STANDING COMMITTEE ON PUBLIC ADMINISTRATION

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 18 OCTOBER 2000

Hon Kim Chance (Chairman)
Hon Cheryl Davenport
Hon Dexter Davies
Hon Helen Hodgson
Hon Barry House
Hon B.M. Scott

Committee met at 1.30 pm

VOGEL, DR PAUL,
Director, Environmental Systems,
Department of Environmental Protection,
141 St George's Terrace,
Perth, examined:

TAYLOR, MR KIMBERLEY,
Director, Evaluation,
Department of Environmental Protection,
141 St George's Terrace,
Perth, examined:

CARR, MR BEN,
Environmental Officer, Catchments Branch,
Department of Environmental Protection,
141 St George's Terrace,
Perth, examined:

The CHAIRMAN: Welcome. Have you completed the witness form, and did you read the note at the foot of the form?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. To assist the committee and Hansard, please quote for the record the full title of any document you refer to during the course of this hearing. A transcript of the evidence will be provided to you. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. However, even if evidence is given to the committee in closed session, the committee can still report the closed evidence to the Legislative Council if it considers it necessary to do so, in which case your closed evidence will then become public.

Another standing order to which we are in the habit of drawing the attention of witnesses when they are public servants is Standing Order No 331, which reads -

> Where a committee examines a public servant, questions of policy shall not be asked of that person but shall be directed to the responsible Minister. A public servant is entitled to decline to answer any question on a matter of policy.

It is important that you understand what that means. If, at any stage, you believe that a question has been asked of you by the committee that you believe goes to a matter of policy rather than the implementation of policy you should tell us quickly. We are obviously bound to respect that.

A few days ago the committee sent you a list of proposed questions. We will stick to the broad script, although we may seek details that flow from the broader questions.

What is your agency's function in relation to the assessment of land proposed for clearing or appeals from restrictions on clearing land?

Dr Vogel: May I make an opening statement?

The CHAIRMAN: Please do. I usually ask witnesses to do that.

Dr Vogel: The memorandum of understanding implements a 1995 cabinet decision to ensure that natural resource management issues are considered in clearing applications within the scope and, indeed, the limitations of the current legislative framework. The importance of native vegetation in maintaining eco-system health is now widely recognised. The State Salinity Council has made statements to that effect while also recognising the importance of the equity and fairness issues. Even more recently, an announcement was made by Mr House, the Minister for Primary Industry, on supporting the recommendations of the native vegetation working group, which I have with me.

It is clear that perhaps the most contentious issue associated with clearing native vegetation - that of equity - now has a government-endorsed process through which it can be addressed. The minister's media statement indicates that the FarmBush Advisory Committee will be established and may also be able to recommend paying compensation to farmers prevented from clearing their land where land degradation or loss of biodiversity may have resulted. It reads in part -

> In response to the Prime Minister's recent announcement on salinity and water quality, the Premier has clearly indicated that he will be seeking from the Commonwealth Government compensation for farmers prevented from clearing when salinity funding is discussed at the Council of Australian Governments next month.

Hon HELEN HODGSON: What date was the media statement issued?

Dr Vogel: On 12 October 2000. It is our belief that efforts must now be directed at assisting the Chairman of that proposed advisory service, Mr Colin Philpott, in developing appropriate principles, criteria and a process so that we can move from saying 'no' to clearing to saying 'yes' to assistance.

The CHAIRMAN: That was a good way to start. For the sake of the record and for people who might be reading this record at some stage in the future, is it fair to say that these elements are largely prospective and that in an administrative sense, no fund for compensation exists and no mechanism for the distribution of compensation exists?

Dr Vogel: Certainly not within the scope of the legislation under which we work.

The CHAIRMAN: That addresses part of my question. I refer again to the original question. What is your agency's function in relation to the assessment of land proposed for clearing and in relation to appeals against restrictions on clearing of land?

Dr Vogel: Our agency's function under the memorandum of understanding process implements the cabinet minute of 1995. We are a signatory to the MOU. Our function is to provide advice on the nature conservation issues that are related to land clearing proposals. In relation to the appeals against restrictions on clearing land, which is part 1(b) of the question, we deal with appeals under the Environmental Protection Act, which is a ministerial function. We provide advice to the Minister for the Environment on appeals. We are also required by statute to deal with soil conservation notice appeals for which the Commissioner of Soil and Land Conservation is responsible. We provide advice on two sets of appeals, to both the Minister for the Environment and through the soil conservation notice of appeal process.

The CHAIRMAN: You said that under the authority of the Soil and Land Conservation Act you do certain work. Will you please expand on that?

Dr Vogel: We are required through, I think, the Soil and Land Conservation Act, as environmental representatives, to be part of the appeal process. From time to time, one of our staff from the Department of Environmental Protection is requested to provide advice to the Minister for Primary Industry on an appeal against a soil and land conservation notice. We are required to do that.

Mr Taylor: The Act specifies the Environmental Protection Authority, and it was written when it was the authority. It is now interpreted to be the Department of Environmental Protection. It is a statutory requirement for the department to have a representative on the committee.

The CHAIRMAN: Does the Act define the scope of the then EPA or now DEP's role?

Mr Taylor: No, it does not, and that creates frustration. As we understand the issue, environmental matters are not considered under the Soil and Land Conservation Act appeal process. We, therefore, seem to provide little by way of direct technical input into that appeal process because it is more directed at land and water degradation.

The CHAIRMAN: We will get to that issue in more detail on question 3(b).

Mr Taylor: It does not hurt to say now that from the department's perspective, we question why we are still represented on that committee. It seems to us to be appropriate to review that provision in the Soil and Land Conservation Act concerning the make up of those appeal committees. It is important to recognise up front that the department is a signatory to the MOU. It also has a role to provide advice to the Environmental Protection Authority, which is an independent statutory authority and which is also a signatory to the MOU. We cannot speak today for the EPA. We will speak solely for the department. You may invite the EPA to provide its own representation at some time. Although we also provide advice to the Minister for the Environment on the appeal process, it is only advice in the environmental context. We will not speak on behalf of her broader appeal process today.

The CHAIRMAN: We understand that, but thank you for stating it for the record. What steps are followed in processing matters concerning land clearing propositions and appeals from restrictions within your agency?

Dr Vogel: I have a document that summarises the department's involvement in the process, which we will make available to the committee when we have tidied it up. Initially, inquiries are fielded from land-holders, purchasers, real estate agents and the public about an intention to clear before any formal notice of intent might be issued. A land-holder may telephone, seeking information about the process. We would advise him of the assessment process and any policy position the Environmental Protection Authority may hold at the time.

We record the details of any advertised notice of intent to clear. We then liaise with Agriculture WA to ensure consistency between our records and Agriculture WA's records in the advertised notice. We undertake site visits with the interagency working group, which is the group established under the MOU, that comprises representatives of the four natural resource management agencies.

After formal notification, that proposal is placed on the interagency working group agenda. We receive information from the proponent and we conduct an analysis against the memorandum of understanding biodiversity criteria. The department carries out a comprehensive and sophisticated spatial analysis. We then research and compile any available information on that proposal. We prepare written advice to the interagency working group and continue to advise the proponent of the assessment process and of the EPA's position on the proposal.

At meetings of the interagency working group that are held frequently we prepare and table our advice. If appropriate, we negotiate with the proponent so that the proposal can meet the criteria under the MOU. We also negotiate with the proponent for areas that might be retained under agreements to reserve. If the proposal is unable to meet the criteria, we advise the commissioner to refer the proposal to the EPA.

After the proposal has been referred to the EPA, if that action is taken, liaison occurs between the interagency working group and the DEP. We negotiate where appropriate and establish the necessary information to assist the EPA in setting the level of assessment for the proposal. The EPA is then responsible for setting levels of assessment. That is advertised and we establish contact with the land-holder to confirm his or her intention to proceed.

Mr Taylor: If the EPA decides the proposal does not need to be formally assessed, that decision is advertised. There is an appeal period of two weeks, within which time any person can appeal to the Minister for the Environment on the EPA's decision not to assess. It is up to the minister to decide

whether she wishes to resubmit it to the EPA for formal assessment. If the minister dismisses appeals, those projects are out of the EPA process. They will not be subject to any formal approval issued under the Environmental Protection Act.

If the EPA decides the proposal must be formally assessed or the minister says, through the appeal process, that it should be formally assessed, the EPA must collect sufficient information to enable it to make an assessment of the nature conservation and biodiversity value of the vegetation proposed to be cleared. That is done with the assistance of the DEP. The EPA then considers that information and prepares its position and recommendations to the minister. It is then submitted to the Minister for the Environment in a report, which is a formal part of the requirements of the Act. That report is then submitted to the minister and released to the public. Another appeal period takes place at that time on the EPA's report. The Minister for the Environment must then consider the appeal. After she has dealt with the appeal she must then decide whether that clearing can be implemented and what conditions should apply to it.

The landowner has rights of appeal both when the EPA reports and when the minister sets conditions. She considers the conditions and at the end of the process she issues a statement either that it cannot be implemented or that it can be implemented subject to certain conditions.

The CHAIRMAN: In effect, under the memorandum of understanding does the Minister for the Environment rather than the Commissioner of Soil and Land Conservation make the final decision about whether clearing may proceed and if so lay down conditions?

Mr Taylor: In a number of cases that happens. Under the MOU, the process requires that the commissioner look at the land and water degradation issues first. He may issue a soil conservation notice to say land clearing cannot proceed at that time. If he issues that notice and the landowner says he will not proceed any further, it does not move to the environmental process. If the farmer says that he will appeal to the Minister for Primary Industry, or the commissioner says he has no objection on land and water degradation grounds, the matter moves into the environmental process. What you said was correct, at the end of the day the Minister for the Environment decides whether it should proceed. The DEP and the EPA have no formal decision-making power; they are advisory to the minister in that regard.

The CHAIRMAN: To summarise, the answer I think is beyond a certain point, for example, if the commissioner has no objection. Is that reasonably accurate?

Dr Vogel: And if there is an appeal.

The CHAIRMAN: Yes, thank you. What statutory power does the Minister for the Environment have to prevent or permit clearing of land for agricultural purposes?

Mr Taylor: Part IV of the Environmental Protection Act is fairly broad. It begins by stating that any proposal that, if implemented, is likely to have a significant effect on the environment can be referred to the Environmental Protection Authority for assessment. That means that anyone who believes that a certain proposition or action is likely to have a significant effect on the environment, may refer it to the EPA. The EPA has the power to decide whether it should be assessed. The MOU specifically provides that the level 3 working group, which considers the nature conservation and biodiversity issues, must advise the commissioner whether it thinks the environmental impacts are significant and, therefore, whether it should refer the matter to the EPA.

The commissioner generally follows that. If it has been decided that it was likely to have a significant effect on the environment, the commissioner has usually referred the matter to the EPA.

The CHAIRMAN: I am not concerned about the effect of the MOU because that has no statutory effect. My question was limited to what statutory instruments are involved.

Mr Taylor: It is part IV of the Environmental Protection Act.

The CHAIRMAN: Does that include section 38 of the Environmental Protection Act?

Mr Taylor: Yes. Section 38 is the provision to which I initially referred, that provides that a proposal may be referred to the EPA if it is likely to have a significant effect on the environment.

The CHAIRMAN: Has your agency experienced any operational difficulties or conflicts in implementing procedures that are set out in relevant memorandums of understanding, either of itself or in the light of the Soil and Land Conservation Act, the Environmental Protection Act or any other legislation? To put that in its context, the committee is aware of the environmental protection agency's own analysis of section 38 issues. It was made available to us some time ago. However, we would like to know what general difficulties or conflicts have been experienced.

Mr Taylor: Our difficulties and conflicts are similar to those identified by the EPA. The environmental impact assessment process of the Environmental Protection Act is founded on the basis that the proponent of the action can demonstrate that the proposal is environmentally acceptable. It has been established in our minds that for major projects such as iron ore projects and major infrastructure projects, proponents have the capacity to do detailed environmental studies and demonstrate whether the proposal is acceptable under their own resources, and to make any offsets or any other actions that are necessary to minimise environmental impacts and to safeguard the environment.

Part IV of the Environmental Protection Act is not conducive to individual landowners looking at land clearing. They are not familiar with the impact assessment process. It is our experience with not only clearing but also any other proposition involving people who are not familiar with the EIA process that it causes problems.

Landowners also have limited financial capacity to undertake the necessary biological assessments required on their property. Even if they had the capacity to carry out surveys and assessments of the biological values of their property, unless they have information about the biological values of the region and can make judgments about the regional significance of the vegetation, it is problematic for the EPA to make decisions and provide advice to the minister. It is unreasonable to expect the landowner to do a survey of a broad region when he is interested only in his property. Similarly, in many cases government agencies have limited data and resources on the vegetation and biological values of regions. When proposals are referred it makes it problematic for us to assess it and to make sound and timely decisions in the absence of adequate information and data. That has been most problematic in the process since the commencement of the MOU. While it was well-intentioned, in the operational sense the landowner could not provide the data and the government departments did not have the data and resources to deal with these things and to provide the necessary reports in a timely manner. That has been clearly spelt out in the EPA report, which indicates that the part IV, section 38 process is not conducive to dealing with this issue.

The EPA and DEP have found that the Environmental Protection Act, in its strict interpretation, requires them to deal only with environmental matters, not the broader equity and social issues. Often the issues we are dealing with in land clearing, particularly with the landowner himself, relate as much to equity and other matters as they do to strict biological assessments. The longer we have been involved in this process and the more of these we have done, the clearer it has become to the DEP and the EPA that many of these requests are inappropriate from an environmental perspective. However, accepting these equity issues, we do not seem to have a sufficient process to handle the situation.

The CHAIRMAN: While the MOU is set out to streamline the process of applications to clear land, has transplanting the effect of part IV of the Environmental Protection Act into the application process muddied the water rather than clarified the issue?

Mr Taylor: I would not say it has muddied the water; it has tried to imply a degree of rigour on the assessment that has not been possible with the data provided to either the landowner or the Government.

The CHAIRMAN: Would you agree that the process applied was never designed for that purpose?

Mr Taylor: I have stated previously that part IV is cumbersome in dealing with land clearing applications.

Dr Vogel: The 1995 cabinet decision sheet referred to consideration of nature conservation issues being accommodated in further clearing assessments. That is difficult in the current legislative framework. The Soil and Land Conservation Act did not deal with the issue. The MOU needed to be developed to integrate the consideration of nature conservation issues into clearing assessments. The only way to do that was to have an MOU, as cumbersome as it might be. That was a direct bureaucratic response to cope with the direction to deal with nature conservation issues within the existing legislative framework. It has introduced a level of complexity.

The CHAIRMAN: Perhaps it is not the MOU that is the problem; rather, it is the statutory instruments which those persons who are operating under the MOU have to implement that are inappropriate.

Mr Taylor: The statutory instrument is part of the problem. If we did not have adequate data on which to make a judgment about whether a particular piece of bush should be cleared in an acceptable manner and if we wanted to consider fully the nature conservation and biodiversity matters, we would not be able to do so almost irrespective of the instrument. It is not only the Act itself, it is the fact that in many cases the information required to make that environmental decision is not available.

Dr Vogel: In recognition of the difficulty that land-holders face in trying to understand the regional significance of the vegetation, the DEP has undertaken a sophisticated analysis. I understand that the committee has received copies of the information that the DEP brings to the interagency working group. These documents are geographic information system analyses of the land-holders' land, where it sits in the landscape, what vegetation is on the land and how representative it is. As Mr Taylor has indicated, it is extremely difficult for an individual land-holder to do this type of analysis. In recognition of that, the DEP has undertaken to provide that level of information to the interagency working group for it to make an assessment about the value of vegetation. From there we can negotiate with the proponent about what land might be cleared and whether the clearance must be referred to the EPA. That forms the fundamental basis for discussion at the interagency working group meetings.

The CHAIRMAN: The kind of data shown cannot be recorded by the Hansard reporter. Dr Vogel has shown the committee a set of maps that describe landforms and vegetation predominance.

Dr Vogel: They also illustrate how much vegetation remains of the existing vegetation types, how representative it is and how it complies with the biodiversity criteria under the MOU.

The CHAIRMAN: Do those documents have titles?

Dr Vogel: Yes.

The CHAIRMAN: Please identify them.

Dr Vogel: They are entitled "Percentage of Beard's vegetation types remaining covered in woody vegetation".

The CHAIRMAN: Is that a DEP document?

Dr Vogel: It was produced by the DEP using data sets from other government agencies.

The CHAIRMAN: Those documents will be tabled at the end of the session.

Hon BARRY HOUSE: What is the legislative base for the MOU biodiversity criteria? I understand the land and water degradation issue and the Soil and Land Conservation Act.

Dr Vogel: There is no legislative base for the biodiversity criteria. It has been developed as a policy initiative by the DEP in consultation with the EPA and other government agencies and experts in this area. It is a credible set of biodiversity criteria that can be used by the interagency working group. It is a method of moving forward and addressing in a holistic sense the 21 or so biodiversity criteria seen as relevant in assessing clearance applications. The legislative basis could well be in section 16 of the Environmental Protection Act, which deals with environmental studies and providing environmental advice to the EPA. In that sense, the DEP does not call on a particular section of the Act to do that work. It is a general power defined under the Act that enables the DEP to conduct studies, to provide advice and so on. The DEP undertook wide consultation with experts to derive those criteria.

Hon BARRY HOUSE: Have some of those criteria been derived from the 1995 cabinet decision sheet as well?

Dr Vogel: If the member is referring to the 20 per cent and so on, we have been guided by that cabinet decision sheet because they are the numbers referred to. As our understanding of landscaping processes has improved in recent years, we have had to look at the appropriate percentage of vegetation that must be retained in the landscape to protect ecosystem health. We are guided by that cabinet decision sheet.

Hon BARRY HOUSE: Is the DEP required to take anything other than environmental aspects into account in its assessments? Is it required to take into account any social or economic sustainability aspects?

Mr Taylor: The Crown Solicitor's Office has advised that the DEP should stick strictly to the definition of "environment" in the Environmental Protection Act. That generally excludes consideration of equity, financial and economic issues.

Hon BARRY HOUSE: Does that still apply even if the economic sustainability of a situation will impinge on the environment?

Mr Taylor: In that case, we would probably seek a precise legal opinion. To date, the EPA has accepted the advice that those factors are outside its jurisdiction when considering an assessment.

Dr Vogel: The EPA has found itself in the Supreme Court as a result of entering into economic arguments. It is complex and contentious.

Mr Taylor: The EPA made statements in an assessment about the economic value to the company and the State of a sandmining operation in Cockburn Sound in 1994. That was challenged in court, and the court found the report to be invalid because it determined that those matters were outside the definition of "environment" in the Act. The Act has a specific definition of "environment" and it includes the word "economics". However, the DEP has been told that a very strict legal interpretation applies to the extent to which the EPA can consider that matter in its assessments. It gets down to the very fine legal interpretation of the extent to which it can consider those matters. It is then up to the EPA to provide any further advice on how it reads that interpretation and applies it.

Hon DEXTER DAVIES: Development and understanding of the biodiversity and environmental implications are moving targets. Some of the people with whom the committee is dealing are obviously caught. That changing situation is causing problems. Our understanding of biodiversity will be different tomorrow. Extensive work has been done by many people, but the criteria may change. After two years, we have many frustrated people. Implementing a good administrative process to achieve a result means we must draw lines somewhere. Those lines keep getting extended and that is the source of the frustration.

Dr Vogel: I acknowledge the frustration experienced by land-holders in this process. The Soil and Land Conservation Act was enacted in 1945, so we have been dealing with soil and land degradation for a long time. The concepts of biodiversity and ecosystem health, and the role that

they play in maintaining the health of landscapes are relatively new. Governments are trying to deal with the issue of sustainability and how we make it operational. We change standards even when we are dealing with licensed industries as our understanding of the impact of, for example, air pollutants on human health improves. While it may be perceived as a moveable feast, it reflects the community's expectation to be protected from adverse environmental impact in that context. We have come a long way quickly with regard to biodiversity, but perhaps we have not taken the land-holders along with us as well as we could have.

Hon DEXTER DAVIES: I accept that, but the standards are changed from 100 parts per whatever to 200 parts. In biodiversity, it goes from something to something else. It is subjective as opposed to objective. A number is applied in environmental air standards, and then it is changed.

The CHAIRMAN: It is unscientific.

Mr Taylor: It is not unscientific, but it is subjective. Establishing the criteria was an attempt to introduce some objectivity. Members must have realised that we started applying the MOU in mid 1997. We have learnt over time that it boils down to the range of information we have. We cannot go through the criteria and come up with an absolute answer with which everyone agrees. There is that subjectivity, but it is probably leading-edge practice nationally - I would almost say internationally - in trying to inject some objectivity. This State is at the forefront in that regard. We are not making decisions based on one person saying that this is good. The process is endeavouring to inject some objectivity.

The CHAIRMAN: When industry goes through the process of changing standards - such as those relating to particulates emitted from motor vehicles or air pollution produced in an industrial strip - those changes apply to everyone, if not immediately, then over a specified short period. The difficulty in agriculture is that the standards are applied only at the point of application for clearing - a point many farmers passed 50 years ago. Therefore, we do not have an equal contribution to biodiversity by farmers; we have an apparently unequal contribution levied most heavily on those who have taken most care in the past. That is partly the reason for this unequal distribution of load.

Mr Taylor: That is the undeniable outcome of the process. However, the environmental assessor cannot say that we have only 10 hectares of this bush but, because no-one else has protected it, we should let this person destroy it. DEP would not be fulfilling its statutory function if it did not advise the minister that the vegetation had a particular value. That comes back to the problem of equity versus the strict biological issue.

I have a plan that shows the percentage of all types of pre-European vegetation that existed in the south west of Western Australia. Members will see that throughout the agricultural region we are down to 20 per cent. I suspect that 99 out of 100 botanical experts in the world would say that that is below an acceptable level of biological diversity protection. The EPA has been through these assessments a number of times and has come to the conclusion that, given the extent of clearing that has occurred in the region - there is very little vegetation - it cannot be argued from an environmental basis that clearing is acceptable.

The CHAIRMAN: We are treading all over policy here at the moment. Perhaps the record should note that we are doing that, but in an informal sense.

Hon BARRY HOUSE: I refer to the interpretation of the spread of biodiversity. Does the DEP always take the macro view with regard to the entire south west region, or does it ever take the view as it pertains to a particular local government boundary, group of properties or topographical area?

The CHAIRMAN: Please identify the document for the record.

Mr Taylor: I refer members to the map entitled "Percentage of Beard's vegetation types remaining covered in woody vegetation". The map shows remnant vegetation in the south west of the State. Beard did an analysis of vegetation units over Western Australia at a high level. One would find

much more diversity at lower levels within those units. The majority of what we refer to as the "agricultural region" is below 10 to 20 per cent. An EPA analysis has concluded that because so little vegetation remains and because of the impact and the value of the vegetation - the rare flora, plant communities and the consequences for fauna - it is not possible to argue that further clearing would be acceptable from a biodiversity and nature conservation point of view.

The EPA has provided general guidelines for areas outside that region. If someone can argue a case that clearing is acceptable, the EPA will advise the minister accordingly. Land clearing applications relating to that area are proceeding. However, vegetation in the agricultural region is so limited that the EPA has come to the conclusion that further clearing cannot be justified.

The anomalous area is the midwest sand plain region or the west midlands region. The EPA has taken the view that that area has a particular significance on a state and international level because of the high level diversity of the vegetation. It believes that, even though it has more than 20 per cent vegetation cover, further clearing should be severely restricted. It is reviewing the position statement on that area. It realises that that is somewhat anomalous in the context of the other areas.

Dr Vogel: The State Salinity Council has passed a motion stating that clearing of remnant vegetation is no longer acceptable and that the issue of equity needs to be addressed. That motion has been passed to the cabinet committee.

The State, the Commonwealth and, significantly land-holders are spending huge sums on replanting, revegetating and protecting remnant vegetation under the Natural Heritage Trust. That is a recognition of the landscape crisis we are facing. That must be borne in mind: We are spending a lot of public money trying to fix the problem while acknowledging the issues facing individual land-holders. However, the majority of land-holders accept that we have a crisis and that they are part of the solution.

Hon DEXTER DAVIES: The hydrological and landscape structure of that area is very different. We do not want to confuse the situation in the eastern wheatbelt - where I come from - with the coastal midland area, which has completely different problems. The consequences of clearing the two areas are totally different. That causes confusion as well. We are talking about equity, not the science. The science speaks for itself.

Mr Taylor: The science is difficult, but the equity issue is probably more difficult.

Hon DEXTER DAVIES: That is in the right order.

Dr Vogel: I will table a document entitled "Environmental evaluation of native vegetation in the wheatbelt of Western Australia". The DEP commissioned Rod Safstrom to produce this paper and it formed the basis of the criteria. The criteria were not a construct of DEP thinking; it consulted broadly with experts to derive those criteria. They are being refined now, because our understanding is evolving. How we apply the criteria needs to be considered. I understand the point about how they might be applied, but we are all learning.

Mr Taylor: It is regrettable that some landowners have suffered more than others in going through that learning process.

The CHAIRMAN: That document is tabled along with the document relating to the maps, which have previously been referred to on the record.

The CHAIRMAN: Does the agency follow procedures or practices relating to the assessment of land clearing matters that divert from or are not covered by the memorandum of understanding? If so, can you identify those procedures or practices and any other instruments that identify those procedures or practices?

Mr Taylor: At the higher level, the major modification that has occurred subsequent to signing the MOU, having experienced a number of these assessments and gained an understanding of vegetation in its regional context, the EPA has issued its position statement on how it views land

clearing in the agricultural region. As a result of that and rather than forcing more landowners to go through a very long, complicated and potentially expensive process before being told by the EPA that it does not believe the land clearing is appropriate, the EPA has adopted the term "proposal unlikely to be environmentally unacceptable". On the basis of the timing of the application, if the EPA believes that no further land clearing can occur, it puts that out as its level of assessment and sends its report straight to the minister so that the minister can then consider it, hear the appeals from the landowner and make a decision. That is an improvement on the previous situation of long exchanges between the department and the landowner, in an effort to get more information from the landowner when he did not have the resources to find it. It dragged out the process and all parties became frustrated. This is a modification to the process whereby the EPA may set a level of assessment and provide a report to the minister under what it calls "proposal unlikely to be environmentally acceptable" so that the minister can expedite a decision more promptly. That is the key adjustment to the process as part of the EPA assessment.

The CHAIRMAN: When you say key adjustment, are you saying that is the key adjustment that is required?

Mr Taylor: It is the key adjustment that has occurred in the context of implementing the MOU from the perspective of the Department of Environmental Protection and the EPA.

The CHAIRMAN: Are you saying it is a key adjustment that is already in place?

Mr Taylor: Yes.

The CHAIRMAN: How many hectares of land have been cleared under the provisions of the MOU since its introduction in 1997? I do not mean those hectares of land cleared due to earlier authority but those which have been physically cleared since 1997. How many successful applications for land clearing have been made under the post-MOU arrangements?

Mr Carr: We do not have the figures on the post-MOU situation here today.

The CHAIRMAN: I have been informed that the answer is effectively nil. No broadacre applications have been approved since the MOU has been in effect.

Mr Taylor: I think that is correct for broadacre applications. I can think of three cases of broadacre clearing that have been approved by the minister. However, they each began the process before the MOU. I cannot say how many subsequent reports we have put to the minister. However, a number of reports have been put to the minister, which are still with her, awaiting a decision. The most recent cases to which I referred as "proposals unlikely to be environmentally acceptable" have gone directly to the minister. Having learnt from our experience of the assessment process of the proposals of Messrs Underwood, Martin and Glover, two or three further assessments have been completed for which the EPA has provided its report to the minister. I can provide that information.

The CHAIRMAN: I am not trying to put you on the spot here but we all agree that the number of assessments for broadacre land clearing under the MOU since 1997 would be in the range of nil to minimal.

Mr Taylor: Yes.

The CHAIRMAN: How can you call the key you have just identified a resolution if it does not have an outcome that satisfies people? How can the effective shut down of the land clearing process be an effective outcome, unless you are trying to shut it down?

Mr Taylor: We are not. Mr Underwood's application probably took four years to conclude; Mr Martin's probably took two and a half to three years; and Mr Glover's probably took a year and a half. I have a schedule setting out details of progress. We are now moving those in the system by saying that the EPA will give its report to the minister, who must make the decision. She can then make her decision. We have instigated this adjustment to get them out of our system and provide

our report. All we can reasonably do is give our best advice to the minister and let her make the decision. We are trying to avoid spending two to three years on applications.

The CHAIRMAN: Have we really found the key?

Mr Taylor: Not on the equity issue. The report to the minister will say from an environmental, biodiversity perspective certain clearing cannot be justified. The only area on which we can report is the environmental matter. All we can do is get the report to the minister and let her make a decision. The landowner can then have a decision and if he wants to take other action he can do so. Unlike our inability to produce a satisfactory outcome in the cases of Mr Underwood, Mr Martin and Mr Glover, we want to get the reports through our system to the minister in a more timely fashion. We have not done that because we have not had the information and data we needed. Since then, we have been able to get more regional information because our geographic information system is in place. Rather than taking up to four years we can get them out in six months. Although six months might sound like a long time, it can be done only in the context of the resources the department has available to it. It is assessing major iron ore projects, major industrial projects and major infrastructure projects for the State. Land clearing gets the remaining resources. We cannot say to the people running the Hope Downs iron ore project that we cannot deal with them this week because we are dealing with Mr X's land clearing application.

Hon BARRY HOUSE: Does that table indicate all the applications before you at the moment and the stages they are at?

Mr Taylor: This is a schedule of all the matters that have come to us subsequent to the MOU and the stage they have reached in our process.

Hon BARRY HOUSE: Can we have a copy?

Mr Taylor: Yes. It is an internal departmental document, so I cannot vouch for its accuracy. However, it is as truthful as it can be. In some cases, the department has worked with the landowner in a very cooperative manner to try to assist in achieving land clearing.

The CHAIRMAN: Do you want to make a request to the committee to treat this part of your evidence as private?

Mr Taylor: Yes.

The CHAIRMAN: The committee resolves that that be the case.

[The Committee took evidence in camera]

The CHAIRMAN: What is the title of the document?

Mr Taylor: It is the "Land clearing table, 16 October 2000".

The CHAIRMAN: That document was received in private session and will be treated as private evidence.

Hon DEXTER DAVIES: Subjectivity, timeliness and the change of rules are issues of concern. That does not fit the parameters within which the DEP must work relating to strict scientific and environmental issues. The DEP's decision is mixed up with the final decision and it involves emotion and so on. That is the downside of having three or four agencies involved.

Mr Taylor: We do not enjoy assessing land clearing proposals. It has been a considerable drain on the department and staff. We could be dealing with a major iron ore project and the company involved might be well resourced and have the capacity to do all the necessary things. However, dealing with a landowner and saying that he cannot clear land is one of the most draining parts of our job.

Dr Vogel: It is incredibly frustrating for everyone. We have an MOU as an integrating process, but it cannot deal with the issue of landholder viability. That is the critical and fundamental issue.

Hon HELEN HODGSON: What percentage of your personnel deal with land clearing applications?

Mr Taylor: Across the department, probably three to four people out of 230. On average over the past few years it may have been as many as five.

Hon DEXTER DAVIES: If we compare the number of approvals with the area of land previously cleared, we are talking about a minuscule number of applications. In fact, that application to clear 460 hectares would be close to the biggest.

Mr Taylor: It comes back to how the data is recorded. The department's official record should appear in the annual report. This year's annual report will show that of the proposals referred under the MOU process, only 47 ha have been approved for clearance. The Monks and Cripps cases were not referred to the EPA because they were able to be dealt with by the interagency working group. Therefore, they will not appear in any official table as having been approved through the DEP/EPA process. We have 3 039 ha covered by notices of intention to clear. That is the amount referred to the EPA.

Mr Carr: That is the amount entered into the process.

Mr Taylor: Under of MOU process?

Mr Carr: Yes.

Mr Taylor: How much has been referred to the EPA?

Mr Carr: The 1 087 ha plus the 47 ha.

Mr Taylor: I can provide the table. Applications to clear 47 ha have been formally referred to the EPA. As at 31 June, the EPA still had applications relating to 1 087 ha before it.

The CHAIRMAN: Mr Carr gave a figure for the total number of hectares under notices of intent to clear.

Mr Carr: They have been referred to the EPA.

The CHAIRMAN: Why is that a different number from the 1 087 ha?

Mr Carr: Not all notifications have to go to the EPA to be approved.

The CHAIRMAN: What was the figure?

Mr Carr: In the financial year 1999-2000, 3 039 ha entered the MOU process and, of that, 1 087 ha are under current assessment after referral to the EPA and 47 ha have been approved to clear following referral to the EPA from the MOU process.

Mr Taylor: It is a continuous process. Those that are entered at the end of the year will not come out until the following year. When we set the parameters at the beginning and end of the year, some are always in the "have been notified" category at the interagency working group level and remain under consideration under the "90 days" column under the Soil and Land Conservation Act. They have not been and may not be referred to the EPA. There are always some that have been referred to the EPA but are pending processing and some that are under assessment.

The CHAIRMAN: The committee would like an idea of the total scale of the issue. Do we have any idea - I am sure I am asking the wrong agency here because I think the appropriate agency would be the office of the Commissioner of Soil and Land Conservation - how many hectares of land are subject to NOI?

Mr Taylor: The commissioner produces a comprehensive table that is included in his annual report each year that will provide those statistics.

The CHAIRMAN: We can get that from the report.

Mr Taylor: He runs a total that is the whole of the process, because it all goes through him. We have tables that show what comes through the EPA and we can ensure that the committee has our information and put in any matter that makes it clear.

The CHAIRMAN: I would be grateful if you could provide that additional data by supplementary information.

Mr Taylor: I said that the EPA was trying to get its report to the minister more promptly. This table shows that in the financial year just ended, three further reports from Messrs Johnston, Kenney and Hill were submitted to the minister and another will be submitted in the next few weeks.

The CHAIRMAN: I remember one or two of those names. The clearing may have preceded the application. Does the agency have any practical ideas on how the environmental assessment of land that a land-holder may desire to clear, can be made more efficient? I appreciate that we have covered much of that. Do you have any more to add?

Mr Taylor: In an ideal world a complete regional assessment of the regional significance of vegetation on a map would show clearly what is and is not permissible. That way, the goal posts would not change. The Department of Conservation and Land Management, the DEP and other agencies have been working on a comprehensive review of the west mid lands area for about two years now. In the areas in which we might consider more land clearing, the ideal situation would be to have a regional assessment undertaken and a regional map showing which areas could be considered for clearing and which areas should not be considered, rather than trying to rely on individual farmers for information.

The CHAIRMAN: Could the process be assisted administratively - I am probably trampling all over policy - if we were able to balance clearing applications against countervailing undertakings to revegetate to a certain standard? I know this has occurred in respect of the clearing ban arrangements under the Country Areas Water Supply Act for prescribed catchment areas where deals have been done for clearing in one area relating to revegetation in another area. I would be surprised if the commissioner himself has not entered into such arrangements. Would you agree that the administration of laws of this nature would be relatively easier if contra deals of that nature could be incorporated?

Dr Vogel: Those cross-compliance issues involving what can and cannot be cleared have been undertaken to some extent in negotiations with proponents. They might involve, for example, the rehabilitation of a high-value, but degraded site in exchange for clearing in another area. It is referred to as a net environmental gain. Those contra deals are a legitimate part of the negotiations already occurring. We are trying to be more strategic than dealing with these matters on a case-by-case basis - the sort of issue to which Mr Taylor referred. If we could get a clear understanding of the value of the remnant vegetation on land-holders' properties, we could develop an adjustment scheme under which the State determines the vegetation is of such high value it would like to purchase it or enter into another arrangement. That is being contemplated through the Minister for Primary Industry's remnant vegetation working group. There must be a clear path for that land-holder to get out of the assessment process and into the assistance process. It is about viability and we are talking about readjustment. That will be a more critical issue this year than it has been for a long time. Those arrangements are already negotiated. Mr Carr plays a large part in those negotiations.

The CHAIRMAN: My question was sparked by something Mr Taylor said some time ago, when he said in a hypothetical sense that if we were dealing with a clearing application which took out the last 10 hectares of the known habitat of that variety, we would of course have to refuse it. It seemed

to me at the time that everyone would agree with that statement. However, we would go on to ask: Why are we not replanting 1 000 hectares of that habitat. Surely that is the proactive issue.

Mr Taylor: To create anywhere near a natural habitat would be inordinately expensive and not within the realms of an agricultural operation. Mining companies that are required to rehabilitate mined out areas spend approximately $10 000 a hectare. It would be 10 times the value of the land.

The CHAIRMAN: Nonetheless, do you not agree that collectively farmers reafforest - I am not referring to commercial forest - far more land than mining companies ever do, particularly these days.

Mr Taylor: Yes, but they would not create anywhere near the nature conservation biodiversity values through that planting. If native vegetation were cleared to re-establish something else, which was essentially a monocultural system, biodiversity would continue to be removed below what is deemed as being reasonable.

Hon BARRY HOUSE: In terms of biodiversity but not viability.

Mr Taylor: We are at a fundamental point in this State with a certain amount of natural system left. It is this tugging between wanting to see equity, doing the right thing and recognising that as a society we have removed an enormous amount of the natural system in the south west of this State. Throughout most of the eastern wheatbelt, we do not get any applications. In only one or two instances people have wanted to test the system and have tried to take out a bit more growth. Of the 2 000 to 3 000 farms there does not seem to be a broad push from farmers.

The CHAIRMAN: We have applied the Wilson Tuckey theory of forest management!

Mr Taylor: The west midland area is specific and has some particular issues that probably still need to be resolved. Various people are trying to work on a regional picture. The south west of the State is driven by other issues associated with forestry and the like. Everything else down there tends to be small scale. We still get applications. We had one recently from Mr Duncan of Manjimup. We are negotiating the clearing of 10, 20 or 30 hectares. Those applications are generally appealed by conservation groups. However, it is a different issue there, and it is being managed. In the broader region, is it hard to see how anything can be put as an offset for taking out further remnant vegetation.

Hon BARRY HOUSE: I strongly support the consideration of other options. Does the DEP entertain the possibility of land swaps? Has the department ever facilitated a land swap for a piece of private property that contains some particularly valuable, rare and endangered flora for a section of publicly-owned land - whether it be a crown reserve, a national park or whatever?

Mr Carr: That was envisaged in one case. The land was under the control of the Department of Conservation and Land Management, so it was outside the DEP's jurisdiction.

Mr Taylor: If there were a mechanism by which government agencies could facilitate providing a landowner with an area of cleared land in return for his vegetated land, the DEP would certainly welcome and encourage that process.

Hon BARRY HOUSE: Is there no such mechanism at the moment?

Mr Taylor: Only within existing agency resources. As I said, the one case we have dealt with in the past few years involved the Brownes, who live near Mr Martin. Their block covered 300 ha. After two or three years of negotiation, CALM acquired the block and the Brownes were then able to buy a piece of land over the road and still expand their property and be viable. It was not a direct trade, but CALM was able to buy that bush block and provide funds for that family to buy a cleared block.

Hon BARRY HOUSE: Would the DEP welcome a process that allowed it to work on lateral options that might produce a better result for everyone?

Dr Vogel: Absolutely. The Rural Adjustment and Finance Corporation has tried to put those arrangement in place in the past. More of that is required.

Mr Taylor: The issue seems to be the value of the land and the price that people have been prepared to pay for bush blocks as distinct from cleared land. Some shift has occurred in that regard in recent times. The price paid for the Browne's land suggested more comparability with cleared land than was the case three or four years ago.

Hon DEXTER DAVIES: It got close; it shifted a long way.

Mr Taylor: If we were to go down that path, we would have to recognise that someone must pay to replace bush with cleared land if landowners are to believe they have got a fair deal.

Hon DEXTER DAVIES: Those swapping arrangements will improve rapidly once we work out how we can get out of the system the people who were caught in the change of rules.

Dr Vogel: As I said, the sooner we can move from a process of saying no to clearing to saying yes to assistance, the better off we will be.

The CHAIRMAN: That sounds like a very constructive way to wrap up this hearing.

Hon BARRY HOUSE: Mention was made of regional assessment of vegetation types and so on. Extensive work has been done in that area. I have been involved personally in one area of the south west that people still regard as a broadacre possibility - that is, the Scott coastal plain. A regional assessment has been done in that area. The dilemma is that the DEP has been part of a regional assessment process that included consideration of environmental, economic and social factors and has worked towards an outcome on that basis. However, at the last minute, the DEP's advice to the EPA was based on a report that dealt only with environmental issues and the recommendation was that no clearing take place. That is a dilemma for many people. Do you wish to comment?

Mr Taylor: The environmental process and how it fits into the whole-of-government decision-making process probably causes a considerable degree of concern and confusion. I do not know how the Government can deal with that given the way the Act is constructed. It constrains the EPA from taking into account those broader social and economic issues. It often deals with whole-of-government issues. We keep getting this dysfunction between the two. I can think of a number of other areas in which that applies. The chairman of the EPA is certainly conscious of it. As much as people have thought about it in recent times, no-one has come up with an appropriate change or way forward to remove that difficulty.

Dr Vogel: This is a policy matter, but I am happy to talk about it because it is something we discuss internally. There is no commensurate, parallel process in government that deals with those economic and social issues. The environmental process is running, but we do not have something tracking alongside so that the Government gets coherent advice on a range of economic, social and environmental issues. I will leave it to better minds than mine how we progress that through government.

The CHAIRMAN: That is a fascinating proposition on which the committee will have to deliberate. The issues are clearly defined: The function of an agency such as the DEP is to provide advice on the environment, not on economics.

Dr Vogel: Indeed.

The CHAIRMAN: It is the Government's role to make a decision after consideration of the advice provided by the DEP and others.

Dr Vogel: Yes.

The CHAIRMAN: That is a complicated process and one that this committee will tackle.

Mr Taylor: The chairman of the EPA would welcome discussing that matter with the committee.

The CHAIRMAN: We hope we will be speaking with the chairman soon. Thank you for your evidence today. It has been very forthright and clear, and it has been of great assistance to the committee.

Committee adjourned at 3.40 pm