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Farm foreclosure political shame

Comment
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THE pending foreclosure of Peter Swift's 600 hectare Manjimup farm scheduled for this month should be the catalyst for the State Government to make good its promises to correct serious anomalies in WA's land clearing laws.

Mr Swift's demise may not have occurred if the government had honoured promises in April last year to review farming activity in environmentally sensitive areas (ESA) on private land.

Our failure to act on this issue saw Mr Swift clobbered with an ESA infringement after he had spent three years defeating an unfounded, malicious land clearing charge against him.

Mr Swift has not only lost his property, his health has suffered and his future is uncertain because of the serious injustice he has suffered.

The ESA rules were written by bureaucrats and endorsed by the then State Labor Government in 2005 in a deliberate attack on private landowners in many of our most valuable farming areas.

They were used in a blatant retaliation against Mr Swift, for his Bunbury Court win, by the Department of Environmental Regulation (DER) to blight half of his property.

He had already incurred costs of more than $300,000 defending the bogus land clearing claim over 15ha of his property which became unviable when the government declared half of the property to be an ESA, which cannot be grazed by livestock.

His appeal to the Attorney General for compensation last year was rejected despite the immense validity of his claim.

Mr Swift's case should embarrass all State parliamentarians as an example of gross injustice for many years to come.

The ESA rules are still in place despite repeated pledges to amend them by this government.

They will entrap many more private landowners in the proposed Perth-Peel Green development plan and that is why this initiative should be postponed until we clean up the mess.

If we do not fix these problems in this term of government, another 3000 to 4000 private farms between Cervantes and Walpole could be rendered unviable.

Necessary ESA regulation changes were clearly spelt out by an Upper House Standing Committee on Environment and Public Affairs in response to a petition by Murray Nixon, Gingin Private Property Rights Group, in August.

They provided for producers to be notified and consulted where restrictions and exclusions were nominated for their property and for more effective rights of appeal.

Another more insidious barrier for farmers such as Mr Swift has been the lack of planning support from the Department of Agriculture and Food and in many cases the deliberate use of planning to frustrate rural development projects.

I am confident after a visit to farmers in my electorate by new Agriculture Minister Dean Nalder last week that this agency might become more of an advocate and less of an apologist when it makes decisions on rural planning policy.

The Swift case also confirms the need for a formal Land Court in WA on similar lines to the powerful Land and Environment Court set up in NSW in 1980.

This jurisdiction has replaced a range of landowner-unfriendly appeal processes and has the same status as the Supreme and Industrial Relations courts in NSW.

It has protected hundreds of private landowners in NSW from unjust environmental and planning prosecutions.

Serious threats to the property rights of many private Investors in WA are continuing to the point where they now contradict our own increasing State calls for more investment in agriculture.

Murray Cowper.

My Private Members' Bill, which was partly introduced in late 2014, requires the government purchase or compensate private land on just terms.

I have been unable to progress it.

We need to confirm that if government is not prepared to purchase land on just terms, or adequately compensate private owners for it, then it should not be legislating to steal or control it.

As influential national agricultural policy maker the Wentworth Group declared when reviewing the impact on farming of the Federal Environmental Biodiversity and Conservation Act in 2002: "Whilst we expect farmers to accept a duty of care to protect the environment it is not fair to expect them to bear all of the costs when the benefits of their actions accrue to others."

98. [redacted]

Property Rights

Traditionally property was well protected by State and Federal law. Farming property in particular came under attack with the growth of environmental controls, in particular International Agreements on Biodiversity and the Kyoto Agreement on Climate Change.

The Federal, State and Territory Governments signed an agreement to protect a proportion of all native plants that were in existence at British settlement (from memory 11%). The agreement was signed by Prime Minister Keating and Premier Richard Court and others and promised compensation to land owners who lost the right to clear. Later, this agreement was enshrined in the Federal "Environment Protection and Biodiversity Conservation Act 1999"but there was no mention of compensation.

The Federal Government gave the administration of the clearing controls to the States. The question remains whether this was because of the States constitutional responsibility for land management or a deliberate attempt to avoid compensation under 51 XXX1. It was argued that the agreement was not Legislation and there was no requirement to pay compensation.

This matter is still before the High Court. Peter Spencer sought justice on this matter over 100 times and could not get a hearing. Eventually the Full Bench gave a unanimous decision that the matter should be heard, costs were awarded to Spencer and the Federal Government ordered to provide evidence as required. The Government did not deliver and was taken back to court and once again ordered to provide evidence. Recently the Court found in favor of the Federal Government, but Mr. Spencer has appealed.

The clearing bans were introduced in W.A. under a Memorandum of Understanding between Government Departments, with Agriculture as the lead Department. The document claimed that Cabinet had agreed to certain proposals. This was later found to be a lie and senior civil servants were forced to resign.

Instead of the protection of rare species that the Biodiversity agreement was supposedly for, it became almost impossible for farmers to get a permit to clear. It was argued that every acre was different to every other and so all should be protected.

With the election of the State Labor Government in 2000, the Environment Protection Act received radical amendment in 2004 which included changes to clearing regulation and the permitted use of wetlands.

The problem became even more bizarre when farmers who had a legal permit to clear were requested to advise the Department of their progress. Those who were foolish enough to comply then had a soil conservation notice issued and if they continued to clear were charged with disobeying an order. At least one farmer has been to the courts and won the case, but his right to clear is still being refused.

It has now come to light, that the Howard Government used the clearing bans to meet the Kyoto targets, although Australia had not signed the agreement. Queensland suffered more than W.A. as Pastoralists had been clearing Brigalow regrowth. When the aborigines were managing the land with a fire stick, it had always been open country.

It is worth noting that in W.A. only 7% of the State is held by freehold title and a good estimate is only 6% of the State has been cleared. With modern land management there is almost certainly more bio-mass than prior to settlement because of "Thickening" in the bush.

98[redacted]
The other threat to property came via the Wetlands. Once again the Federal Government entered into International Agreements of which the Ramsar Convention is the best known. They also established "A Directory of Important Wetlands in Australia" (2001).

Our State Department of Water and Rivers, then Conservation and Land Management (CALM), then Department of Conservation (DEC) now the Department of Environmental Regulation (DER) also got into the act and employed a husband and wife team (V&C Semeniuk Research Group) to map Wetlands in W.A.This was a massive task and much of it was "desk top" and the maps are a guide but certainly not completely accurate.

On the Swan Coastal Plain, important Wetlands had been protected by The Swan Coastal Plains Lakes Policy 1992, which had been introduced by Minister Julian Grills; an excellent policy that had a clear definition of why the lakes were listed. It had caused no problems for land owners. Unfortunately the policy had a five year review period and the Department used this as an excuse to propose protection of all the wetlands on the geomorphic maps produced by Semeniuk.

Historically Wetlands have always been highly valued for agriculture. Civilization developed on Wetlands. On the coastal plain summer green country is highly regarded, and in Gingin Shire has been grazed for over 150 years. The draft Swan Coastal Plain Wetlands Policy (as it was now known) was promoted as being required to meet our International obligations. Public opposition to the Policy was enormous and Minister Cheryl Edwards refused to sign it.

Following the change of government, the draft received minor amendment and Minister for the Environment, Mark McGowan, was invited to Gingin by the Property Rights Group to inspect the implications of the policy if introduced. In Parliament, he announced that the Policy had been dumped and the old Lakes Policy remained. Land owners thought the threat to their property had been removed. What few if anyone outside the Department realized, was that a Notice had been published in the Government Gazette that declared all the wetlands on the Semeniuk maps as Environmentally Sensitive Areas (ESA). This covered the entire South West Land Division of W.A.

Environment Protection Act 1986
Environmental Protection (Environmentally Sensitive Areas) Notice 2005

Because it was Subsidiary Legislation, it was tabled but the Delegated Legislation Committee that examines these matters did not issue a report and it became law with no debate.

This Notice has the power to prevent the grazing or clearing of regrowth on any land identified in the geomorphic maps as wetlands. It includes most of the highly productive Swan Coastal Plain and the South Coast, our most productive dairying, horticultural and beef fattening land. In all, there are 22 normal land management practices that are illegal on land declared an ESA. There is no compensation available.

The prosecution of Manjimup farmer, Peter Swift, charged with clearing an ESA without a permit, brought the Notice to the attention of land owners. He won, but the stress and expense of defending the case has destroyed Mr. Swift's health and finances. He has been forced to place his property on the market.

In March this year, the Gingin Private Property Rights Group (Inc) petitioned the Legislative Council of W.A.to have the Notice repealed. The Standing Committee on Environment and Public Affairs has reported to Parliament (Report 41, Petition 42) and recommended amendment to the Environmental Protection Act 1986. The State Government has yet to respond.

98. [redacted]
In evidence heard by the Committee, it was revealed that there are over 98,000 parcels of land declared Environmental Sensitive Areas (ESA) by the Notice.

Whilst the farming community is expected to provide "National Parks" at no cost to the community, bush continues to be cleared in the Metropolitan Area, and wetlands continue to be filled in.

All these Policies arose from International Agreements entered into by the Federal Government.

The greatest scandal is that property rights have been stolen by the use of Policies and Notice that have not been subject to full Parliamentary scrutiny. They are published in the Government Gazette, are subsidiary legislation and unless a Member of Parliament successfully moves a motion of disallowance, have the force of law!

If the community wishes to take the right of land owners to use their land, the community must be prepared to pay compensation on just terms.

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