

Habitat Scheme
Currently a pilot scheme, this offers incentives to farmers to take land out of production to protect certain specified valuable habitats, or to introduce extensive grazing to manage land for the benefit of wildlife. This includes land previously set aside under provisions in the EC Common Agricultural Policy (CAP) this 'setaside' land can be viewed as regrowth. Annual payments range up to £525 for arable land.

4.2 Public Good Conservation in the USA

4.2.1 Recognition of rights

Public policy in the USA has long recognised the need to ensure that the public have some role and responsibility in relation to the conservation of land and water resources. To some degree this is underwritten by the Fifth Amendment of the US Constitution, which is one of the first ten amendments that were ratified to create what is known as the Bill of Rights in December, 1791.

The Fifth Amendment states (in part)

> "*No person shall be …. deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."*

A range of case-law exists in the USA in relation to this question. While not definitive, the general interpretation appears to be that the Supreme Court has proceeded according to the view that the clause is to prevent government from forcing some people alone to bear public burdens which should be undertaken by the entire public[16].

This is in contrast to the situation in Australia where the 'just-terms' provisions of the constitution have generally been interpreted to apply only in the case where actual title, as distinct from rights, have been acquired by Government.

While the USA appears to offer stronger protection of property rights than Australia, it is clear that the use of environmental legislation to restrict owners of farmland is also an issue for farmers in the USA. The American Farm Bureau (the main lobby organisation for US farmers) has listed the protection of property rights as one of its ten major priorities.

As it explains "*… society has created demands for goods relating to the environment that exceed the requirement that landowners not create a nuisance or harm for their*

[16] Mason J. HCofA. The Tasmanian Dam Case (1983) at 67

neighbours. When society makes such demands, it is only fair that society shares in its cost".[17]

4.2.2 Action to protect farmers' rights

Several pieces of legislation are currently progressing through the US legislature to achieve such protection as a right, rather than a privelege. These include;

- HR 495 An amendment to the Endangered Species Act (1973) to prohibit a Federal Agency from taking an action affecting privately owned property that results in the diminishment of the value of any portion of property by an amount equal to or greater than half of the value of that portion unless compensation is offered.
- HR 1142 An amendment to the Endangered Species Act (1973) to require Federal Agencies to make efforts to avoid, minimise or mitigate impacts on non-Federal property as a result of agency action under the Act. Requires the Agency to obtain landowner consent, agreement, or agreement to compensation before action is taken.
- S 246 Private Property Rights Act 1999. States that Federal policy is to protect the health, safety and welfare of the public in a manner that, to the extent practicable, avoids takings of private property. Directs each Federal Agency to complete a private property taking impact analysis before taking any action that is likely to result in a taking of private property. Enables the owner of private property to obtain appropriate relief via civil action in the event that a taking of property rights has occurred.

US Programs to encourage conservation on farmland.

US Government programs to assist and encourage landholders to carry out conservation on private land originated during the Dust Bowl catastrophes of the mid-1930s. At that stage, the US Department of Agriculture (USDA) successfully convinced Government that a permanent agency was needed to focus national efforts to tackle the problem.

Natural Resources Conservation Service.
Technical support for landholders undertaking conservation works is provided by the Natural Resources Conservation Service (NRCS). A key aspect of the establishment of the service was the recognition that a nationwide partnership of Federal agencies and local communities was needed to help farmers conserve their land.

Under the service, 3,000 conservation districts have been established, which are units of local government and are established under State law. They are operated and managed by elected local citizens, who establish their own priorities for soil and water conservation in conjunction with a range of other Government agencies and civilian organisations. Their efforts are supported by over 11,000 full-time NRCS employees, and almost three quarters of the technical support provided goes to the establishment of conservation systems on private land. 1999 US Budget appropriations for the NRCS totalled $826 million, of which $650 million was for direct technical assistance.

Achievements include:

[17] AFB Issue Backgrounder: Protection for Property Owners. March 2000

- sustainable management systems adopted on 8,680,000 acres of cropland and 7,900,000 acres of grazing land with USDA's Natural Resource Conservation Service (NRCS) assistance. On these lands, the operators applied conservation on the resource management system level, which means that all resources--soil, water, air, plants, and animals--were considered in planning the management of the land.
- In FY 99, restoration practices were installed on 270,000 acres of wetlands with NRCS assistance (NRCS provided technical assistance to landowners who participate in State or locally funded programs to preserve wetlands).

Conservation Reserve Program.
Direct financial support for landholders volunteering to undertake conservation measures on their own land is provided via budget allocations to the US Department of Agriculture, which are administered by the Commodity Credit Corporation (CCC).

A key program administered by the CCC is the Conservation Reserve Program (CRP), which was initially established under the Food Security Act of 1985. The CRP is a voluntary program that provides annual rental payments, incentive payments for certain activities, and cost-share assistance for establishment costs such as fencing etc.

In general, the program provides support for 50% of the cost of establishing conservation areas and practices, and contracts landholders to maintain those areas for periods of between 10 and 15 years.

The opportunity to have land included in this program is offered to farmers through a bidding process. To be eligible to participate, land tendered must be cropland, or certain types of marginal pasture land. The requirement for inclusion of cropland enables this program to meet twin objectives of taking land out of production to reduce overproduction of grain, and also to establish conservation areas.

Land offered for inclusion in the program is ranked on environmental factors on the basis of an environmental scoring system referred to as Environmental Benefits Index. (EBI) This is quite a complex scoring system which involves a broad range of different factors. The process for selecting land for inclusion in the program involves establishing minimum EBI scores that will be accepted, then considering the cost of accepting land that has been proposed. In this manner, the process is competitive and the Government is able to ensure that the environmental benefits are achieved in a cost-effective manner.

Currently, the CRP program has been extended to 2002, and the USDA may maintain up to 36.4 million acres at any one time. Landholders whose land has been included in the program may opt out at the end of the contract period (typically 10 or 15 years) or may opt to rollover into a new contract arrangement.

Conservation Reserve Enhancement Program (CREP) proposals have been approved in ten states, including Maryland, Minnesota, Illinois, New York, Oregon, Washington, Virginia, Delaware, North Carolina, Pennsylvania, and Ohio. The federal-state program provides incentives to farmers to remove environmentally sensitive lands determined by the states from production and improve them by taking steps to control erosion and reduce polluted runoff.

USDA recently announced that landowners can receive more money for participation in the Conservation Reserve Program continuous sign up program. The financial incentives, totaling up to 350 million over the next three years, include signing bonuses and more money for installing and maintaining conservation practices. During 1999, USDA accepted 253,000 acres into the program.

5. How to equitably share the costs associated with conservation among all members of the community

5.1 The need for payments

At issue here are the rights of farmers. In order to achieve conservation goals and protect these rights the community will have to pay farmers for the conservation services they provide in the same way they would pay for any other crop from the land. This can be achieved through either compensation payments for the loss of rights (based on reduced productivity or land values) or through well funded voluntary incentive schemes to purchase public goods.

Beyond the issue of rights, an overriding consideration on the issue of incentive schemes for farmers is that in most cases, farmers simply cannot afford to change practices without help. With average farm incomes languishing well below $30,000 there is little room for investment in any change of practice. The FM500 Group, which forms a link to assist agriculture to access consulting expertise, considers that a family needs to have over $45,000 a year in disposable income to maintain investment in a farm business as well as in environmental protection.

As an interesting contrast between industries, $120 million of Commonwealth money has been allocated to structural adjustment in the forestry industry where it is effected by conservation initiatives through the Forest Industry Structural Adjustment Program. No new Commonwealth money has been allocated for the effects such initiatives on agriculture in NSW, even though it employs more that 25 times more people than forestry.

5.2 Incentive schemes

There are a number of different incentive schemes that have been used to encourage landholders prepared to adopt conservation activities. The land uses and landscapes of Australia are so varied that it would be entirely inappropriate to seek to offer incentives through any single blanket mechanism. However, there are a number of features that should be adhered to.

a) Voluntary take-up

A basic principle of incentive programs is that take up should be completely on a voluntary basis. Experience in both Europe and the USA is that properly funded incentive programs are likely to be oversubscribed.

If a program has to be compulsory to achieve desired levels of participation then clearly the incentives offered are not at a sufficient level. However, it is acknowledged that there may be cases where particularly valuable remnants exist on land and reasonable measures to protect them are rejected. In this case the community may need to have recourse to impose compulsory measures but this should trigger automatic compensation processes, and it should be stressed that this should be a last resort. In such cases some form of arbitration to determine compensation would be appropriate.

b) Clear and measurable conservation outcomes

An incentive scheme should make explicit in any agreement with a landholder exactly what is being protected, what management measures are required and what will be paid. Any audit or enforcement measures should be clearly stated at the outset of an agreement.

c) Minimum red tape

Some of the resource management requirements imposed in NSW require complex and expensive assessments including flora and fauna surveys and heritage studies. If these are to be required, the burden of information should rest with Government. Farmers do not have either the resources or the time to spend immersed in additional paperwork.

d) Flexibility to meet individual property needs

Schemes must have the flexibility to be relevant and to attract property owners. The needs of both conservation and farmers will differ enormously between properties and any incentive scheme must allow for these differences. For example, in some areas remnants may require fencing and cessation of all farming activity. More often extensive grazing will be beneficial and will also offer some return to a farmer, reducing the level of incentive payment required. Farmers may also be reluctant to enter into agreements for long periods of time. Trial periods and break clauses should be used to offer greater flexibility.

e) Stability and certainty in funding

Farms are businesses. Any funding must be offered on a secure basis to allow proper business planning and to mitigate against adverse impacts on land valuation where limitations are placed on landuse or management.

f) Avoid duplication between schemes

Duplication leads to confusion and results in increased proportions of funding being devoted to administration as opposed to being spent actually achieving public good conservation outcomes.

g) Relevance of funding

If incentive funding is an equity measure or is designed to allow conservation measures to be undertaken without financial loss then the funding must be accessible in a form relevant to the aim. The common practice of paying for fencing, for example, is unlikely to assist farm viability.

5.2.1 Examples from NSW

a) Water Wise

This scheme is administered by NSW Agriculture and is part of the adjustment package to help water users through the water reform process. It has had an extremely poor uptake for the following reasons:

- It was not applicable to water users in areas covered by Land and Water Management Plans which in effect excluded a large number of farmers (this was the most important factor when considering the poor uptake rate).
- The scheme was based on the provision of water management property plans for water users. As a result water users who already had water property plans had no reason to use the scheme.
- There was no provision of funding to help with the 'real' issue of the cost of upgrading infrastructure or the adoption of new efficient water use technology.
- It was viewed by the industry as a PR exercise for the Government and hence was poorly regarded.

It should be noted that in some areas where access to the scheme has been possible, farmers have used and benefited from it in much the same way as they have from Farming For the Future (see comments below).

b) Native Vegetation Management Fund

$15 million was set aside to help with the implementation of the Native Vegetation Conservation Act. Initially no one accessed the fund, and even now the uptake rate is poor for the following reasons:

- Initially landholders who wanted to access the funds had to prepare a property plan. The process of developing a plan was bureaucratic and frustrating for the first 8-9 months of the life of the Act and consequently no one was able to get a property plan approved.
- Once the requirement of a property plan was dropped, more people began to access the funds. However it was primarily used for fencing land with conservation value with limited long-term benefits to both the landholder and the environment.
- Due to the way in which the fund was being allocated, there was no recognition of the real cost for landholders of conserving vegetation/habitat.
- The NSW Farmers' Association suggested among other things that a revolving fund be activated when an application to clear vegetation was rejected, thus compensating for preventing the landholder from using that piece of land as they wanted/intended. This approach has not been adopted and as a result the fund is being used for activities that will require another cash injection in 15-20 years time.

c) Farming For the Future (FFTF)

Farming for the Future is a collaborative effort between the NSW Farmers' Association, National Parks and Wildlife Service and Department of Land and Water Conservation. FFTF has been the most successful incentive based environmental program in NSW. It runs a subsidised course for farmers to develop property plans. The scheme's success has been based on the following features:

- It is voluntary.
- It demonstrates and provides for definite economic and social benefits as well as environmental benefits.
- It utilises farmer networks for marketing, as more farmers do the program, the word spreads that it is useful and worthwhile. Peer acceptance is crucial.
- It promotes long term sustainable agriculture that includes succession planning.

5.2.2 Examples of incentive schemes across Australia

a) Conservation Trusts

The Victorian Trust for Nature assists with the administration of conservation programs on private land in Victoria. It operates through conservation agreements that are entered into on a voluntary basis by landholders. Covenants are registered against the title of land for perpetuity and the entry into such an agreement allows the landholder access to assistance for fencing and to rate relief for the land in question. [18]

The concept of a Conservation Trust for NSW is being explored by an alliance of the NSW Farmers' Association, WWF, Greening Australia and the Nature Conservation Council of NSW. Subject to discussions with the State Government, it is likely that legislation will be put to the State Parliament to set up such a Trust. The independence of this trust will make it an excellent vehicle for the channeling of both Government and private sector funds directly to achieving conservation outcomes. It is intended that the trust will have the flexibility to enter into a variety of agreements with landholders to conserve remnant vegetation and to meet other conservation objectives.

The real challenge lies not in the setting up of these State organisations with covenanting powers but in ensuring that they have adequate funding to fulfill their potential.

b) Revolving Funds

As part of the Bushcare Program funded through the Natural Heritage Trust, Environment Australia have been seeking expressions of interest for the management of Bush for Wildlife Revolving Funds. Through this initiative the Commonwealth seeks to target private land with significant wildlife and habitat conservation values. The land is purchased at market value, has covenants put on the title to ensure that the land is managed to ensure that conservation objectives are met, and is resold, often to the original owners. This ensures that owners are compensated for the lost value of their properties and allows conservation management objectives to be realised.

Revolving funds offer the possibility of equitable, permanent and managed conservation outcomes. They could be used as a key instrument in offering payments for the conservation of public goods on private land.

c) The Australian Bush Heritage Fund

Established in 1990, the Australian Bush Heritage Fund is a non-government, non-profit organisation that purchases and manages land of high conservation value. The Fund raises funding through community contributions, bequests and from corporate donations.

This organisation and others like it will tend to be limited to conservation of land of the highest environmental value but could, with direct Government funding perform a vital role in purchasing and managing properties for conservation where other mechanisms are simply inappropriate. This might be the case where the property in question contains vegetation so fragile that all farming activity will be damaging. Use of the Australian

[18] Platt, S. (1998) Incorporating natural environment into farm management. Bushcare, August

Bush Heritage Fund to implement some components of an incentive program would ensure that duplication and administrative costs were minimised and would build on existing expertise in this field.

Farming and Conservation working together.

Kevin Campbell is proof that farming and conservation can be a winning combination for both sides.

When Kevin was told he couldn't continue to clear his own property because of a rare woodland habitat (Grassy Whitebox), he faced the prospect of owning an economically worthless piece of land. Certainly no-one would be interested in buying land they couldn't use and he couldn't cultivate the land for farming.

"This farm is our superannuation policy and the new state legislation (SEPP 46) came along and scuttled all our plans while doing nothing to compensate us for all the money we had already invested," Mr Campbell said.

Fortunately the Australian Bush Heritage Trust thought the area was of high enough conservation value to purchase it. The land is protected and so is the farmer.

In this instance Kevin Campbell has not lost a substantial part of his income. Now Mr Campbell works with the Trust, volunteering his time to help manage the woodland area.

This is a good example of how well funded vegetation retention programs could and should operate. The alternative, and the option that more often seems to happen, would see Kevin Campbell caught by Government legislation, and then left to bear the brunt of the costs.

"It's just a shame that this all came about the way it did. The legislation, SEPP 46, was brutal. We were not invited to be involved in the process, we weren't given any say even though it was our land and it shouldn't be that way," said Mr Campbell.

"Farming is effectively a small business operation and my heart goes out to those people who have been less fortunate than us because they are suffering."

d) Compensation

The issue of payment of compensation for the impost of regulations designed to conserve public goods on private land is one fraught with concerns about principles and fears of establishing unaffordable precedents. To simply compensate for any imposition on private land is a fairly blunt instrument in these days of market led credit schemes but, compensation schemes work and in a very simple manner redress the balance between the land owner and the beneficiaries of public good conservation measures.

South Australia, which has the largest area of land under conservation agreements in Australia[19], offered compensation, of sorts, under their Native Vegetation Management Act 1985. Under the Act, if a landholder was denied clearing approval, they were automatically eligible to enter into a Heritage Agreement with the State Government and were allocated 'assistance' according to any diminution in land value less development

[19] Industry Commission (1998) A full repairing Lease. Inquiry into Ecologically Sustainable Land Management, Report No. 60. Australian Government Publishing Service, Canberra.

costs. Between 1985 and 1991 $70 million was paid to landowners in compensation resulting in 550,000ha of land being bought under conservation agreements.

The Act has since been replaced due to fears that landholders with no real intention to clear were making applications simply to access the funding. However, the fact that the Act had to be amended due to these fears of false demand does demonstrate the potential of a scheme for voluntary conservation where proper compensation is paid. Any landowners applying under false pretences would not receive a windfall beyond the cost of the public good they were to deliver, the conservation objectives of the community would be met and farmers would be empowered to manage for conservation outcomes. Overall, this hardly seems and adverse outcome.

5.3 Funding

5.3.1 Costs

It is clear that governments do not have access to a bottomless pool of funds to offer these payments to farmers. Questions about the extent of public goods required and the level of conservation that is truly optimal are really for politicians to answer in conjunction with their electorates. Intrinsic to this decision making must be consideration of the real costs of these public good outcomes.

A recent report 'National Investment in Rural Landscapes'[20], estimated that $65 billion will be required over the next ten years to achieve the desired level of public good that experts may consider optimal. This estimate appears to be the first serious attempt to cost the size of the conservation task. However ground breaking this report may have been, the costs it places of the rehabilitation of Australia's environment should be treated with some caution. It is likely that this desktop study has identified the cost of a 'Rolls Royce' solution to the environmental problems of the nation. This should not dissuade governments and specifically the Commonwealth from allocating more realistically available resources to the task. Indeed a great amount of conservation work could be achieved on private land for lesser amounts of money if it is allocated properly. Further research of this kind could quickly establish what can be achieved for different investments allowing the community to make an informed choice.

The principle that is paramount here is that the conservation task facing Australia must be shouldered by all Australians and not just by farmers and other landholders. Beyond that it will be up to the community to decide whether it wants to allocate $6.5 billion a year or any other amount. Certainly, it would be hoped that conservation will continue to be treated seriously and will attract significant funding. However, if the community is not prepared to pay it should not happen and governments at all levels should drop the pretence that conservation objectives can be achieved with minimal cost to taxpayers.

5.3.2 Finding the money

It has become almost tradition that whenever somebody raises the question of investing additional funds into the environment the Treasury or government shoots down the

[20] Madden, Hayes & Duggan (2000) National Investments in Rural Landscapes, a report prepared for the National Farmers Federation and the Australian Conservation Foundation.

proposal or report by asking where the money will come from. As is always the case, funding is available but it must either be redirected from other areas that Governments have contributed funding to previously, or be generated through raising additional taxation revenue. Seemingly with the encouragement of government, the community has all too often to put the decisions required into the too hard basket.

Farm groups have proposed a levy on taxation, similar in nature to the medicare levy, to spread the costs of conservation. The transparent nature of such a levy means it remains the preferred instrument, and so long as the proceeds are clearly hypothecated to conservation, it is believed that such a tax would enjoy considerable support in the community.

5.3.3 Working in partnership

There is a need for Governments to start to work in partnership with landholders. The situation in the Willandra Lakes World Heritage Area where it took 18 years of Commonwealth/State buck passing to come to a solution can not be allowed to be repeated. For proper incentives to be available for conservation on private land without waste and with maximum strategic direction there must be a clearly defined roles for all levels of Government. The Commonwealth's role clearly must involve funding. State Governments are increasingly limited in their tax raising ability so this portion of the task must be primarily the responsibility of the Commonwealth.

The role of the States will be to ensure that compensation arrangements and incentive programs fit the needs of their landholders and that conservation priorities are set to reflect community aspirations. State Governments also need to ensure that any funds from the Commonwealth are directed where they are intended and do not simply get swallowed up by the bureaucracy. Local Government will also have an important role in prioritising and possibly implementation of specific programs. Whatever the roles, the traditional buck passing between State and Commonwealth Governments must cease if there is to be a serious effort made to redress the inequity currently associated with conservation on private land.

Beyond government there will be a key role for the private sector (governments must continue to examine ways to make business contributions more attractive). There will also remain a pivotal role for the landholders themselves who will ultimately, it is hoped, have their rights acknowledged and protected enabling them to help to identify biodiveristy value and proudly manage the environment on their properties for all of the community.