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CLR ALAN HASELDEN
East Ward

11 April 2014

Committee Secretary
House of Representatives
Standing Committee on the Environment
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

Submission to the Australian House of Representatives Committee on Green Tape and Environmental Legislation

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Preamble

The community is continually reminded of the issue of urban housing affordability, the major element of which is the price of land. Environmental regulation contributes not only directly to cost but also indirectly from the time taken to approve development. Within the rural sector, landowners are frustrated at the erosion of their traditional rights and their inability to use their land as they see fit. That human activities should be conducted so as to minimize detrimental environmental impacts is indisputable but the contemporary approach to preservation of flora and fauna is inhibiting economic development to the detriment of the human species.

This paper will argue that:

1. We are unnecessarily concerned with species preservation in urban areas and have imposed controls over owners of rural property which effectively annul their historically ordained rights.
2. Land release is significantly impacted by layers of regulation from all levels of government which have, at their core, Australia's adherence to the UN's Agenda 21 promulgated at the 1992 Rio Earth Summit.
   www.un.org/esa/agenda21/natlinfo/austral/inst.htm
3. There should be an holistic approach to environmental assessment with a requirement only that a single assessment of land is made at the time of re-zoning.
4. There is a pressing need for professional accreditation of environmental consultants whose advice can be relied upon and who are accountable for that advice.
5. There needs to be an unambiguous delineation of responsibility for an approvals process.

Species Preservation

Life is resilient and tenacious. We know that only a minute proportion of species which have existed over the 4.5 billion year life of our planet exist today. Commencing 443 million years ago with the Ordovician-Sularian event, palaeontologists report 5 mass extinctions from effects

such as asteroid impact, volcanoes and natural climate change. Life today is all descended from the estimated 4% of survivors of the Permian mass extinction of 248 million years ago known as "The Great Dying".

We observe new species continually evolving and see life flourishing in environments hitherto considered inhospitable. We see tensions in established human communities as fauna colonies such as fruit bats flourish under environmental protection legislation whilst the human environment in the shared space deteriorates.

The 2011 Garnaut Climate Change Review described Australia as having the OECD's highest per capita woodland and forested area of 28.8 hectares, second only on a global basis to that of Suriname. We are unnecessarily burdened by regulation to preserve flora and fauna in urban areas at the expense of development and the general betterment of the increasing numbers of the human species.

On rural property, historically implied rights of property owners as custodians of their land are subsumed by government. Layers of bureaucracy operating in an ad hoc framework devoid of formal accreditation or oversight dictate their every action under fear of severe penalty.

It is in this context that we should consider our contemporary existence and our presence as the planet's most significant life form. Humanity's needs should not be subservient to all other life forms.

Regulation

Environmental management in Australia is governed by multiple systems of legislation, planning, and land use management processes at Federal, State and Local Government levels. The Australian Government has adopted the principles of ecologically sustainable development (ESD) which has its genesis in global conventions from the early 1970's, ratified subsequently over succeeding years. ESD has influenced legislative frameworks at Federal, State and by extension, local government levels.

The array of bodies with input to interpreting the tenets of ESD include:

- COAG
- The Murray Darling Basin Ministerial Council
- Various ministerial councils
- The Agriculture and Resource Management Council of Australia and New Zealand
- Australia and New Zealand Environment and Conservation Council
- National Environmental Protection Council
- Related working groups to these councils

In general, the principles of ESD are to:

- Integrate environmental and economic goals in policies and activities.
- Ensure environmental assets are appropriately valued.
- Provide for equity within and between generations.
- Recognise the global dimension.
- Deal cautiously with risk and irreversibility.

Tensions inevitably arise when almost every land development is considered because there is always an argument for environmental impact regardless of its magnitude. The multi-layered legislative framework, cascading from UN conventions through governments and devoid of any clarity in lines of ultimate authority, provides scope for anyone seeking to either demonstrate an adverse environmental impact or engage in open ended analysis, the cost of which is ultimately born by the community.

Gifted with a scope of such wide ambit, bureaucracies will expand and inevitably frustrate development to the point where cost and time delay affects the entire community. Once

regulation is in place, the scene is set for bureaucracies to employ layers of operatives, many of whom will be imbued with a zeal to "protect the environment" whilst lacking commercial experience or understanding the economic impact of their decisions.

It is essential that there is clearer public policy distinction between concerns about biodiversity against the interest of private property owners of urban and rural land to be able to develop and use their land as they see fit.

An example of contradictory and conflicting policies at play is that of a local government's right to set regulation about tree preservation where often this is in stark contrast to an owner's interest. There should be a better balance between public benefit and the historic rights implied in private land ownership. Property owners are arguably the best stewards of their own land. Public benefit outcomes should be paid for by the public as distinct to policies that prevent harm but still allow the development of land and those basic rights needs to be clearly established without ambiguity.

A Strategic or Holistic Approach

There are a number of Commonwealth and State laws that either prohibit or make certain actions an offence, or require permissions in the form of an approval or license to undertake an activity. Unfortunately, environmental law is not confined only to the preservation of the environment but also requires that development of the natural environment be accommodated. Ambiguity about the precise weight that must be given to each of these causes uncertainty and delay which is costly to administer and a potential threat to investment. The constant refrain from developers is that the cost of property development is greatly impacted in dealing with regulation and bureaucracies.

Too much emphasis and activity is centred on burdensome and highly reactive approvals processes, which minutely examine, at multiple points, all conceivable environmental impacts. The community would be better served with a more strategic, holistic and proactive approach to environmental management. Preservation of the natural environment should be viewed in the context of the right of private landowners to utilise their property's natural resources for development.

- An example of this approach could be The Hills Shire Council's cluster subdivision scheme. This provides a development framework for large tracts of urban fringe rural land on the basis that a cluster of housing is offset by preservation of a shared area of undisturbed vegetation. On a grander scale, similarly, strategic corridors of high value biodiversity should be identified and acquired by state and federal agencies along the lines of national parks. This would allow the current multi layered obsession with ad hoc and repetitive environmental studies of the same land to be dispensed with.

Practitioner Accreditation

A greater confidence in the "environmental practitioner" is required. A system of accreditation should be developed so that developers and approval authorities (mostly local government) can be confident in the advice that has been given. Professional accreditation bodies such as Engineers Australia or the Royal Institute of Chartered Surveyors provide examples of independent organisations whose advice is relied upon and whose members are personally responsible for the advice.

Under the current system there is often a bias in reports by environmental consultants toward the commissioning party. Because advice from these sources is not professionally accredited, in many instances regulatory authorities will proceed to duplicate the effort by checking the voracity of the reports to satisfy themselves that the impact is acceptable within the legislative framework.

- It is essential that there is clearer public policy distinction between concerns about biodiversity against the interest of private property owners of urban and rural land to be able to develop and use their land as they see fit.

  Currently, a number of contradictory and conflicting policies are at play with an example being a local government's right to set regulation about tree preservation where often this is in stark contrast to an owner's interest. There should be a better balance between public benefit and the historic rights implied in private land ownership. Property owners are arguably the best stewards of their own land. Public benefit outcomes should be paid for by the public as distinct to policies that prevent harm but still allow the development of land and those basic rights needs to be clearly established without ambiguity.

Responsibility

Given that development approvals are frustrated by multiple agencies at all levels of government, the need for a sensible clearer identification of who is the appropriate regulatory authority needs to be established. Clear demarcation and accountabilities between Federal and State agencies is required. For example, if a proposal has an effect on vegetation that is to be protected under State laws as well as Federal laws, one agency should take overall responsibility instead of both. Currently there is the absurdity that the State agency may give approval only to have the Federal agency intervene to overturn an approval.

During the development of the Hills Shire Council's Withers Road urban land release, the Shire's own and State government's environmental approval was further subjected to Federal scrutiny resulting in delay and additional cost to the project.

A Case Study

In late 2012, a landowner in The Hills Shire applied to subdivide a block of land then zoned residential R3 (medium density to a maximum height of 10m). Prior to this 2012 classification, from LEP 2005, the land had been zoned R2A. The block, which had been assessed as being able to accommodate 31 housing lots, had right-of-way access to Windsor Road in the suburb of Beaumont Hills, was situated between established housing on both sides and was bounded by a creek reserve at its rear.

Council sent the DA to its review panel with the recommendation that the development be declined primarily because:

- An earlier environmental study had identified a stand of Cumberland Plain Woodland and the possible existence of an endangered snail
- The applicant had refused to commit to a further Species Impact Statement – a process which would have added $31,000 to development costs (approximately $1000 per block).

In refusing the application, Council noted, inter alia:

The development application has been determined by refusing consent to the application for the following reasons:

1. *The proposal is unacceptable having regard to the aims and objectives of Baulkham Hills Local Environmental Plan 2005 as it does not demonstrate that environmentally sensitive areas are suitably protected or enhanced (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act).*

2. *The development application is not supported by sufficient information to assess and determine whether the proposed subdivision is likely to significantly affect threatened species, populations or ecological communities, or their habitats (Section 78A(8)(b) of the Environmental Planning and Assessment Act).*

3. *The development application is not supported by sufficient information to assess and determine whether the proposal complies with the aims and objectives of Baulkham Hills Local Environmental Plan 2005 (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act).*

4. *The development application is not supported by sufficient information to assess and determine whether the proposal complies with the aims and objectives of Part D Section 5 Kellyville/ Rouse Hill of the Baulkham Hills Development Control Plan 2011 (Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act).*

5. *The development application is not supported by sufficient information to assess and determine whether the proposal is in the public interest (Section 79C(1)(d) of the Environmental Planning and Assessment Act).*

Right of Review

Section 82A of the Environmental Planning and Assessment Act 1979 confers on the applicant the right of review of determination subject to such a request being made within six months of the determination date and accompanied by a fee as prescribed in Clause 257 of the Environmental Planning and Assessment Regulation 2000. For development applications lodged before 28 February 2011, the statutory timeframe for review is twelve months from the determination date.

Section 82(A)(1) of the Environmental Planning and Assessment Act 1979 does not permit a review of determination in respect of:

a) Designated development, or
b) Integrated development, or
c) An application by the Crown under Division 4.

Right of Appeal

Section 97 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the NSW Land and Environment Court exercisable within six months after receipt of this determination. For development applications lodged before 28 February 2011, the statutory timeframe for appeal is twelve months from the determination date.

The federal Department of the Environment website comments as follows on Cumberland Woodplain:

The remaining stands of this ecological community are threatened by the spread of the Sydney suburban areas. Threats include clearance for agriculture, grazing, hobby and poultry farming, housing and other developments, invasion by exotic plants and increased nutrient loads due to fertiliser run-off from gardens and farmland, dumped refuse or sewer discharge.

In considering these threats, inspection of the site reveals that, likely due to its location on an arterial road and bounded on two sides by established residential development, the area displays rubbish and weeds and has clearly long ceased to be a site of ecological sustainability. It is simply too small, isolated and surrounded by too many deleterious influences.

Had the owner commissioned a species impact statement and agreed to further environmental assessment, the presence of threatened flora and fauna would likely have been confirmed and resulted in additional costs from either bio-banking offsets or other assessment by the NSW Office of Environment and Heritage. That the land will ultimately be subdivided and sold is

almost certainly inevitable but between that point and the present, further environmental assessment will only add to the price paid by the potential new homeowner.

At the present time, the land sits idle, is an increasing repository for rubbish and weed growth and is a potential fire hazard given its proximity to houses.

This case is an example of why it is so important to change the approach to environmental assessment. Had the block in question

- been included in an environmental assessment of the surrounding region at the time of its re-zoning,
- been assessed once by a professionally accredited consultant,
- or not had its development shackled by a plethora of regulatory bodies operating without a clear line of authority in a framework which places the supremacy of other species above that of humans,
- or not (given its size, immediate surroundings and long term sustainability as a habitat) been considered worthy of environmental study,

it would have been available for subdivision at the discretion of the owner without further delay or cost, thus contributing to the pool of available housing.

Yours faithfully

COUNCILLOR ALAN HASELDEN

CC: Mayor, Clr Dr Michelle Byrne