

5 December 2006

To the attention of:

Minister for Resources & Energy, the Hon. Mr Batchelor
Minister for Water, Environment & Climate Change, the Hon. Mr Thwaites
DSE Executive Director, Mr King

RE: NATIVE VEGETATION REGULATION AND THE EXTRACTIVE INDUSTRIES

— The Extractive Industry (the Industry) recognises a significant amount of Victoria's native vegetation has been cleared because of the growth and economic development of the State. The Industry also understands that the remaining native vegetation is important for maintaining catchment health, and protecting flora and fauna habitats. The government launched the *Native Vegetation Management – A Framework for Action* (NVMF) Policy in 2002 as a response to the continued, incremental loss of native vegetation.

There has been considerable concern about the NVMF policy by the Industry, which can be grouped under:

- Concern as to the independence, transparency and accountability of the current regulatory process,
- How the habitat-hectare is assessed at a particular site, and
- Concern about how the cost of offsets are balanced with the community.

Subsequently, a key sticking point is that the sites involved are very small compared with the localities in which they are situated with the result of this process appearing to be quite disproportionate to the actual impact on the environment. The NVMP has become a major weapon in planning permit applications.

The present system is unworkable and slowly strangling Industry, with entry restricted, exit plans implemented and future developments stalled. The process consumes excessive cash reserves from the businesses further hindering their ability to service their markets.

An economic, extractive industry resource is constrained by its geology and is fixed in space. It is a valuable and necessary resource to the State of Victoria. The Australian Bureau of Statistics estimated that the resident population of Victoria is 5.022million¹ (June 2005) and the DPI production figures for 2005 indicated 41.70 million tonnes of product². This suggests that just over 8 tonnes of materials was used by each Victorian in 2005. The cost of this is presently \$12.43/tonne in Victoria where as other states pay up to \$30/tonne.

Clearly, the development and use of extractive industry products is of importance to all Victorians, and as the population grows, the need for a continual and assured supply of reasonably priced extractive industry products contributes to the economic development of Victoria.

Consequently, there needs to be co-operation and an understanding between the stakeholders of the different resources at a specific site when evaluating the surface (e.g. native vegetation) and sub-surface (e.g. geological) resources.

The CMPA respectfully submits our position paper on native vegetation and is keen to establish a dialogue with you in an effort to resolve the Industry's concerns.

Yours sincerely

Grant Phillips
CMPA Chairperson

¹ See <http://www.abs.gov.au-Publication3101.0>

² 2005 Statistics not yet published. See [Victoria's mineral, petroleum and extractive industry 2004/05 statistical return](#)

Native Vegetation Raising the concerns of the Extractive Industry

1. Introduction

The Extractive Industry³ (the Industry) recognises a significant amount of Victoria's native vegetation has been cleared because of the growth and economic development of the State. The Industry also understands that the remaining native vegetation is important for maintaining catchment health and protecting flora and fauna habitats. The government launched the *Native Vegetation Management – A Framework for Action* (NVMF) Policy in 2002 as a response to the continued, incremental loss of native vegetation.

The NVMF identified three major steps for reducing the loss of native vegetation, namely:

- Avoid the removal of native vegetation
- Minimise the removal of native vegetation through appropriate planning and design, and
- Appropriate offsets for the loss of native vegetation.

The Industry understands these principles but, along with other organisation (farmers, miners and developers) is having difficulty with the Department of Sustainability and Environment using strict, regulatory interpretation of the native vegetation assessment of a site. Impediments to a native vegetation survey can be variable seasonal conditions; drought stressed native vegetation, a recent fire episode that has impacted on the native vegetation or inclement weather limiting access to particular fauna or flora. A native vegetation survey is a "snapshot" of the site at a particular time and a number of the above factors can impact on why a particular species is, or is not, at the site and arguments about precise details is expensive and time consuming for the Industry.

The Industry is heavily regulated and supervised by numerous regulatory authorities. Work Authority holders have defined rehabilitation commitments and these include revegetation using local native species. Work Authority holders are bonded and this means that the Government is assured that the rehabilitation (and revegetation) commitments for a particular site are met. Additionally Work Authority holders are often required to plant buffers zones with native vegetation and this adds to the existing native vegetation resource in a particular area.

Improving and enhancing the natural environment is a community wide aspiration that delivers benefits for all Victorians and is something that the majority of Work Authority holders strive to achieve. The Industry understands rehabilitation and revegetation.

However, the Industry is very concerned about native vegetation because:

- Concern as to the independence, transparency and accountability of the current regulatory process,
- How the habitat-hectare is assessed at a particular site, and
- Concern about how the cost of offsets are balanced with the community.

Subsequently, a key sticking point is that the sites involved are very small compared with the localities in which they are situated with the result of this process appearing to be quite disproportionate to the actual impact on the environment. The NVMP has become a major weapon in planning permit applications.

The present system is unworkable and slowly strangling Industry, with entry restricted, exit plans implemented and future developments stalled. The process consumes excessive cash reserves from the businesses further hindering their ability to service their markets.

The costs imposed by this process are particularly impacting smaller operations such as those the CMPA represents. Unit rates are being forced up, increasing the cost of housing, construction and other works where Industry products are used.

Consequently, there needs to be co-operation and an understanding between the stakeholders of the different resources at a specific site when evaluating the surface (e.g. native vegetation) and sub-surface (e.g. geological) resources.

The CMPA respectfully submits this position paper on native vegetation and is keen to establish a dialogue with the appropriate regulators in an effort to resolve the Industry's concerns.

³ Covering those involved in the extracting processing or otherwise working in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling businesses

2. Regulatory Management

The Industry is under increasing pressure to improve productivity and competitiveness, particularly as the State's demand for its products continues to increase. While the Industry accepts that removal of native vegetation should be minimised, it is counter productive to threaten the ongoing viability on any businesses by preventing sustainable and sensible development.

Similarly, the Department of Sustainability and Environment is required by both legislation and community expectations to protect the State's native vegetation assets. In their role of protector and champion of native vegetation, they have undertaken responsibility for coasts and marine, conservation and environment, forests, heritage, parks and reserves, plants and animals and water assets.

The following comments were recently put forward in relation to the management of OHS in the earth resources; however equally apply to the issue of native vegetation:

"For a regulatory process to have credibility, it must be independent, transparent and accountable. Any agency taking on the responsibility for overseeing [native vegetation] has that clear obligation to the [environment] that it is seeking to protect.

Companies are also entitled to know that a regulator with the potential to impact on their endeavours is going about its role without fear or favour.

It is also essential that this regulatory framework is able to protect the public's interests in a balanced and accountable way.

Independence is, however, not only about reality; it is also about perception. The process must not only be independent; it must be seen to be independent. This will only be compromised if the people or the agency exercising a responsibility is thought to be captive to one or other of the parties directly engaged in the workplace."

The rehabilitation requirements of the Work Authority approval process are commitments towards sustainable development. The increasingly difficult and cumbersome native vegetation assessment processes are increasing the amount of red tape involved - these processes need to be reformed.

In assessing a permit application to remove native vegetation, the true economic impact (opportunity cost) and potential for recuperation of the impact of the application must be included in the assessment process.

The CMPA are concerned that local government or DSE staff are evaluating the native vegetation from sectional interests to consider this important aspect when presiding over permit decisions.

The introduction of the Bush Broker program provided that all but minor permit applications for the removal of native vegetation will be referred to the DSE. While the CMPA is not opposed to steps that will aid in ensuring consistency of assessment, an independent department is required to provide a comprehensive assessment of the need, benefits and impacts of removing native vegetation.

The CMPA seeks:

- ***A commitment to making an independent department the referral authority for native vegetation permit applications***

3. Habitat-Hectare Assessment

The Industry understands that the Ecological Vegetation Class (EVC) mapping is an on-going process and collected information is continually being added to the State's data bank of knowledge. There are parts of the State where the mapping is incomplete and in many cases, the Industry is paying for the native vegetation survey and collection of information. This knowledge then becomes part of the State's collective knowledge bank and can be used to the benefit of all Victorians.

From the surveyed and existing knowledge of a site, the offset requirements for clearing native vegetation under the NVMF Policy are computed. These offsets areas can be very significant and in many cases onerous. For example, there are areas where EVC maps have identified rare or extinct species only to find on the ground that they are abundant, and offsets such as requiring 8 large trees be protected and 40 more trees planted to offset the removal of one tree.

EVC maps are a corner stone to the consistent application of the NVMF. Where accurate and reliable EVC maps do not exist, Work Authority holders are required to pay expensive consultancy fees to cover investigations of their own sites and reviews of the wider EVC area. This is a significant financial burden to the Work Authority holder and when the specialist consultant's work is debated or disputed or in other ways argued about, then the costs continue to rise and the total costs become exorbitant for the Work Authority holder.

When the information being collected is for the benefit of all Victorians a more co-operative, and less combative approach to the evaluation of the submitted specialists consultants work would be beneficial. In many cases, the specialist consultant has been selected from the Department's list of specialists equipped to carry out the task in a professional manner and hence there should be a minimum of argument and debate about his/ her work.

It is contended by some members, that the cost imposed upon their businesses to conduct these assessments and present arguments, is well beyond that value of the native vegetation being removed. The Industry has a small environmental footprint, particular with regards to native vegetation, with only a small percentage of the State's landmass being opened up each year and large buffer areas compensating for this. Consideration also needs to be given to the ability of a site to reduce other environmental impacts. For instance a site close to its market results in minimised greenhouse gases and transport.

This situation requires urgent attention. Combined with other regulatory burdens, it is now commonplace for significant time delays of over 5 years to occur and excessive consultancy fees into the tens of thousands of dollars. This is sterilising working capital. It is not appropriate or reasonable to expect the State's business community to bear excessive burden without any support from the community.

The CMPA seeks:

- ***A commitment to an independent review of the methodology determining the offset requirements under the Native Vegetation Management Framework and Bush Broker scheme***
- ***A commitment to place due consideration of the site's environmental footprint, resource size and ability to reduce other environmental impacts when considering native vegetation assessments***
- ***A commitment to assess, evaluate and address the restrictions to entry and financial burden being placed upon businesses and the wider community due to a lack of site specific knowledge inhibiting development activity.***

4. Balanced Financial Responsibilities

The protection of native vegetation to improve bio-diversity and environmental outcomes is a community wide goal. The CMPA supports the Industry's participants protecting remnant native vegetation on land under their control but there is a need to achieve balance between the rights of Work Authorities and the broader community objectives for conservation. The costs of meeting native vegetation management requirements is gradually strangling Industry with the forced closure of businesses and reduced availability of the Industry's vital products .

The Victorian Competition and Efficiency Commission (VCEC) report validated the CMPA's long-held concerns with the regulatory control of native vegetation. The report states:

"The community should bear the costs of increasing the quantity and quality of native vegetation to enhance biodiversity and address the effects of past clearing."

It is essential that the assessment process take into account these financial burdens and attempts to minimise these where possible. This may be addressed by ensuring that an individual's views are separated from the assessment process or through establishing a limit on the amount of time spent on an application in relation to its size.

The management of native vegetation clearly needs to be reformed. Sustainable and ongoing improvements in native vegetation management can only be achieved if the burden of regulation is reduced and an equitable sharing of responsibility is taken.

The CMPA seeks:

- ***A commitment to adopt a 'community benefit-community pays' approach to native vegetation protection, consistent with the Flora and Fauna Guarantee Act***
- ***A commitment to ensure the assessment process minimises the financial burden***

5. Summary of Recommendations

Most extractive industry sites are situated in rural Victoria, as against urban or semi urban regions of the state. For the most part they are relatively small operations, the area being worked at any time covering a small footprint in the context of surrounding rural broad acres.

Despite the small areas involved the NVMF assumes major, and at times decisive, importance via the planning permit process in relation to extractive industry proposals. In a contested situation the NVMF is often utilised by objectors as a powerful weapon. The applicants seeking a permit to establish an extractive industry is likely to be forced to incur the significant cost of engaging consultants to conduct a flora and net gain assessment, which essentially is confined to the proposed, relatively small site and is not an assessment of the locality generally. The applicant may be faced with an obligation to procure significant habitat hectare offsets, which may be very difficult to locate and may in any event involve a totally non viable cost. A recent example is a site where moss on the rock face was assessed as Escarpment Shrubland of very high significance requiring significant and difficult to locate offset habitat hectares.

Despite the community need for materials produced by extractive industry, and the fact that the geographical location of the resource dictates the site for extractive industry, the NVMF has the capacity to itself block extractive industry proposals and to be used as a weapon for this purpose by objectors.

To summarise the recommendations in this paper, the CMPA seeks:

- A commitment to making an independent department the referral authority for native vegetation permit applications
- A commitment to an independent review of the methodology determining the offset requirements under the Native Vegetation Management Framework and Bush Broker scheme
- A commitment to place due consideration of the site's environmental footprint, resource size and ability to reduce other environmental impacts when considering native vegetation assessments
- A commitment to assess, evaluate and address the restrictions to entry and financial burden being placed upon businesses and the wider community due to a lack of site specific knowledge inhibiting development activity.
- A commitment to adopt a 'community benefit-community pays' approach to native vegetation protection, consistent with the Flora and Fauna Guarantee Act
- A commitment to ensure the assessment process minimises the financial burden