

# Dharriwaa Elders Group

submission regarding the NSW

## Draft Native Vegetation Regulation 2004

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A gulibaa with many scars near the Namoi River at Walgett - one way that native vegetation has Aboriginal cultural heritage significance

### About the DEG

The Dharriwaa Elders Group was born 20 November 2000 after working together on projects since 1999. Activities include:

- Supporting elders to resume leadership roles in the community
- Establishing a collection of local cultural heritage information
- Recording of cultural and language knowledge of the elderly and the promotion of local Aboriginal cultural knowledge
- Community development in particular the development of local Aboriginal cultural heritage and natural resource management
- Culture and language camps for elders and youth

The DEG is currently auspiced by the Walgett Aboriginal Medical Service and is in the process of incorporating. PO Box 174 Walgett NSW 2832 ph: 02 6828 2619 dharriwaa@ceinternet.com.au

1. The Dharriwaa Elders Group supports the end to broadscale clearing that the Regulation and Act aims to achieve.
2. The proposed legislation<sup>1</sup> must recognize the Aboriginal cultural benefit of remnant vegetation and correctly value the impacts on Aboriginal people and their cultural heritage of the legislation. This has been totally ignored.
  - a. The presence of native vegetation has emotional and spiritual and other benefits for Aboriginal people. The activities associated with clearing impact on Aboriginal cultural heritage by disturbing and destroying items of significance like camp and burials sites, carved and scarred trees and other evidence of material culture valuable to Aboriginal people who are trying to reclaim identity and well-being. The presence or not of sites of significance to Aboriginal people should be valued and taken into account in any impact measurement.
  - b. The ability of Aboriginal people to maintain their links with sites also affects the value of the site. Regular access through properties is an important right to maintain in legislation so that the value of places can be maintained.
  - c. Culture and land are indivisible for Aboriginal people. Aboriginal culture values not just places and things that show evidence of Aboriginal life and material culture. It also includes the presence of biodiversity - the birds, animals, fish, insects and their communities and habitats and the lifestyle given and shaped by rivers, land and native vegetation over tens of thousands of years.
  - d. There is an economic and social impact of the presence and absence of native vegetation for Aboriginal people and everyone in NSW, which has not been calculated by the Regulatory Impact Statement. Future enterprises including ecotourism and Aboriginal cultural tourism, use of bush medicines and other products derived from native vegetation which are affected greatly by the biodiversity of an area and which will provide an important economy for NSW Aboriginal communities in the future, have not been valued.
  - e. Local Aboriginal communities have to give native vegetation its value – non-Aboriginal people can't give it a value – they don't know it. For value to be attributed the legislation must include a process.
  - f. The scientific approach to give value to native vegetation in the Assessment Methodology is applauded but we are concerned about the absence of Aboriginal cultural value and the absence of any attempt to value it in the methodology. Support needs to be given to Aboriginal people to ascribe value. In the Walgett area this process was begun by the

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<sup>1</sup> Regulatory Native Vegetation Regulation 2004 Regulatory Impact Statement, the Native Vegetation Regulation 2004, and the Native Vegetation Act 2003

NSW Dept of Land and Water by the mapping of the “Occurrence and Frequency of Plant Species having an Aboriginal Cultural Value”<sup>2</sup>.

### 3. The Property Vegetation Plan (PVP) model

- a. Part 4, Section 26 (2) of the Native Vegetation Act provides that a draft PVP cannot be submitted for approval without the consent in writing of: (a) all landholders of land to which the plan applies, and (b) any person who has an interest in the land prescribed by the regulations. If this is where Aboriginal interests are intended to be considered by the legislation it is not enough. If landholders are to work with Aboriginal people this needs to be more clearly stated in the Act. “Persons who have an interest in the land” include Aboriginal people. How their interests are represented effectively will be different from place to place. This has always been a difficult process for landholders and NSW government departments and will continue to be until there is a concerted effort to roll up the sleeves and negotiate local processes with Aboriginal people that are transparent and fair. This will be and has been difficult! But we can help. The Dharriwaa Elders Group offers its assistance to give advice on how local processes can be developed.
- b. Offsets in PVPs could provide an opportunity for Aboriginal management of natural resources and we are interested in pursuing those possibilities with the Catchment Management Authorities. We ask that the legislation encourage this role. This will not happen if left up to landholder self-regulation.
- c. While offsets on a property scale are fine, legislation should also include provisions for native vegetation communities around NSW to be offset against previously cleared native vegetation. That is, offsets should be made on a regional and state level to compensate for native vegetation already cleared. Also, Assessment Methodology formulas need to take into account that the loss of old growth cannot be substituted in an offset by regrowth or new planting. They are not equal i.e. they do not have the same Aboriginal cultural value!
- d. We urge the government to consider the impacts on crown lands of the proposed PVPs. The land council network<sup>3</sup> is a stakeholder in these matters, representing the interest of Aboriginal communities and protecting land that can be claimed in the future under the NSW Aboriginal Land Rights Act. Any modification of crown land, or impact on it from development, has an impact on the Aboriginal value of the

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<sup>2</sup> See *Vegetation Communities of the Northern Floodplains – Western Division of Walgett Shire of Western NSW – Book 1*, *Vegetation Communities of the Northern Floodplains – Brewarrina Shire of Western NSW – Book 2*, *Vegetation Communities of the Northern Floodplains – North Eastern Section of Bourke Shire of Western NSW – Book 3*, Northern Floodplain Regional Planning Committee 200; which were produced with Natural Heritage Trust funding

<sup>3</sup> The Aboriginal Land Rights Act is currently under review. Whatever happens to the Act and the land council network described under the Act, Aboriginal elders in the Walgett region and probably throughout NSW, will continue to maintain an interest in the protection of crown lands

crown land and so will affect the intention of the NSW Aboriginal Land Rights Act. Crown lands used for watering and travelling stock (including along the rivers and other waterways) are valued highly by Aboriginal people in our area as they were often the places Aboriginal people camped and passed by (from water to water) so they have sites on them. Stock routes are also an important site of remnant native vegetation and so often are the last remaining places where bush foods and medicines can be sourced, where the rest of the land has been cleared for cropping.

- e. A problem with the PVP model as it currently exists is that they can't be changed within 15 yrs by new listings of threatened species or environmental planning instruments. If this is the case then the NSW Scientific Committee which investigates and considers listings under the NSW Threatened Species Conservation Act, and the Dept of Infrastructure Planning and Natural Resources and the Department of the Environment and Conservation and local government need to be given the resources to bring their considerations up to date before the PVPs are brought in. They need to be resourced so that they can gather the data needed to make determinations about the state of biodiversity now after years of neglect and damage in NSW. If this is not the case then PVPs will be made with incorrect data, government will be constantly catching up and making new findings which **will have to affect PVPs**. Aboriginal cultural heritage knowledge regarding native vegetation has not been mapped in most of NSW. Only parts of Walgett, Brewarrina and Bourke have been mapped in this regard. Until these maps were produced in consultation with Aboriginal people, little was known regarding the cultural value of native vegetation in our region. We guarantee that the production of these maps were a revelation to many. Most government workers or politicians had no data to back up the claims of Aboriginal people – i.e. they had no idea until these maps were produced of the richness of the landscapes facing destruction. Just imagine what will be lost to the future generations of NSW if the Aboriginal cultural value of native vegetation is not mapped in the rest of NSW. Again, it is only Aboriginal people who can give cultural value to existing and new maps and it should be done everywhere in NSW if you insist on locking-in PVPs.
4. The proposed legislation provides that financial incentives for native vegetation management to landholders who lodge PVPs be given through Catchment Management Authorities. How do taxpayers ensure we are getting what we pay for through this process? What monitoring will be undertaken and who will pay for it? We know that illegal clearing has been undertaken in the past but evidence-gathering over large areas of north western NSW by limited DIPNR and NPWS staff who are selected often for their empathy with landholders and agricultural interests, has been difficult. Aboriginal Liaison officers employed by these departments are poorly trained and have a conflict of interest when working with communities. We believe that a greater financial contribution towards compliance would provide greater funds for management of native vegetation. Aboriginal communities must be supported to develop their own maps overlaid over

government data, and given access to training and expertise so that they (the people) can be integrated into the monitoring and management processes. How else can Aboriginal cultural value be known and maintained? Importantly any Aboriginal worker in this area must be qualified and endorsed by appropriate elders.

5. Another current difficulty with compliance, which should be addressed in the legislation, is the assumption that fining a landholder for illegal clearing addresses the problem. A hefty fine can be imposed but old growth native vegetation cannot be rehabilitated once it's cleared – it is lost forever. Fines are an inadequate penalty or correction measure. Once the value has been correctly attributed to native vegetation then perhaps its loss will begin to be correctly valued as well.
6. Land excluded from the operation of the Act<sup>4</sup> includes land “referred to in Part 1 of Schedule 1 (national park estate and other conservation areas)”. We interpret this as being an inadequate protection of important areas. We know from on-the-ground experience that the NSW National Parks and Wildlife Service Act interim protection orders are only available when there is an immediate or imminent threat to items and places of importance. Aboriginal people are rarely lucky enough to be on the site when an immediate threat is present. It will not be possible to put sites and places and things under interim or full-time protection unless this is arranged within a PVP or some other instrument. Another comment from experience is the inability to protect koala habitat. Landholders are reluctant to declare they have koala habitat on their land because they know this will close their development options. So they don't declare it. Aboriginal elders however, still have knowledge of most koala habitats in this region due to the time spent working on properties and maintaining links with culture. We have anecdotal evidence that self-regulation amongst landholders regarding protection of koala habitation does not work.
7. We know that it is generally understood by government that processes involving Aboriginal people in NSW have to be negotiated through Local Aboriginal Land Councils and Community Working Parties in the Murdi Paaki region. In our area land councils and community working parties aren't strong. NSWALC is currently under administration and the NSW Aboriginal Land Rights Act is under review. This might mean that those who normally represent our interests in these matters on a state level have not in this case. The Dharriwaa Elders Group is strong about Aboriginal cultural heritage and natural resource matters and believes it is not alone amongst Aboriginal communities in NSW. You may not receive many submissions regarding this legislation from Aboriginal people, but we request that this not be assumed to indicate a lack of interest or concern.

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<sup>4</sup> Part 1 section 5 (a) Native Vegetation Act 2003