THE CASE FOR REPEAL

OF ENVIRONMENTAL PROTECTION (ENVIRONMENTALLLY SENSATIVE AREAS) NOTICE 2005

INTRODUCTION: The Notice only became well known to the public following the prosecution of Peter Swift, wrongly accused of clearing an Environmentally Sensitive Area (ESA) without a permit. Peter is facing foreclosure on his property as a consequence.

An examination of the Notice and its effect on land owners led the Gingin Private Property Rights Group (INC) to petition the Legislative Council of W.A. for its repeal. (Submission Enclosed)

In recent years, land owners have had their right to use free hold land restricted by environmental legislation, particularly due to the Federal Government responding to International Agreements on greenhouse gasses (Kyoto), Wetlands (Ramsar) and Bio-diversity. Constitutionally land management is a State responsibility and the Federal Government had the States introduce environmental legislation to satisfy their obligations to the treaties

The question of whether the Federal Government is liable for compensation to land owners who have lost property rights is before the Federal Courts, and a finding will be made soon. (Peter Spencer case)

Western Australia's Environmental Protection Act (1986) was subject to extensive amendment in 2004, which introduced amongst other regulations, clearing restrictions. Clearing was only allowed under permit, unless allowed under schedule 6 (a list of exceptions).

The Act authorised Environmental Protection Policies and authorised the Minister to declare by Notice ESA's. The general rules that apply to most freehold land do not apply to areas covered by Environmental Protection Policies and the ESA Notice 2005. Many normal farm practices require a permit.

Properties can be subject to restrictions on their use by other Acts, particularly planning and it is only in 2014 that a Statement of Interests was available from Landgate listing possible legal responsibilities applying to a property. Years of regulation and legislation has created a maze of red and green tape which is beyond the understanding of land owners and requires specialist legal advice.

History has demonstrated that private property is generally well cared for and most owners are good environmental custodians. If their land use is restricted for the communities benefit, not their own, the community should purchase the property or pay just compensation, but firstly the laws must be clear so that the land owners responsibilities are clear.

In the case of the ESA Notice, restrictions were placed on many properties and the owners were not advised. It adds complexity to environmental law which would be better covered elsewhere, environmental law is very difficult to interpret.

There appears some confusion whether the purpose of the Notice was to keep wetlands" wet" or protect the vegetation on them, although they are connected.

Certainly the Department of Water in allowing the drawing of huge quantities of underground water for the Metropolitan Area, horticulture and timber plantations, particularly pines has, combined with a period of low rainfall, caused a lowering of the water table and destruction of many lakes and wetlands.

In the Eastern States there have been problems with the protection of Native Flora including the protection of native grasses. This has caused the restriction of grazing on native pastures and the construction of fire breaks.

Our legislation is silent on native grasses. The Act restricts clearing of "riparian" vegetation. Does this include the rushes and reeds that grow on much of the high water table country in W.A. particularly on the coastal plain, or only the woody flora? We need a clear definition to ensure farmers can continue to develop and use their most productive pasture country.

Detailed Analysis: Environmental Protection (Environmentally Sensitive Areas) Notice 2005

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Made by the Minister under section 51B of the Act.

This statement is queried in the submission to the Legislative Council. Not only is it doubtful sufficient consultation took place, it slipped through the Committee system and Parliament without debate, the maps were not readily available, there was little if any advice to the public and certainly none to the land owners affected.

1. **And 2.** No comment required.

3. Accept (a) and (b). These are defined in other legislation. It is the wetlands defined by V and C Semeniuk in (c) and (d) and (e) on page 2 that are in dispute.

   These were mainly desktop studies from aerial maps, were never field tested, are not accurate and should not be used to destroy a person's property rights.

   Much of the property claimed to be a conservation category wetland is called "Palus Plain," (from the Latin, Palus - Marsh) a great exaggeration, most has never been marsh.

4. Accept (1), (a) and (b). These are covered under other legislation.

   (c) Is in dispute as stated above. It is dreadful that a person's property rights, income and land values (collateral) can be destroyed on such inaccurate maps for no proven environmental reason. In addition, the inclusion of a 50 metre buffer puts petrol on the fire. Low lying land in a high rainfall areas (our best grazing land) can have many wetlands indicated on the maps. In many cases these would join with the inclusion of the buffer zone.

   The recent policy decision by the Department (and Minister) that once an indicated wetland has been cleared, it is no longer an ESA is very welcome. Does this mean that once an ESA has been grazed, it is no longer an ESA? Does it mean that a wooded ESA surrounded by pasture must have a 50 metre buffer that cannot be grazed? If so it would quickly revegetate and may then require another 50 metre buffer. It is a can of worms!

   Whatever the policy (with a small p) it must be incorporated in law, either in the Act, an Environmental Protection Policy, or in regulations, so it is not easily overturned by a change of Minister, Director or Government.

   (d) and (e). Rare flora should be protected, but it need not be included in this Notice. If not already adequately protected in the Act, it should be included in the Clearing Regulations, or a special Policy.

(f) (g) (h) (i) and (j), are all covered in other legislation and don't require mention in this Notice.

(2) And (3) are not disputed, and should be covered in their own legislation.

(4) Is a common sense interpretation, but I fear not always abided by? Local governments and Main Roads must be able to maintain their assets with as little Green tape as possible.

If rare and endangered species are identified on a road reserve they should be speedily removed and transplanted to Kings Park or a similar protected area.

(5) Accept the principal, the owner should be notified by certified mail. Land owners who lose the use of their property in the common good should receive compensation.

Similar to protected flora on road reserves, rare and endangered species should if possible bulked up in several safe reserves.

(6) No comment.

(7) I find this subclause a little imprecise. Does mapping in itself determine that a plant is protected? It appears contrary to (5) above.

Conclusion:

Rare and endangered species: These should be protected wherever they occur, not in this Notice.

Clearing: No land can be cleared without a permit unless allowed in schedule 6. Applications to clear any land should be considered individually on the environmental impact.

The Act is very confusing in its statement that grazing is clearing. This leads to the conclusion that if land has been grazed it is cleared. Land owners should not be subject to prosecution for grazing land that has been grazed in the past.

Regrowth: Land not subject to an ESA declaration can be kept clear of regrowth less than 20 years old. This recent change to legislation would have been better stated if it had allowed control of regrowth on previously cleared land. (Full stop).

High rainfall and wetlands have always been considered the best agricultural land. Agriculture must again be recognized as a beneficial use. If property owners are not allowed to control regrowth on wetlands, they will very quickly return to bush with huge financial consequences for the land owner.

All land should be treated the same unless acquired for conservation purposes.

The environment is well protected on wetlands by the Environmental Protection Act 1986, other State and Federal Acts, Environmental Protection Policies and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. The Notice should be repealed!

If the community wishes to use agricultural land for other purposes, they must buy it or fully compensate the land owner in other ways.

Murray Nixon

8 – 2 - 2015