VIC.
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Native Vegetation Inquiry
Productivity Commission
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MELBOURNE VIC. 3003
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I. V. Farm - Vic.

The following submission outlines the effect and consequence of a planning permit to construct dams on our property that contained an ambiguous time completion clause and omissions. The recommendations of the Department of Natural Resources and Environment given to the Indigo Shire have been overlooked and new conditions have been forced upon us.

Endangered and rare species of vegetation were found over the proposed site and subsequently, four alternative sites were considered. All sites were of a lesser dam value than the original site. All four dams would be needed to store the water for our proposed120 Ha. vineyard and olive development.

Some native vegetation was to be removed to complete the extent of the plantings. This clearing was discussed and agreed to by DNRE during the planning process period. DNRE's report to Indigo Way Services, the planning arm of the Indigo Shire, included reference to this vegetation as part of their conditions for the permit. The vegetation removal was considered as an offset to conserving the 4 Ha. site.

A planning permit was issued for four dams finally on 22 March 1999, after our plea to the Indigo Shire CEO to expedite the matter. The permit included reference to tree removal at the dam sites only and did not refer to the remnant trees within the proposed olive planting areas.

We submitted construction plans for sites 4 and 1 to DNRE for their approval through IWS, as a requirement of the permit.
Approval was given for both dams 4 and 1, and work on dam 4 commenced early May 1999. This dam is sited at the same elevation and proximity to the electricity supply as the original site but does not have the same refill capacity. This dam cost over $25000 more than the estimate given for the original dam.

Dam 4 was not completed in one operation because of the late start of construction (the approval took 66 days), and the onset of winter rain. The wall was completed in February 2000 and the floor has yet to be excavated to its potential capacity. (now subject to GM-W approval, under new legislation)

The plan for dam 3 site was submitted to IWS on 3 May 1999.

During the planning process, Site 2 was declared by Goulburn - Murray Water to require a winter diversion licence before water could be taken from the site. The indicative cost of this licence was given at between $700 and $800 per Ml.

The Water Act relating to farm dams was being reviewed at this time and the preliminary Baxter Report proposed that 50% of the runoff water above the dam site would be the water entitlement to that dam.
A plan for the dam at site 2 was not submitted at this time as there was a change of government, and different rules relating to entitlements to runoff, and dams on waterways were being considered. The defining of a waterway presented a major sticking point for all water authorities and legislaters.

Preparation for construction at sites 1 and 3 was done during 2000/1. I rang IWS early May 2000 seeking the approval for dam 3 submitted to IWS 12 months earlier. I was told the approval was only a formality. We have since ascertained that DNRE received an undated facsimile for dam 3, 12 months after we had sent it to IWS. DNRE Wodonga did not respond to IWS. Goulburn - Murray Water viewed this site to be not on a waterway.

Our water broker arranged for a winter-fill licence from the gully of dam 2 site. The 40 Ml licence was purchased without further concern. A request to GM-W for an increase in our existing groundwater licence from 108 Ml to 380Ml. was made.
DNRE Tatura, required a *whole of farm plan* to be prepared before the groundwater licence could be considered. (only the groundwater licence necessitated the whole of farm plan!) The plan was to show the extent of the development, existing and proposed conditions, contours, structures, roads, dams, fences, a soil survey, and an irrigation plan, although at that time some 80 % of the irrigation was installed and 50% of the olive grove was already planted. The *whole of farm plan* was prepared and approved by DNRE Tatura in November 2000, at our considerable cost.

Earthworks for dam 3 commenced in March 2002 and a notice to stop work was issued by IWS on 2May 2002, stating we did not have a current permit.
This was the dam we had received only verbal approval. The time clause on the planning permit was, to start within 2 years and complete within 2 years of commencing. Our understanding is that we had 4 years to complete all dams from the date of the permit; 22 March 2003 being the completion date for all four dams.
Our water requirement would increase over the period of establishment (planned at 5 years) and inline with tree and vine growth. The staged program for dam construction was based on timely water needs, project expenditure and the permit time restraints.

We rang the Indigo Shire's CEO to try to sort the matter out before seeking legal advice. The Manager for Technical Services assured us, that work would be able to recommence within a week. We engaged a planning consultant to make new applications for dams 3 and 2. On the 27 May 2002, on-site negotiations were held with the same DNRE staff, GM-W staff and IWS personnel as the original permit of January 1999. It was a 3.5 hour inspection with 7 statuatory personnel, our planning consultant and both myself and wife. Ultimately a permit issued on 5 July, after having to return it 4 times to include the correct GM-W requirements. This hold-up meant the loss of the opportunity to store water for that year. The cost of the stop work notice, including equipment stand-by charges, planning consultants fees and permits amounted to $9200.

During the meeting of 27 May, dams sites 3, 1 and the new site 2, were inspected. IWS considered that we had removed native vegetation from dam site 1 without a permit. IWS notified us of *intent to inspect* and together with the original DNRE staff a further 2-hour inspection of our property took place on 18 June.

GM-W also reviewed their assessment of dam 1 at this meeting, and declared the dam to be on a waterway and that any further development at this site would jeopardise our existing groundwater licence.

We applied to DNRE on 2 September 2002 for an aquaculture licence to grow-out native fish in our water storages. The application had to be made to the same DNRE Wodonga person who prepared the original DNRE report on the endangered species site and who took part in the 18 June inspection.

On the 10 October 2002, Indigo Way Services issued a Planning Infringement Notice on us, based on a report by the DNRE Wodonga personnel regarding the removal of native vegetation and prepared by the same person. The PIN is ambiguous and incorrect. The report contains reference to the removed trees that were addressed previously in DNRE's report to IWS in their original report. It used an aerial photo taken some 2 years prior to our purchase of the property to determine the number of trees removed. It counted non-native species, dead trees and large rocks in the removed tree numbers. It also made mischievous reference to indiscriminate clearing from the approved dam 1 site. It exaggerated the extent of the cleared area and it alluded that we performed water channeling works; but were actually carried out some 40 years earlier.

Our solicitor advised us that the cost of defending the PIN would be more than that of replanting and recommended we address the PIN's requirements.

The PIN required us to replant under-story vegetation, pay a $1000 fine, and arrange a vegetation protection covenant to be placed over on our title. The covenant was over 7 sites, which totaled approximately 45 Ha. It included the areas nominated by us for the future aquaculture ponds and the site of dam 3; the site on which we had acquired the planning permit for the second time, just 4 months earlier. The same personnel from IWS and DNRE were involved in all permits.

We requested a meeting with the Shire's CEO to inform him of the history leading to the PIN. After this meeting with the CEO and the IWS planner, and another meeting with senior DNRE personnel, Shire managers and others, a further third meeting, held 13 November, reduced the PIN requirements to the preparation of a revegetation plan. This plan was required to be submitted to IWS by us, before 13 December 2002. We received a reply to this correspondence on 13 May 2003.
The cost to-date of the PIN has yet to be finalized but it includes, solicitors and planning consultants fees, loss of production in attending to these matters, ground preparation, tree purchases, pain, distress, frustration, disillusionment and despair.

The PIN matter caused further consternation for us at the time, in the suggestion by the DNRE staff that we seek the replacement trees from a nursery, known to us as being part owned by a then councillor of the Indigo Shire. The same councillor who was then a IWS director and who also held a position on the Catchment Management Committee, the body which has the responsibility for developing revegetation policy.

Included among the list of services offered by IWS are tree planting, dam cleaning and town planning consultancy, all of which are perceived by us as a conflict of interest.

The PIN replant requirement is counter productive to our development.
The replants include species that attract birds, increase the fire hazard and draw upon the water we have to pay for as groundwater, irrespective of availability. The replants also include species other than those removed.
The effect of the revegetation requirement is to place quasi covenants on the property.

We have been told, that as part of some DNRE staff performance assessments, tree replacement targets are set and evaluated as part of that persons performance of duties. We would like to ascertain the validity of this hearsay.

This PIN matter has not yet been finalized, nor has the dam construction requirements issue resolved with either IWS or GM-W.

The Warby Swamp Gum *(Eucalyptus cadens*), part of the refusal for the initial dam site, is now listed as vulnerable. There are some 70 plus sites containing Warby Swamp Gums and, according to the criteria for listing as endangered, i.e. endangered of becoming extinct, **probably should not have ever been declared as such**, as their numbers were not recorded until 1999.

No compensation or consideration has been given to our olive and vine planting in the revegetation requirement in addressing: -

1. salinity reduction of our deep rooted plantings,

2. the air cleansing through the carbon dioxide soaking action of the plantings or

3. the efficient/ higher value water and land use now, compared to the heavy stocking practice over the past 20 plus years.

4. the loss of the use of 4 ha of ground, (the most efficient use of this land use is water harvesting and storage)

5. the increased cost of the other dams construction, tree replacement, electricity and pump installation

6. the additional and **ongoing water pumping cost** from dams at lower elevations (water has to be pumped twice from these lower dams)
   The cost of off-peak electricity rose 300% in year 2002.

7. retaining the 4 Ha.in offsetting the PIN revegetation numbers, or

8. the natural regeneration of the 4 Ha through our de-stocking of the area.

The 4 Ha. site contains stands of Warby Swamp gums, which are generally in a very poor state due to mistletoe infestation. In its present condition the area is a fire hazard. It abuts neighbouring bush and is to the north, the fire potential side of our olive grove. The site has the potential to be reinstated as a wetland; it was drained some 40 years ago with open channels. We have been told that prior to this action, the area contained only a few trees.
No response has been received from our verbal request to DNRE for consideration of the 4 Ha.site to be part of the Bush Tender management project.

The consequence of the environmental requirements and water entitlements uncertainty is such that no further olive plantings have been undertaken. No further vines have been ordered and we have lost one permanent staff member and the aquaculture development may not proceed to the original planned scale.

To-date the project has cost in excess of $1.3 million. It needs to be fully developed to be viable. It is planned to build an oil extraction plant, a cellar door facility for both wine and olive products and an aquaculture production and processing facility. It will require 5 full time staff when complete. The planned project requires a further expenditure of approximately $1.2 million to complete.
It is vital that secure water entitlements are in place and the full knowledge of costs and environmental responsibilities known, before the project can proceed.

I attempted to raise our planning issues with the then Member for Benalla as a concern for others wanting to develop new businesses in rural Victoria. We wanted to also seek possible solutions to our water uncertainties. However, state election issues took precedence. The member lost her seat and a reply to my fax has not been received.

We offer the inquiry committee, access to our files, and would be willing to expand on any issues we have raised, in any forum.

The concerns we have from dealing with IWS and DNRE/ DSE and GM-W include:-

1. The legality of the actions of DNRE/DSE and IWS staff in their bid to harass us into placing covenants on our land. The Particular Provisions of the Indigo Shire's planning requirements as per cl. 52.17 of the Department of Infrastructure file where the listed exemptions have been overlooked.

2. The lack of concern by DSE, Parks Victoria and IWS staff in the protection of public use and private property in addressing roadsides use and management. There is more consideration given to native vegetation than to private property. In the recent 2003 bush fires we had spot fires rising from the adjoining Chiltern-Mt. Pilot National park. It was only a timely change in the wind direction that saved our property.

3.Indigo Shire is one of three Victorian shires that still requires a planning permit for dams. Dams with a capacity greater than 3 Ml. need a planning permit even in rural zoned areas.

4. There is no provision made for water in our neighbouring National Park for either wildlife or for fire-fighting purposes. As neighbours, we are required to provide the water (now paid for under the new Water Act - farm dam legislation) and repair damaged assets, including tree and vine damage caused when wildlife break through fences.

5. The cost of providing the control measures in maintaining errant wildlife numbers is also left unfairly to the park neighbours.

6. The new permit for dam 2, which took ten weeks to process, still has conditions beyond those required under the new legislation. The same debacle has to be repeated to correct these conditions. We question if this is incompetence or a deliberate action to stop the dam being built.

7. This concern arises from a recent stream flow management committee's recommendation to consider the gradual reduction of access to water from the Kiewa River. The Kiewa River Stream Flow Management Consultative Committee comprises of the chairman, who is the Indigo Way Services Planning Manager, one DNRE staff and a member of Goulburn-Murray Water, all three persons are common to our planning application approval processes. The remaining makeup is from statuatory authorities and only three members of the public, who represent water users.

8. The composition of this committee does not conform to the Water Act. The legislated requirement is for the committee to comprise 50% users.

9. Although we have been told that our catchment is not on the list to be studied, we are concerned that the principal of reducing water use is being applied at the planning level in our case.

10. Water and conservation regulations cannot be challenged and receive higher priority than farmer's rights. **They are a restraint of trade**. Farmers rights to farm (native vegetation and water) are removed by stealth, without proper consultation.

11. The PIN which included a covenant over the areas set aside for the ponds for our second stage aquaculture development and also the site of dam 3 appeared to us as a consequence of our application for an aquaculture licence.

12. At no time did DNRE/DSE or IWS tell us what we could do in regard to Native Vegetation Retention Controls only what we couldn't do. It may be possible for compensation to be made by DSE under the Fauna and Flora Guarantee Act, but there has been no suggestion of this by DSE.

13. Our rights and revegatation rules have changed over the period of the permit and we have been manipulated into adhering to harsher requirements by authorities delaying actions. We are now caught in the new draft/legislation? of ***net-gain*** changes to native vegetation.

14. During a PIN resolution meeting, both the IWS Planner and DSE personnel referred to our olive project as feral trees. It is our observation that people opposing the olive industry refer to olives as *feral.* This indicated to us the bias away from our horticultural pursuits and the inability for planners to assess our planning proposals fairly.

15. The threat to our existing water licences and the loss of one dam and having to deal with the same group of people again for our aquaculture licence has curtailed our progress into aquaculture. The information we are required to provide to DSE for the licence gives no encouragement to the venture although aquaculture development is a Victorian government Initiative through Department of Primary Industry.

16. The delays in issuing, or requesting comment from relevant authorities or excluding their recommendations on permits, has forced our project into new legislation for farm dams and the new revegetation rules.

17. The statuatory period required by the referral authorities to address planning conditions was ignored. The correct procedures were not adopted by IWS.

18. The Indigo Shire, under their Roadside Management Policy has given many roads within the Shire a high conservation value.
This policy is non-compatible with the safety of road users, as was experienced in the recent fires. Roads are for safe public access and for reserves to service properties. Does the policy contradict the DSE clearances to public land; which includes road reserves?
Our access road has mainly dead Black Wattle regrowth along both sides of the reserve for its length of one kilometre. This is a fire hazard in its self, apart from restricting access to maintain other vegetation.
This regrowth was also an issue for Telstra, our neighbour and consequently to our selves when our telephone line was installed. Telecom had to place their lines through the neighbours paddock as an Indigo Shire staff member stated there be no disturbance of any wattle regrowth within the road reserve.

19. The adjoining Chiltern /Mt Pilot park was recently made a 22000 Ha. National Park. There is no current Management Plan inplace for the park, and no backburning planned to protect any neighbouring assets or fences.
We have constructed a 2 metre high electric fence around our property. Five kilometres of our boundary abuts the National Park and was constructed entirely at our cost, including the royalty paid to Parks Victoria for the trees removed to construct the fence. The fence is necessary to exclude kangaroos and feral animals from entering from the park and we now have to maintain the fence, as if a park tree falls on our fence the park tree becomes our responsibility.

20. There is only a fifty-metre buffer zone between our property and a 600 Ha Reference Area in the park. There is little public knowledge of this Reference Area and its existence has only recently been brought to our attention. Access is not permitted through this area and fuel reduction of any kind is not permitted within the Reference Area. It is essentially an exclusion zone, locked out to any human or non-natural intrusion. This does present a fire hazard, not only to adjacent landowners but it has the potential to be a major hazard to the Yackandandah township and Wodonga.

21. New Legislation relating to fires started by electric fences, tractors etc. is not clear. If a tree on public land be it roadside or park, falls on an electric fence, who is liable? Farmers are not allowed to remove native vegetation on roadsides/public land without a permit.
Articles regularly appearing in the Weekly Times newspaper, indicate the obsessive attitude in making farmers replace trees removed from roadside fence lines. Sometimes, at a rate of 100 trees for each removed. These trees are to be planted on the farmers' land, in effect another quasi covenant.

22. People need to be made responsible for their actions and decisions including public servants and municipal officers. This may make for a level playing field for the average farmer.

We are apprehensive in submitting this report given the prospect of receiving more frustrating conditions when we apply for future planning permits.

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