Dwight D Eisenhower:

"Our basic freedoms have become almost the very reason we exist, so that we may enjoy them and pass them, unalloyed, to our grandchildren. It has been said that we uphold property rights in the free enterprise system against human rights. I say that is a false statement. The right to property is only one of the human rights, and when that falls, all else falls with it. The abolition of property rights means dictatorship."

The Declaration of the Rights of Man and of the Citizen approved by the National Assembly of France in August 1789, Article 17 states:

"Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified."

Article 17 of the Universal Declaration of Human Rights states:

1) Everyone has the right to own property alone as well as in association with others;

2) No one shall be arbitrarily deprived of his property.

South West Private Property Action Group
(c/- Post Office Karridale 6288, Chairman - Peter Wren Tel: (08) 9758 4567)

The Committee Secretary
Standing Committee on Environment and Heritage
e-mail: Environment.Reps@aph.gov.au

Dear Sir/Ms

Re: Inquiry into public good conservation - Impact of environmental measures imposed on landholders.

We write to submit the following information for your consideration on the above topic:

BACKGROUND

The above group was formed as a result of a public meeting held in Margaret River in August 1997 and attended by over 300 rural landowners concerned about the erosion of private property rights caused by the increasing influence of government agencies and more particularly the planners.

Since that time the executive of the group has met with State Government Ministers, parliamentarians, local shire councillors, and Ministry officials in an endeavour to represent the views of the private rural landowner.

The three core concerns of the group are:

a) The protection of existing private property rights;

b) A right to compensation where those rights are eroded or diminished; and

c) A low cost system of appeal in any process where there is likely to be a need.

Following a Parliamentary Select Committee of Enquiry on "The Right to Farm", the current Liberal/National Party Government adopted a Cabinet Position Statement in 1994 as follows:

> *"The Western Australian Government considers that productive agricultural land is a finite national and state resource that must be conserved and managed for the longer term.*
>
> *As a general objective the exercise of planning powers should be used to protect such land from those developments, activities or influences that lead to its alienation or diminished productivity, while always accepting the need for land for urban and other areas of state significance."*

The result of the above statement has been a plethora of documents issued over the past three years which cover State planning issues, protection of agricultural land issues, the water reform process instituted by COAG and our local Shire Council District Planning Scheme. We have been forced into the process by these documents and have had to devote an enormous amount of time and energy grappling with these topics.

We have endeavoured to set out some of the issues we continue to deal with in our endeavours to ensure that the views of the main stakeholder in many of these debates, **the landholder,** are taken into account. These issues are presented in the same order as the terms of reference:

The impact on landholders of public-good conservation measures imposed by State Government:

1) We note the first term of reference and would like to commence this submission with the perception of the Government of Western Australia's approach to the planning and management of land.

   Policy documents indicate strategies that are lacking due to an absence of ability on behalf of the relevant authorities/agencies to negotiate outcomes either due to lack of funds or a lack of opportunities.

   An example of this is the Leeuwin-Naturaliste Ridge Statement of Planning Policy – Appendix 2 (pages 77 – 80) lists *"Mechanisms for Protection of Conservation and Landscape Values"* which are {see Group 2 (Private Land) }– *Conservation agreements, restrictive covenants, and private conservation reserves; Revolving Fund; Transferable development entitlements; and Zoning under a local government planning scheme which permits only uses compatible with the conservation and landscape values.*

   Also mentioned as *other support* are the options of *Financial support – CALM's Land for Wildlife scheme; Natural Heritage Fund and Save the Bush grants; Gordon Reid Foundation grants for conservation purposes; Fencing grants; Rate relief (reduced local government rates); and Taxation concessions for Landcare works.*

   In addition *Voluntary arrangement options* are listed as being *Donation of land with leaseback; Financial donations, fund raising appeals; Voluntary group purchase; Community management.*

   The reality unfortunately is that in the majority of cases in the southern section of the area covered by the LNRSPP none of the options have been clearly put on the table for discussion. The reasons for this are unclear but the results leave the landowner financially worse off with nowhere to go.

   The options listed are of benefit - it is the capacity to deal with them and negotiate that is lacking – we believe the main reasons to be financial and political – they must be addressed.

2) In the overall structure of values and competing land uses, conservation rates highly in the minds of government and supposedly in the community (although this has never been tested with any form of levy/environmental tax). However the same high value has not been supported in

financial terms.

3) There is a lack of transparency in government processes when forming conservation groups – agencies will take on people who philosophically support the agenda, often without any actual **stakeholder** involved.

4) The clearing ban currently existing in Western Australia negatively affects all landholders irrespective of whether a region suffers over-clearing or not. This has resulted in lost economic opportunities for many landowners in the South West who have had their long term farming plans halted by the ban. There are even some who are part way through "conditional purchase" arrangements who have been unable to complete their part of the clearing conditions and have therefore not got the farm size they had originally counted on. The result in some cases is a landowner with an unviable farm.

5) It is an unfortunate result of the current environment now existing that some landowner groups are actively exploring avenues whereby a class action can be taken against the Government of Western Australia as a consequnce of some of the planning initiatives in the South West, e.g,. the Peel Region Scheme.

Policy measures adopted to ensure cost of public good ……

We are aware of a number of mechanisms that have been used overseas to manage this process including:

special rates; purchase of development rights; agricultural zoning; restrictive deeds and covenants; farm based ordinances; subdivision and dwelling controls.

As will be seen from the previous comments some of these are listed in documents as *Mechanisms* for use in WA – the only thing missing is a belief that they have been proven to be effective in a significant number of cases.

In order to highlight the situation in the South West I submit the following data relating to the Shire of Augusta-Margaret River - 42% (99 800ha) of the Shire is State Forest and 8% (18815ha) is National Park; 48% (114 900ha) is rural land; 2% is urban and special rural.

It is our view that currently there is an unjustifiable and increasing philosophy of regulation being imposed on farming land in the south west that (as can be seen from the above statistics) is premature.

The simple solution in this instance is to look at the problems that exist within Australia and Western Australia on a more localised and regional basis and not overreact to what may be a localised problem.

Appropriate mechanisms to establish……

The principle contained in the following extract from " A FULL REPAIRING LEASE: Inquiry into Ecologically Sustainable Land Management " (ESLM) produced by the Industry Commission on the initiative of COAG and published in September 1997, should be of paramount importance to any government body in its decision making processes either legislative or policy making and thus be incorporated in any documents issued:-

" Recommendation 14.4.

The Commonwealth, States and Territories should use agreements for the management and conservation of biodiversity and sites of natural heritage significance on private landholdings. Conservation agreements should:

(a) be offered to landholders on a voluntary basis;

(b) be available for a range of time periods, terms and conditions to allow landholders to choose the combination which suits them best;

(c) be accompanied by stewardship payments to landholders for the costs of conservation management over the period of the agreement; and

(d) be accompanied by a once-off compensation payment for forgone economic opportunities where this is necessary to secure the landholder's agreement.

Local government authorities and appropriately constituted catchment management and regional natural resource management bodies, should be permitted to achieve their conservation priorities by entering conservation agreements with private landholders.

Covenanting – refer "Information on the Conservation Covenanting Program" brochure issued by National Trust of Australia (WA) – 30th April 1999 – *"Land is assessed for its conservation significance including cultural and natural values*" - Factors given consideration – included should be an assessment of the impact on surrounding/adjoining land. If there is environmental benefit to conserve the land then the value of that benefit should be reflected in the value of the land - this does not occur now. The entire method of valuation of land for conservation purposes should be reviewed by all Valuers General in all States and the Commonwealth.

The other relevant value issue relates to after the land is covenanted. As Environment Australia commented in the ESLM Report referred to above (page 344):

"….It is not enough to fence off the area and leave it to look after itself - the protection of remnant vegetation on private land requires significant effort on behalf of the landholder, in both time and money…"

The natural question arising out of this relevant issue is who pays for the ongoing management of the land under the conservation covenant? Is rate relief for that land sufficient and who compensates local government for that loss of rates income? In our part of the South West several documents have identified the Leeuwin-Naturaliste Ridge as *"…an area of State significance…"* surely this makes the costs of both covenanting and managing a State Government responsibility.

Recommendations, including potential legislative……..

The "costs" referred to in this term of reference are of extreme concern to landowners, including the costs of landowner/community groups (such as ours) forced to exist to participate in a process, often commenced by government, just to maintain the role of having a voice. There is a strong perception of inequity in the government funding granted to conservation groups who use the funds to erode the rights of private landowners, compared with the struggle by groups such as ours who are forced to go cap in hand to it's members for funding to cover costs forced upon it.

The future costs in terms of lost economic opportunities in the case of land placed into conservation zones in perpetuity is also an unknown. It is certainly inequitable to foist those costs on the landowner as currently occurs in the south west of WA.

The current launch of Earth Sanctuaries on the Australian Stock Exchange is at least one attempt to place a value on the conservational aspect of the enviroment - it remains to be seen to what extent the community will support this concept. The fact that this organisation has actually come up with a formula to place a value on perceived rare and/or endangered flora and/or fauna is also worthy of further examination by government.

I believe it is cognisant upon us all to acknowledge that the ownership of private land is an integral and fundamental benefit of living in a democracry - we should recognises this and celebrate it - the loss of this right is the first step towards the failure of our system and way of life and should be resisted by all members of the community and government.

The Australian Constitution S51(ss31) states:

" The acquisition of property on just terms from any State or person for any purpose in respect of which the Partliament has power to make laws:"

In 1997 the High Court of Australia referred to this section, during the Coronation Hill case, and the words *just terms* when it concluded that property rights could not be *"sterilised"* without fair compensation being paid. Justice Kirby said:

"It is one thing to expand a national park for the benefit of everyone who will enjoy it's facility. It is another to do so at an economic cost to the owners of valuable property interests…..whose rights are effectively confiscated to achieve that end….."

In closing we wish to congratulate the House of Representatives for recognising the need for this type of Inquiry and would like to confirm our interest and willingness to contribute in any further deliberations or processes that may serve to redress the current problem.

Kind Regards

Peter Wren
Chairman