



Serrated Tussock Working Party for NSW and ACT Incorporated

**Re-invigorating serrated tussock control**  
**Some suggestions for a coordinated approach**  
**Nov 2007**

Serrated Tussock Working Party for NSW and ACT Incorporated  
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## *Executive Summary*

Serrated tussock has the potential (if uncontrolled) to cause a complete loss of production in pastoral land and a monoculture in former native grasslands. It continues to spread across the Tablelands and Monaro of NSW. The Serrated Tussock Working Party for NSW and ACT Inc has identified weaknesses in the way that this pernicious weed is currently being fought. While recognising that it is the responsibility of every landholder to deal with the weed, the Working Party sees a need for the reinvigoration of the serrated tussock control programme by way of a co-ordinated approach involving the following:

1. A GIS mapping survey of the affected areas should be undertaken to facilitate a proper understanding of the spread of the weed and its more targeted management - and to provide baseline data against which to measure the success of control programmes.
2. Local Control Authorities must implement an effective and adequately resourced inspection-extension-monitoring and compliance regime (including annual inspections of priority areas). This will require substantial additional funding from the State. By comparison, Victoria (which is reducing the level of infestation in its state) is understood to spend at least five times the total amount being provided in NSW by the LCAs and the State Government.
3. Successful management and technical practices of Victoria and leading NSW LCAs should be reviewed and transferred to other LCAs.
4. The weed management plans of LCAs (which underpin the new Class IV Noxious Weed status of serrated tussock) should be reviewed, to ensure that they require continuous suppression and destruction of the weed on arable land and that they maintain the driving goal of stopping the seed rain.
5. LCAs should introduce a special rate to help fund additional control measures for invasive weeds like serrated tussock, which rate would not apply to those landholders who enter into enforceable weed management plans or whose land is effectively free of the weeds.
6. Subdivision approval should be made conditional on a prior weeds inspection, with any remedial work required by the LCA being enforced by section 18 notice or a weed management plan.
7. It must be made a legal requirement that contracts for sale disclose any outstanding section 18 notice or weed management plan.
8. State and Federal agencies must establish a fund of a substantial annual amount to support long term remedial work which will bring mother lode areas under control – and thus prevent the seed rain which constantly undermines the control efforts of the surrounding community. These core areas are on non-arable, steep and otherwise difficult terrain, where remedial work is well beyond the financial capability of the landholder.
9. Tax concessions by way of rebate should be made available for control work on the weed, including where the affected land is not income-producing.
10. The development of a NSW State Plan for serrated tussock control is needed.

The Working Party sees these recommendations as a package of interlocking measures which must be implemented if we are to make an impact on serrated tussock through a rejuvenated community approach.

## ***Introduction***

The Serrated Tussock Working Party for NSW and ACT Incorporated consists of eight concerned landholders drawn from across NSW and an ACT government representative. NSW DPI and The Hawkesbury Nepean CMA are also represented as observers. The Working Party was formed as a consequence of a well attended and widely representative meeting held in Goulburn in May 2006. That meeting clearly expressed its concern at the potential of serrated tussock to affect adversely the environment and agricultural production in NSW and endorsed the need to change the approach to tussock control. It was in part motivated by the fact that a government-funded serrated tussock control programme has been demonstrated to be effective in Victoria since 1995.

Serrated tussock is one of the twenty weeds of national significance. It is a grass which is unpalatable to stock and has been described by the Keith Turnbull Research Institute as “potentially causing greater reductions in carrying capacity than any other plant in Australia”. Serrated tussock has also been listed by NSW Department of Environment and Climate Change as a key threatening process to the biodiversity of native grasslands. These impacts flow from its prolific seeding (up to 140,000 seeds per mature plant), its very light seed which can be carried by wind for 20 km or more and its ability to survive in low rainfall or drought conditions. If uncontrolled, the weed can cause a complete loss of production in pastoral land and result in a monoculture of the weed in former native grasslands.

The Working Party believes that the serrated tussock control effort will succeed only if there is a cooperative approach by landholders, if the effort is part of wider whole of property and regional action on environmental and productivity issues and if a long-term perspective is routine, eg, by use of continuous improvement systems. The existing governmental regulatory and extension programme has failed to achieve this, or to convince all landholders that they have obligations to control the weed on their land - and, as a consequence, the weed has continued to spread. There are also many landholders who have been working diligently for years to control the weed on their land, only to have seen its re-infestation from untreated areas. During the drought conditions of the last five years the spread of tussock has reached a scale not seen before.

We had hoped to receive funding to facilitate an in-depth study of the strengths and weaknesses of the existing system to control serrated tussock as implemented in NSW. This study would have enabled us to produce detailed recommendations for a better approach. So far our funding applications<sup>1</sup> have been unsuccessful. Meanwhile, we have been developing our views on the basis of our own research. We have produced, and attach as Attachment A, a paper on what we see to be the failings of the existing system. Drawing on this paper and taking into account more successful approaches in the ACT and Victoria, we have developed below what we hope are constructive suggestions for a co-ordinated approach to the reinvigoration of serrated tussock control.

Two preliminary comments should be made about our suggestions. First, in view of the lack of publicly available information about how the control system is actually being implemented by local control authorities, our suggestions must be seen as a first draft only; we look forward to developing and refining them in discussion with interested parties. Secondly (and notwithstanding their draft nature), we see them as a package, which should not be ‘cherry-picked’ or implemented piecemeal. At a time when landholders seeking to make profits from their land are reeling under the pressures

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<sup>1</sup> Applications were made to the Noxious Weeds Advisory Committee in May 2006 and the Natural Resources Advisory Council in January 2007.

of climate change and a devastating and ongoing drought, there will be little enthusiasm among them for a new attack on this most pernicious weed, if only additional obligations are imposed. There will need to be a range of measures. An essential one is a well resourced integrated inspection-extension-monitoring-compliance programme. Also needed is a specific programme facilitating meaningful solutions for the core infestations; in these areas remedial action is beyond the financial resources of the relevant landholders and the surrounding community is suffering from the uncontrolled seed rain.

### *Our suggestions*

#### **1. Carry out GIS mapping survey over affected areas of the Tablelands and Monaro.**

**1.1 (Mapping)** Regional plans call for map-updating but this is not generally undertaken. Mapping is basic to understanding the problem, developing management strategies and measuring the success of control programmes. A common mapping system needs to be adopted by all local authorities, to aid oversight at a state level.

In many instances LCAs already have good data on serrated tussock infestations that simply needs to be digitised onto a GIS map. This could be facilitated by a series of inexpensive workshops with LCA Weed Officers in each of the affected regions. A model for these workshops would be those conducted in 2007 by Kelly Saunderson, the Western Sydney Regional Weed Committee Coordinator.

**1.2 (Use of aerial techniques?)** The Working Party does not have the knowledge and resources to quantify the likely cost of any possible aerial mapping. We note, however, that Wingecarribee Shire Council recently spent \$9,000 on nine hours flying by helicopter over about one third of the Shire. Serrated tussock was recorded against identified properties on a lap top computer during the flight, with requests for weed management plans made thereafter for all affected properties. The weeds officer's comment was that this was a much more efficient use of time than the alternative of individual property visits. Ground truthing and follow-up could also then be better targeted.

To enable capture of levels of infestation in greater detail, it may be necessary to adopt the practice of LCAs in Cooma-Monaro which for the last five years have used helicopters and a two man team of a spotter and a separate computer operator. It may be sensible to carry out mapping when the weed is most distinctive, e.g at flowering in December-January.

**1.3 (Information sharing)** The outcomes of better mapping need to be readily available to Catchment Management Authorities so that they can influence the CMAs' patterns of investment, for example in improved production systems or natural system regeneration.

#### **2. LCAs must implement an effective and adequately resourced inspection-extension-monitoring-compliance regime which in turn must receive meaningful additional State funding**

**2.1 (Inspection)** Weeds inspection needs to be frequent enough to ensure that there is an up-to-date identification of emerging serrated tussock infestations. Currently, many/most LCAs implement site inspections every 5-7 years - this may be due to current funding constraints but is quite unacceptable, in view of the ability of the weed to infest clean country within 5 years.

Annual inspections should be made in prioritised locations. The draft *Southern Tablelands & South Coast Noxious Plant Committee Regional Extension Plan & Strategy: Rural Residential Development and Bush Blocks* lists useful criteria to apply so as to identify sites for priority inspections annually and proposes a database linked to GIS with an expanded weeds officer force to implement such an inspection system. The draft's criteria to determine priority areas for inspection are attached as Attachment B. This addresses issues relating to rural lifestyle blocks but the listing for priority inspections also seems to have general application. The mapping specified in point 1 above could help with the establishment of initial priority areas.

**2.2 (Extension)** Sufficient numbers of Weed Officers need to be trained and able to provide detailed knowledgeable advice on appropriate integrated weed management at the potentially most fruitful stage of the process with landholders – the initial on-site face to face meeting. The experience of successful serrated tussock management programmes shows this extension is a key component. CMA staff similarly need to be well-informed about the relationship between serrated tussock (and other weed) problems and the broader programmes they are seeking to implement.

**2.3 (Monitoring and compliance)** Weed notices must be issued wherever there is infestation, unless the landholder is prepared to enter into an approved programme to control the weed within acceptable time frames. CMAs could be informed of these cases so that broader-based programmes contributing to serrated tussock control can be developed for the property, in concert with neighbours where possible. Where prescribed works are not completed within the agreed time frame, the LCA must be prepared to enter and carry out the works and seek to recover the cost from the landholder (subject to any alternative arrangement if funding is provided for dealing with core infestations). The LCA must be adequately funded to achieve these results.

**2.4 (Funding)** Currently the State is allocating quite limited resources to noxious weed control. Furthermore, those resources are currently going by way of priority to new and emerging weeds with possibly high invasiveness and impacts, at the expense of established and widespread weeds like serrated tussock that are known to be highly invasive and have wide impact. The most relevant criteria for fund allocation should be the destructive and invasive nature of the respective weeds. Although it is already a widespread weed compared to a new incursion, we believe serrated tussock is the most destructive and invasive weed possible. As such it is in a class of its own and must be treated accordingly as the very first order of priority. Its impacts are high and will continue to mount. It is forcing us to realise that our funding for this weed must increase substantially.

Available funds under the Commonwealth's Defeating the Weeds Menace (\$40 million) have already been allocated or spent. The sums made available to LCAs under the annual NSW Noxious Weeds Grants (about \$8 million) largely go to supporting previously approved projects; only about \$320,000 of the current grant are available for new projects - and have to cover all noxious weeds, not just serrated tussock. This low level of financial support contrasts sharply with the perception of priorities held by the agricultural community, which (according to ABS) ranks weeds as its number one natural resource management concern.

The low level of financial support in NSW also contrasts with the Victorian experience. A quick analysis in April 2006 of inspectorial-extension-monitoring-compliance staff for serrated tussock showed:

- NSW DPI spends approx. \$1.26m for >1million hectares of infestation = \$1.26/ha
- Victoria spends approx. \$1m for 80 000Ha of infestation = \$12.50/ha
- So on Victorian staff levels, NSW budget would be at least 1 million Ha times \$12.50/ha = \$12.5million or about 10 times the present NSW budget.

Even if one allows for the extra funding coming from rate-funded and financially constrained LCAs and assumes that this matches the NSW DPI contribution, the resources directly allocated to serrated tussock are in the order of one fifth of the amount being applied in Victoria. If we are going to have an effective inspectorial-extension-monitoring-compliance system, NSW should promptly match the Victorian effort.

There are several economic studies by NSW & Vic DPI showing the significant positive economic returns available from controlling serrated tussock - even if widespread.

### **3. Transfer of best currently available practices from Victorian DPI and between NSW LCAs**

**3.1 (Identification of best currently available practices)** The regulatory and extension services being provided by the Victorian DPI and by leading NSW LCAs in the serrated tussock infected belt should be reviewed, with the best of them identified and then transferred to all NSW LCAs.

**3.2 (An example)** This refers to both management and technical practices. There are some successful LCAs in our region which demonstrate the superior outcomes of a better funded and more committed extension and regulatory programme. An example is the recording activity of the Southern Slopes Noxious Plants Authority. When weeds officers inspect properties, they take photographs of infested areas on their digital cameras, record the GPS reference and feed the material into computer files for the relevant properties held by the Council. These records provide evidence of the problem for regulatory purposes, give essential base material of the level of infestation and provide a benchmark against which to measure control efforts of the landholder. Such a cost-effective recording system should be generally adopted by LCAs.

### **4. Ensure LCA weed management plans have appropriate enforcement provisions to support the class IV status of serrated tussock**

There seems to be a perception at large that the substitution of class IV status for the previously applied class III status has led to a relaxation of the level of control – which must not be the case. Continuous suppression and destruction of the weed should be required for all arable areas. The driving goal must be to stop the serrated tussock seed rain.

The new Class IV status was introduced to recognise that a strict enforcement of the ‘complete suppression and destruction’ requirement was impractical in the context of mother lode infestations on difficult terrain. It also allowed for the development of integrated weed management plans for long term control. Feedback we have suggests that this is poorly understood, not only by landholders but also by some LCA weed officers.

**5. LCAs to introduce a special rate to fund additional control measures for serrated tussock (and other specified noxious weeds), rebatable to landholders who enter into enforceable weed management plans or whose land is effectively free of seeding plants.**

**5.1 (The suggested rebatable scheme)** The Wyndham City Council in Victoria has used this technique. The weeds to be included could be determined by each LCA but should definitely include serrated tussock and any other noxious weeds with particularly invasive and high impact characteristics. A broad base model weed management plan which lists key specifics (e.g. deadline of mid August each year for serrated tussock control) should be developed; the model plan could be amended by LCAs and landholder to fit the particular circumstances of the landholding. The plan would not bind the land on transfer (because it may be particular to the vendor's broader land management plan, financial resources etc) but the purchaser would be made aware of it before committing to the purchase (see 7 below).

**5.2 (A model plan prepared)** A draft model plan has been prepared by the Working Party and is available for consideration by LCAs.

Since its preparation, we have learned that there may be constraints under the Local Government Act in LCAs granting any rebates on rates levied by them. A solution may be to impose the special rate only on landholders who do not enter into the weed management plans or to treat it as a charge for services provided under the Noxious Weeds Act. The constraints on the method of implementation (including confirming that the special rate will not breach any caps on the increase of general income of councils) should be reviewed by those expert in the ramifications of the Act.

**6. Require weeds inspection and (if infestation level dictates) issue section 18 notice or require execution of enforceable weed management plan (preferably supported by bonds), before approval of any subdivision or other boundary adjustment**

This actually happens in certain LCA areas – but not apparently in the majority of LCAs. It may be necessary to check that relevant LEPs make it clear that the condition will be imposed. The section 18 notice or weed management plan needs to cover the period between approval of the subdivision and the issue of a linen plan, which could be up to 5 years.

**7. Amend Schedule 4 of the Environmental Planning and Assessment Regulation to require disclosure in contract for sale of outstanding section 18 notice and any weed management plan applicable to the sale land.**

**7.1 (Inadequate disclosure under existing system)** Section 18 notices are discoverable by section 64 certificate, but the certificate is usually sought after exchange of contracts. It should be notifiable before exchange. Furthermore, there is an increasing trend of LCAs to substitute weed management plans agreed with the landholder, rather than enforce the Act via a section 18 notice. To recognise this, the vendor should be required to disclose any weed management plan before exchange of contracts and thus put the purchaser on notice of the type of measures which might apply if a section 18 notice is to be avoided.

**7.2 (Detailed discussion paper)** Attachment C is a paper which helps explain this recommendation.

**8. Financial incentives for infested non-arable, steep and otherwise difficult terrain**

**8.1 (The mother lode problem)** It is widely acknowledged that many landholders with mother lode infestations on land with steep slopes would face bankruptcy on a strict enforcement of the 'complete suppression and destruction' requirement. Yet the neighbours and wider community suffer from the seed rain flowing from these infestations. The landholders (and indirectly the affected community) need special assistance with the control of these contaminating infestations. That assistance will often be to ensure that the affected land is retired from pastoral or other agricultural activity, treated by herbicide and revegetated with competitive vegetation which will out-shade the tussock.

The draft Goulburn Mulwaree Council Intractable Serrated Tussock Management Plan (*Bush and Landcare Services, 2003*) deserves close examination for application in all affected LCA areas. The plan makes it clear that substantial financial assistance and extension service support will be required if these areas are to be brought under control.

**8.2 (Assistance needed)** Until the mapping exercise is carried out over the State, the extent of the mother lode infestations will not be confidently known and the cost of control will not be accurately quantifiable. However, the Working Party believes that the State and Federal Governments and their agencies should between them provide a substantial amount per year for these special situations, until these infestations are controlled and the surrounding community is protected from the destructive seed rain.

This governmental investment could leverage further investment in farm forestry and carbon credits. The remedial action required could take advantage of revegetation methods for serrated tussock control currently being trialled in the Snowy River area by NSW DPI. We believe that CMAs should be encouraged to assist revegetation efforts for serrated tussock control where significant biodiversity benefits could be demonstrated, such as in buffering or connecting existing high conservation value lands.

## **9. Other financial support for infested areas (including area in 8)**

**9.1 (Tax incentives)** Funds spent on control of serrated tussock should receive a tax concession, whether or not the land involved is income-earning. The tax concession should be by way of a tax rebate (rather than tax deductions), so that the tax benefit is meaningful and the same for all taxpayers, regardless of their level of income.

**9.2 (Subsidies?)** Many landholders have suggested that they should receive subsidies for glyphosate and/or fluproponate, where its use on serrated tussock is linked to long term control measures, (e.g. competitive pasture establishment or tree plantings). Such a scheme has been tried in the past in NSW and, we understand, applies in some LCA areas in Queensland. However, we thought that funds should be targeted and directed to where the most good can be achieved for the wider community, i.e. the funding called for under 2 and 8 above.

## **10. State/regional strategies – accountability**

In NSW, the national strategy for serrated tussock control is accepted as the State's strategy. This is supported by seven regional serrated tussock strategies. However, these regional strategies do not appear to be implemented and are not reported on or monitored; therefore,

they serve little purpose as a strategic response (although many of them appear eminently sensible and have the potential to be effective if properly resourced).

A State plan is needed. At the least, that plan should provide for:

- an integrated approach involving all relevant agencies, CMAs and landholder groups aimed at mobilization of landholders across regions and incorporation of serrated tussock (and other weed) issues in public investment planning, particularly by CMAs;
- oversight of the implementation of the various regional weed plans used to manage serrated tussock at a local level;
- accountability of each LCA to the State for performance against its individual regional plan, and
- accountability of the weeds inspection officers in respect of failure to act on legitimate complaints received from landholders.

Serrated Tussock Working Party for NSW and ACT Incorporated

2<sup>nd</sup> November 2007

## **Attachment A**

### **Weaknesses of the existing system for serrated tussock control**

Serrated tussock is a major threat to the environment and a significant cost to rural production. If we are serious about the protection of our natural resources, we need to reinvigorate the fight against this most invasive weed.

Serrated Tussock Working Party for NSW and ACT Inc., established after a large community forum in Goulburn in 2006 and with members from throughout the Tablelands and Monaro, sees the control programmes within the state as having failed to stop the spread of this weed since serrated tussock began to infest land in NSW. Time and the onset of drought have exacerbated the situation to the point where many landholders in the Tablelands and Monaro see the problem as insurmountable, especially under the current regime.

The Working Party sees two areas that are failing in NSW. These are:

- The failure of the current regulatory and extension process to convince all land managers to control the weed within their boundaries.
- The spread of the weed into steep, inhospitable, less fertile areas where control is difficult and unable to yield a positive economic result.

In respect of the regulatory and extension programme the Working Party has serious concerns relating to:

1. The apparent view of NSW DPI to prioritise funding for new and emerging weed problems as opposed to increasing effort on existing threats that are considered “out of control” by them.
2. Inadequate resourcing compared to the ACT and Victoria to achieve satisfactory outcomes. Spending in these jurisdictions on extension and regulatory oversight appears much greater when compared to NSW.
3. Despite the investment of many millions of dollars per annum on control measures by land managers in NSW there appears to be a continuing deterioration in respect of control on ground whilst, in Victoria, there is evidence of a reduction of the impact of the weed.
4. The confusion created by the ongoing banter between NSW Dept. of Primary Industries and Local Control Authorities as to whose responsibility it is to fund adequate regulatory control and extension strategies.
5. The apparent lack of a state management plan, instead, total reliance on the national plan supplemented by local and regional plans.
6. The lack of implementation of the regional and local control plans.
7. The apparent lack of accountability at the regional and local stage of the weed management programme.
8. The apparent lack of oversight of the implementation of weed management plans at a regional and local level
9. No ongoing universal mapping of serrated tussock infestations in NSW so there can be no performance measurement, let alone transparency, in the implementation of control strategies.
10. Land managers have no feeling of ownership at any stage of the weed control programme in respect of serrated tussock.
11. Land managers who are making a serious effort to control serrated tussock on their land feel their efforts are undermined by the lack of effective action on other holdings.
12. The control programme in NSW does not have the clear aim to arrest the serrated tussock seed rain in the summer months.

13. Purchasers of land remain ignorant of the impact of serrated tussock and are unprotected following the apparent failure to administer appropriate notices under the Act.
14. There is little use of the powers to enter to carry out control works in NSW where there is not adequate control measures taken by the land manager.
15. Extension material is poorly distributed and can be said to reach only those who want to receive it.
16. There appears to be little use of weed management plans on individual holdings as a means to achieve meaningful control outcomes and simplify regulatory procedure.
17. There is a lack of confidence amongst many land managers in the weed inspection service. Largely this is because of the lack of resourcing of weeds inspection and relates to frequency of inspection, follow up work and reinspection..
18. There is difficulty for land managers in making complaints either about other infestations or in respect of determinations by individual weeds inspectors in respect of issues within their own land. There is a feeling that the weeds inspector is “judge, jury and executioner”.

With regard to the spread of tussock onto difficult terrain, the Working Party sees the urgent need to strategically determine the sites where control measures such as revegetation need to be implemented. A wide ranging and carefully managed programme to harvest funding within appropriate environmental funding sources, other Government sources and various private industry sources as might have an interest in or responsibility for the environment is vital to overcome the serrated tussock infestation in many areas that are fundamentally mother lode infestations and cannot be dealt with in any way by the current managers of that land.

The large public good component to serrated tussock control from biodiversity gains, regional economic gains and public amenity convinces the Working Party of the urgent need to independently evaluate the current serrated tussock management in NSW in order to develop recommendations for Government that will reduce the impact of serrated tussock on the environment and on rural production. As has been devised in Victoria, the Working Party sees a cooperative management strategy underpinned by sound and readily accessible technical advice, adequate regulatory tools and overseen in the light of predetermined performance indicators is paramount to achieving success and turning around the continued spread of serrated tussock in NSW.

Serrated Tussock Working Party for NSW and ACT Inc.

## Attachment B

### Criteria for determining priority areas for inspection

From the draft *Southern Tablelands & South Coast Noxious Plant Committee Regional Extension Plan & Strategy: Rural Residential Development and Bush Blocks*

#### 3.1 Enforcement of the Noxious Weeds Act 1993

Weed inspections under *Noxious Weeds Act 1993 (NW Act)*, have been a critical component of weed management in the Region. It is recommended that enforcement of the NW Act remains one of the more powerful tools to reduce the impacts of rural land subdivision on noxious weed management. However, a more strategic (or prioritised) response, combining field observations and prioritising recently subdivided rural-lifestyle lands is proposed.

All properties within each LCA should be inspected every 5 – 7 years minimum. Priority sites in the LGA are also to be reinspected and/or inspected annually. Local Weed Officers, at the time of the inspection, are to determine whether the property is a priority site based on the following prioritising criteria:

1. There are absentee landholders and new 'rural lifestyle' landowners that need regulation and/or extension and/or support.
2. The area of land has been recently subdivided for rural lifestyle purposes.
3. Properties where a *Section 18 Notice* has been issued.
4. To assist landholders undertaking high-quality weed control measures but who are surrounded by properties where inadequate control is being undertaken. Annual inspections are to occur on adjoining properties.
5. Properties where landowners and/or occupiers have a history of insufficient control and who use questionable land management practices, which may exacerbate weed problems.
6. Properties where there has been an increase in weed infestation levels.
7. Where there are new weed infestations in an area (neighbouring properties also to be inspected). Annual inspections ensure swift action.
8. Any areas where rare or isolated infestations are recorded. Annual inspections in these areas ensure that any isolated infestations are prioritised for control to prevent the spread of the weed.
9. Infestations in otherwise clean catchments. Annual inspections in these areas recognise the importance of keeping catchments weed free.

An Access database, preferably linked to a Geographic Information System, could be developed that would not only list properties to be inspected in the year (or other designated timeframe), it could also automatically list properties requiring reinspection or annual inspections. To achieve this, the above criteria would be used as a trigger allowing the database to generate a list of priority properties (based on previous inspections) to be also inspected in that particular year (or season or month).

It is expected that the implementation of this process may require additional funding to develop the database and to undertake the possible increased numbers of inspections. This requirement will vary from Council to Council and the need for extra inspectors may not be known until the above inspection regime is implemented. However, it is recommended that additional funding is sought for the development of the database and where required, additional weed officers.

Until additional funding is available, inspections are to be undertaken as per existing local procedures. This may result in a less strategic approach and will not target rural land subdivision at the most opportune time (*i.e.* early stages).

Inspections are also to be undertaken as soon as possible after a rural land subdivision development application is lodged. Section 18 notices are to be applied where necessary.

Many LCAs currently undertake inspections of land for sale on an ad-hoc basis. Inspecting all land for sale may be an effective strategy, as it will ensure information obtained during Section 64 searches is current. However, the limited resourcing levels of most LCAs may preclude this from becoming a region-wide strategy. This action is to be undertaken at the discretion of local weed officers, but will need to be applied consistently to avoid perceived biases and victimisation. A council based policy should also be developed prior to this action.

#### **Summary of recommended actions – Regulation:**

- Funding is to be sought for the development of Council databases to assist in the prioritisation of inspections based on criteria listed in Section 3.1.
- Implement strategic inspection regime based upon the database and the criteria listed in Section 3.1. If required, funding is to be sought for additional weed inspectors to facilitate this.
- Where considered appropriate by LCAs, LCAs are to develop a council-approved policy regarding inspections of land for sale. LCAs are to undertake inspections as per policy.
- Inspections are to be undertaken on all land subjected to a rural land subdivision application.

## **Attachment C**

### **Serrated tussock: Adequate disclosure of infestation at time of sale?**

#### **1. Rationale for increased level of disclosure**

At present, lawyers and conveyancers acting for purchasers of rural properties could seek a certificate under section 64 of the Noxious Weeds Act (*Act*). This certificate reveals whether there are weed control notices in force affecting the land (under section 18 of the Act) and whether there are related expenses due to the control authority and any charges over the land. If all land infested with serrated tussock were the subject of section 18 notices, there would be no need for any additional disclosure.

It appears that the level and regularity of property inspections and action (including by issue of section 18 notices) by local control authorities (*LCAs*) vary widely, reflecting an underlying attitude in the LCA ranging from diligent to “it’s beyond control/too difficult an issue”. Unless and until a uniform and energetic approach is adopted, the question is whether there should be better disclosure of infestations before potential purchasers commit to purchases?

Defenders of the status quo resort to the doctrine of “caveat emptor” or “buyer beware”, *i.e.* let the purchaser make its own enquiries. This assumes that the purchaser is aware that a problem may exist. Furthermore, the doctrine is nothing more than a general principle and there are numerous examples where the doctrine does not apply. A contract for sale prepared for the vendor makes many disclosures of matters affecting the land, *e.g.* a planning certificate under section 149(2) of the Environmental Planning and Assessment Act 1979 is required to be attached which discloses, apart from zoning-type information, a variety of matters such as affectations by mine subsidence, road

widening and contamination. At general law, there is a trend for increased protection of consumers (see recent developments in the Trade Practices Act).

There are many stories of purchasers acquiring infested properties, with no idea of the obligations they are assuming under the Act. The Serrated Tussock Managers' Factpack (page 17) refers to the problems of new residents in subdivisions with no experience in weed management, who feel that they "have been 'cheated' because they were not informed of the problem before purchasing the land".

But the clinching argument against the "caveat emptor" enthusiasts is that, when it comes to serrated tussock, the issue is no longer one merely between the vendor and the purchaser. The surrounding neighbours and community who are being infected by the seed rain have a direct interest in seeing that a purchaser of infested land is aware of a landholder's duties and responsibilities to control this pernicious weed.

Furthermore, if a prospective vendor knew that disclosure of infestation would be required before the purchaser is committed, there would an additional incentive put on the vendor to comply with his/her statutory obligations and take appropriate steps to control the infestation.

## **2. Discussion**

### **2.1 Inadequacy of section 64 disclosure**

It is not obligatory or usual for the vendor to obtain and attach a section 64 notice to the contract, nor apparently do purchasers usually seek such a notice before exchange of contracts. After exchange, a certificate under section 603 of the Local Government Act is routinely sought by a purchaser's lawyer. This discloses amounts due or payable to council, "by way of rates, charges or otherwise, in respect of a parcel of land" and apparently often alerts the lawyer to any notices under section 18 (which could lead to a charge if not satisfied) (Tyler 2007). If such disclosure is made, the lawyer may then seek a section 64 notice. The contract for sale makes it clear that any notice under section 18 and any charge over the property, in either case issued or created before exchange, remains the responsibility of the vendor.

The first problem here is that the purchaser is relying on a disclosure of an outstanding notice by council under the section 603 certificate, which is not strictly called for by the wording of the section (which only refers to amounts due or payable – not the existence of a section 18 notice).

The next problem is the limited disclosure required by section 64. This problem is recognised in the fliers routinely sent out by Upper Macquarie County Council with section 64 and 603 certificates (see Attachments "1" and "2"). Note in particular the words highlighted on Attachment "1" which refer to the County Council's preferred approach (in lieu of immediate issue of section 18 notices) of encouraging occupiers with noxious weed problems to enter into weed management plans with Council for their control. Unless the vendor voluntarily discloses such a plan, the purchaser has no enforceable right to discover its existence. This prompts the County Council to recommend that the purchaser obtain the vendor's consent to the council disclosing what it knows about the property, including the details of any weed management plan – and recommend that the purchaser obtain an inspection and written report on the noxious weed status of the land. These are highly sensible recommendations. However, they are usually made to the purchaser in response to section 64 or section 603 certificate requests, which in turn are almost invariably made after exchange of contracts. The purchaser is by then bound to complete the purchase.

Even if the vendor authorises the LCA to disclose to the purchaser what it knows about the property, the information on file with respect to noxious weeds is probably not up-to-date. Of the four LCAs consulted during the preparation of this paper, the only one which maintains timely inspections of all properties in its area is The Southern Slopes Noxious Plants County Council. This LCA inspects each property at least every two years and perhaps twice a year for properties with known serrated tussock infestations (Minehan 2007). In contrast, funding and other resource limitations mean that The Upper Macquarie County Council, Wingecarribee Shire Council and Bega Shire Council work on inspections in time frames varying from four to seven years (Jennison 2007, Anderson 2007 and Herbert 2007). Given that clean properties can become heavily infested within even four years, this seems totally inadequate.

## **2.2 Previous attempt to require greater disclosure by LCAs**

In 2003, a landcare co-ordinator (through lawyers) wrote to relevant NSW Ministers seeking the inclusion by LCAs of information in the compulsory planning certificate (section 149(2)) as to whether the land may be affected by any noxious weeds (as defined by the Act). The Ministers rejected the application. A copy of the letter (with the applicant's name deleted) is Attachment "3". The reason for rejection appears to be that the Ministers considered as adequate the existing provisions for notifying the presence or risk of noxious weeds.

The first of these provisions referred to by the Ministers was the certificate under section 64, the deficiencies of which have been discussed above. The next provision was a disclosure required in the section 149(2) certificate pursuant to Schedule 4(7) of the Environmental Planning and Assessment Regulation 2000, as to whether the land is affected by a policy of council or other public authority that "restricts the development of the land because of the likelihood of land slip, bushfire, flooding, tidal inundation, subsidence, acid sulphate soils or any other risk." Although this should be checked with a property lawyer, there must be an argument open that the events listed (as likely) in the quoted words refer to a risk for the development of the land by the erection of a dwelling or other structure and that the final words "or any other risk" would be read down accordingly - and thus not extend to disclosure of a policy on noxious weeds. In any event, it would be interesting to note if any council or public authority has developed a hazard restriction policy on noxious weeds which would need to be disclosed under this provision.

Perhaps the most promising of the provisions referred to in the Ministers' letter is the certificate which can be procured by a purchaser under section 149(5).

## **2.3 Section 149(5) of the Environmental Planning and Assessment Act 1979**

Section 149(5) and the key words of section 149(6) are:

"(5) A council may, in a planning certificate, include advice on such relevant matters affecting the land of which it may be aware.

(6) A council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5)..."

The Ministers suggested that, under section 149(5), council may be able to refer to any information it has on the presence of noxious weeds on lands in its area.

The potential for such disclosure was considered in the Regional Extension Plan (c. 2003). This is a plan (developed as a supplement to the Regional Weed Strategy of the Southern Tablelands &

South Coast Noxious Plants Committee) which looks at the special problems posed by rural residential, rural lifestyle and bush block development – but is a plan which seems to have broader application. Eight pages from this document are Attachment “4”. (Whilst this plan was developed around 2003, it appears that it has not yet been considered and adopted by the above-mentioned Noxious Plants Committee (Herbert 2007).)

The third paragraph of section 2.2 of that draft plan concludes that there may be legal dangers for councils in revealing information on noxious weeds under that provision. However, the references for the legal advice given to councils to support that conclusion are not readily available. The plan makes no reference to the legal protection offered to councils under section 149(6), quoted above. However, as the plan also points out, the information available to council for disclosure may not be up-to-date.

So how should a prospective purchaser proceed to obtain a proper understanding of the noxious weeds status of the property?

### **Purchaser enquiry prior to exchange.**

As recommended by the fliers suggested by The Upper Macquarie County Council and the Regional Extension Plan (c. 2003), a site inspection by an experienced weed control operator (but prior to exchange of contracts) is the prudent course to take. To what extent this takes place as a routine matter is unknown, but comments received in the preparation of this paper suggest that this approach is uncommon.

Furthermore, where the property is being sold by auction and there is no indication that a sale to a particular potential purchaser is assured, the expense of an independent site inspection, particularly on a large property, may be discouraging. Again, a site inspection will not reveal what may have been negotiated between council and the vendor over many years related to noxious weed control. Indeed, there are instances where councils have not enforced the Act against a vendor for reasons related to his/her age etc. but where, on notification of a transfer to the incoming purchaser, a council inspection occurred and a section 18 notice was promptly served on the purchaser.

### **Subdivisions**

The Regional Extension Plan (c. 2003) recommends that, on receipt of a development application for the subdivision of rural land “and at the discretion of the LCA”, a weed inspection be carried out. The presence of “priority weeds” may lead to a weed management plan or a section 18 notice. The DA consent may be made conditional on satisfying any or all of the conditions listed 1 to 4 in 2.1.2. of Attachment 4, including the lodgement of a bond for the amount that it will cost to undertake initial weed control.

It is not known whether these recommendations have been adopted by the councils in the area covered by the draft plan, but feedback suggests that at least relevant officers of three councils were unaware of the plan’s recommendations and that at least two councils did not require weed inspections as a condition of subdivision consent. In contrast, the Upper Macquarie County Council and the Southern Slopes Noxious Plants County Council require their constituent councils to delay subdivision consent until a site weed inspection has occurred and any remedial action determined.

## **2.6 Practical aspects of an increased disclosure regime**

One form of disclosure by the vendor could involve a detailed report attached to the contract for sale which revealed:

- Noxious weed levels on the property as a percentage of ground cover following normal germination times;
- Any weed management plans entered into by the vendor with the LCA; and
- The information required in a section 64 certificate.

(It is assumed that any change to the existing regime would need to refer to the proclaimed noxious weeds of the area in which the property is situated – and not merely to serrated tussock).

The preparation of an accurate and comprehensive report on weed levels may well be beyond the skills of the average landholder. (However, it is noted that legislation to protect native vegetation provides a precedent for calculating levels of ground cover and assumes that landholders can do the necessary calculations.) The disclosure report would need to be accurate, to avoid claims from the purchaser for misdescription and to give contractual protection to the vendor; the standard contract provides that no claim for compensation or right of rescission would arise from anything disclosed in an attached report. Therefore, a report from an experienced weed control operator independent of the vendor seems preferable. (For the reasons given in section 2.3 of the Regional Extension Plan (c. 2003), it may be impractical to call on LCAs to produce the report.) The report may involve significant expense for a vendor and may be of limited benefit to a purchaser with experience and knowledge of weeds who has inspected the property prior to exchange. Does this suggest that the requirement for such a report in all contracts for sale is too draconian?

An alternative approach could be to dispense with the production of weed level report, where a weed management plan was in place and was disclosed to the potential purchaser.

Jennison (2007) recommended against making weed management plans compulsorily disclosable. Initially, Upper Macquarie County Council had proposed to make all occupiers enter into a weed management plan for their noxious weeds. The local backlash to this proposal was so intense that the county council has now made such plans voluntary (presumably unless required by council as a condition of development consent for subdivision). The argument is that disclosure of a weed management plan entered into voluntarily penalises the person doing the right thing, as opposed to the person with no management plan. Furthermore, the plan is essentially designed by the potential vendor and a different plan devised by the purchaser may equally satisfy the occupier's obligations under the Act.

As for the requirement that the vendor disclose the section 64 certificate, the counter-argument is that the purchaser is duly protected (to the limited extent of the disclosure – see above) by making his/her own application for the certificate.

On balance, a disclosure regime which makes use of information at LCA level may be preferable and easier to implement than one which calls for new obligations to be imposed on a vendor. For example, how is a requirement for a weed level report from a vendor to be made compulsory, except by legislative intervention? Certainly, the standard contract for sale could be amended (assuming its authors agreed) to require the inclusion of weed level report, but what is to stop the vendor's solicitor from deleting the provision (as other sections are routinely deleted)? It may be better to work within the framework of the existing legislation, to the extent possible.

### **3 Recommendations**

#### **3.1 In context of the Working Party's overall recommendation report**

The recommendations suggested below should be viewed as part of, and interdependent on, the broad range of recommendations to be included in the overall report to be prepared by the Working Party. Thus, for example, it is assumed that this report will make recommendations which will lead to more frequent weed inspections by LCAs of each land holding. The overall report will no doubt consider alternative ways to inspect properties, for example by low-flying helicopter sweeps over sizeable areas in the December-January flowering period, with digital camera recording for linkage to specific properties. Whatever the method adopted for better surveying, a system which allows for weed inspections of properties up to 7 years apart should not be allowed to continue.

Section 3.1 of the Regional Extension Plan (*c.* 2003) makes a useful suggestion for the development of a database which identifies priority properties requiring annual inspections. The system would be linked to a GIS and would also flag properties requiring reinspections.

At present, there is much force in the argument that information held on file by the LCA is not likely to be current and that an improved disclosure system based on LCA disclosure will achieve little. If the weed information which the relevant LCA holds on individual properties is reasonably up-to-date, then such a disclosure system should be more meaningful.

As discussed above, the broad approach of many LCAs to noxious weed control is first to seek the co-operation of the landholder (with encouragement of weed management plans for noxious weed problems) and only to fall back on the Act and section 18 notices if the voluntary method fails. However, the existing system for disclosure is only geared to identification of these enforcement steps. Whilst there is much to support the argument above that a potential vendor should not be discouraged from entering into a weed management plan by knowledge that its terms will be available to potential purchasers, it is suggested that the purchaser has a greater interest in being properly informed of the noxious weed problems he/she is facing – and the neighbours and surrounding community have a similar interest.

As landholders, we are all potential vendors and no doubt reluctant to add to the difficulties in achieving a sale. However, if we are serious about making a difference in the fight against serrated tussock, then we must all be prepared to move out of our comfort zones.

#### **3.2 Recommendations for consideration**

It is recommended that:

- (a) Legal advice should be obtained from an appropriate source as to whether the concerns expressed above about potential exposure of LCAs (for information disclosed on noxious weeds in response to a section 149(5) enquiry) are soundly based, particularly having regard to the protection currently offered to LCAs by section 149(6). (This should also involve a review of the legal opinions described in section 2.2 of the Regional Extension Plan, copies of which were unavailable to the writer).
- (b) If there are no legitimate exposures, then (subject to (d) below) LCAs should make disclosure in the section 149(5) certificate of the information on file or otherwise available to the LCA with respect to the noxious weeds on the property. Property lawyers and conveyancers should be instructed that it is good conveyancing practice to obtain a section 149(5) certificate prior to exchange of contracts.

- (c) If there are legitimate exposures for LCAs, Schedule 4 of the Environmental Planning and Assessment Regulation should be amended to require the relevant LCA to disclose in the compulsory section 149(2) certificate the information on file or otherwise available to the LCA with respect to noxious weeds on the property. If it is thought necessary, this could be limited to information acquired in the last twelve months or otherwise still applicable (e.g. a weed management plan entered into two years earlier but still being applied).
- (d) Frankly, provided that there is the political will to amend Schedule 4, it would be preferable to adopt the approach in (c) rather than work through section 149(5) as suggested in (b). This would mean that the vendor would be putting a potential purchaser on notice (via the compulsory section 149(2) certificate) of the noxious weeds situation (to the extent known by the LCA) in, and before the purchaser signs, the contract for sale. The invidious position of a potential purchaser in an auction situation (as referred to above) would be overcome.
- (e) The approach of the two county councils to subdivision described above (i.e. withholding DA consent until a weeds' inspection has been made and remedial action agreed) should be adopted by all LCAs.
- (f) To improve the LCA's knowledge of noxious weed infestations on individual properties, the recommendations in Regional Extension Plan (c. 2003) for the development of a data base for identifying properties requiring annual inspections should be adopted by all LCAs.
- (g) The proposed survey of LCAs by the Working Party should seek clarification of the extra resources required to implement these recommendations. (It is assumed that inspection fees charged by LCAs should recover their direct costs.)

## References

- Anderson, E. 2007, (Environmental Manager, Wingecarribee Shire Council) pers. comm., 19 Mar.
- Herbert, A. 2007, (Weeds Officer, Bega Shire Council) pers. comm., 21 Mar.
- Jennison, R. 2007, (General Manager, Upper Macquarie County Council) pers. comm., 13 Mar.
- Minehan, D. 2007, (General Manager, Southern Slopes Noxious Plants County Council) pers. comm., 19 Feb
- Regional Extension Plan and Strategy: Rural Residential Development and Bush Blocks (c. 2003), a paper prepared for the Southern Tablelands & South Coast Noxious Plants Committee.
- Tyler, D., 2007, (partner, J.C. Walsh and Sons, Goulburn), pers. comm., 23 Mar.

The Serrated Tussock Working Party for NSW and ACT Inc.  
April 2007

# UPPER MACQUARIE COUNTY COUNCIL

The noxious weeds control authority for the areas of Bathurst Regional Council, Blayney and Oberon Shire Councils and the Lithgow City Council



## ARE YOU WISE TO THE DEFICIENCIES OF SECTION 64 CERTIFICATES?

### IMPORTANT INFORMATION FOR SOLICITORS, CONVEYANCERS AND PURCHASERS .

Enclosed is a Certificate under Section 64 of the *Noxious Weeds Act 1993* for which you applied.

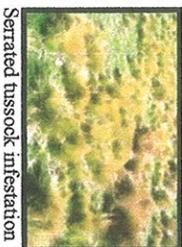
A Section 64 Certificate is required by the Act to contain information about the following matters –

- Whether there are any weed control notices that affect the land;
  - Any amounts payable to the County Council in connection with any weed control notices or any action to control noxious weeds on the land; and
  - Whether the land is subject to any charge arising out of the control of noxious weeds on the land.
- A Section 64 Certificate provides protection in respect of the matters which it is required to contain.

**You need to be aware that a Section 64 Certificate is not required to contain direct advice about whether or not there are noxious weeds on land.**

In fact, it cannot do so!

The Council is prevented by privacy laws from disclosing to a purchaser, without the consent of the owner, any information other than that set out in Section 64 of the Act. This is not a matter within the Council's control.



Serrated tussock infestation

If the certificate does not disclose that there are outstanding weed control notices you will not know from the Section 64 Certificate if there are noxious weeds on the land.

Most Weed Control Authorities do not issue weed control notices as a matter of course: more effective control of noxious weeds is achieved in other ways.

The Upper Macquarie County Council issues very few weed control notices.



Gorse

The Council generally relies on Property Weed Management Plans for the control of noxious weeds. These plans are prepared by the occupier of the land in cooperation with the Council. If there are noxious weeds on land there is a legal requirement that there be an approved PWMMP for the land. The law is a little different in urban areas.

**Don't underestimate the importance of noxious weeds for land purchasers!**

Weeds cost Australia \$3.9 billion per year.

Noxious weeds can be a direct cost to landholders in a number of ways.

- An inflated purchase price that does not take account of noxious weed infestations.
- A reduced price on resale if noxious weed infestations are not controlled.
- Cost of control measures.

Production losses if the land is used for primary production.

It does not matter whether land is rural or urban: the law requires that noxious weeds be controlled and there are severe penalties if they are not.

**So, what should I do to protect my client?**

**Firstly**, get the owner of the land to consent, in writing, to the Council disclosing whatever information it has about noxious weeds on the land. This will include whether or not there is an approved PWMMP for the land and whether the program of work contained in the plan has been complied with. As you already have a Section 64 Certificate the Council will provide this additional information at a minimal cost of \$71.50.

**Secondly**, obtain an inspection and written report on the noxious weed status of the land. You should have a competent person do the inspection and prepare the report.

The Council provides this service but if you want us to do it you will need the written consent of the owner. As you have already paid for a Section 64 Certificate (\$50) and if you also request a disclosure certificate (\$71.50) the cost of an inspection and report in towns and villages will be a fixed rate of \$49.50. If the land is outside a town or village contact us for a quote before applying.

**If you require any further advice or assistance please contact us: we are here to help.**



Large leaf privet

# UPPER MACQUARIE COUNTY COUNCIL

The noxious weeds control authority for the areas of Bathurst Regional Council, Blayney and Oberon Shire Councils and the Lithgow City Council

## SO, YOU'RE BUYING SOME LAND?

### Important information for purchasers (and Solicitors or Conveyancers)

Did you know that weeds cost Australia \$3.9 billion per year?

If you are buying land noxious weeds could also cost you. They could cost a lot!

Noxious weeds can be a direct cost to landholders in a number of ways.

- An inflated purchase price that does not take account of noxious weed infestations.
- A reduced price on resale if noxious weed infestations are not controlled.
- Cost of control measures.
- Production losses if the land is used for primary production.

It does not matter if your land is rural land that you intend to use for primary production; a "life style" block; or a block in a town or village intended for residential or other use. The law requires that noxious weeds be controlled and there are severe penalties if they are not.



Serrated tussock infestation

The cost of removing a privet infestation on a residential block in town may be a lot less than controlling a serrated tussock infestation on grazing land, but it may still be a significant financial burden for the landholder.

### Don't underestimate the importance of noxious weeds when purchasing land!



Broad leaf privet

Take proper steps to protect yourself, and your client.

Upper Macquarie County Council 2006  
Blackberry and privet photographs from  
Weeds of Blue Mountains Bushland website

### What should I do?

Privacy laws apply to the County Council for a Certificate under Section 64 of the Noxious Weeds Act 1993.

A Section 64 Certificate contains information about the matters set out in Section 64 of the Act.

The cost of the Section 64 Certificate is \$30, plus an additional \$55 if urgency is requested.

**Caution:** The information that you get on a Section 64 Certificate is not enough. As a purchaser you need to know the noxious weed status of the land and you cannot get this from the certificate!

The Council is prevented by privacy laws from disclosing to you, as a purchaser, without the consent of the owner, any information other than that set out in Section 64 of the Act. This is not a matter within the Council's control.

### So, how can I protect myself?

Secondly, get the owner of the land to consent in writing, to the Council disclosing to you whatever information it has about noxious weeds on the land. The Council will provide this information at a minimal cost of \$71.50 provided that a Section 64 Certificate has been obtained, or is applied for at the same time.

Thirdly, obtain an inspection and written report on the noxious weed status of the land. You may have any competent person do the inspection and prepare the report.

The Upper Macquarie County Council provides this service but if you want us to do it, and if you are not the owner of the land, you will need the written consent of the owner. If you have already paid for a Section 64 Certificate (\$30) and a disclosure certificate (\$71.50) the cost of an inspection and report in towns and villages will be a fixed rate of \$49.50 if the land is outside a town or village contact us for a quote before applying.

If you require any further advice or assistance, please contact us on the following details:  
 Telephone 02 63631871  
 Fax 02 63631872



NEW SOUTH WALES

MINISTER FOR INFRASTRUCTURE AND PLANNING  
 MINISTER FOR NATURAL RESOURCES

D03/6124  
 M03/04091M  
 A03/00165D

SYDNEY NSW 2000

2 FEB 2004

Dear Ms . . .

**Planning certificates – notation for noxious weeds**

I refer to your correspondence requesting that Schedule 4 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* be amended to require planning certificates to record whether or not the subject land may be affected by certain types of noxious weeds within the meaning of the *Noxious Weeds Act 1993 (NW Act)*. The delay in this reply is regretted.

I am also replying on behalf of the Hon Diane Beamer MP, Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), to whom a copy of your letter was referred.

The issue you raise appears to be partly addressed by the *NW Act*. Under section 64 of that Act any person may apply to the 'local control authority' (local Council or county council depending on the circumstances), for a certificate outlining whether there are any weed control notices affecting particular land. The S. 64 certificate must include information on any outstanding moneys owed to the relevant control authority with respect to weed control notices and the actual control of noxious weeds.

The present *EP&A Regulation* requirements for section 149(2) planning certificates are potentially helpful regarding the matter you raise. A provision in Schedule 4 (attached) of that Regulation requires each Council to record in its planning certificates whether or not the subject land is affected by a policy adopted by the Council, or adopted by any other public authority and notified to the Council for reference in planning certificates, that restricts the development of the land due to the likelihood of any risk. Such a policy could be adopted regarding the likelihood of the presence of noxious weeds, perhaps by category.

Vegetation mapping of individual land parcels may present some resource and logistical difficulties. However, you could enquire with NSW Agriculture and individual Councils about whether they have, or are contemplating preparing, any maps of the distribution of noxious weeds and whether they have adopted any weed control policies in respect of those types of weeds.

In the absence of an adopted hazard risk policy, a Council may still have information on the presence or risk of presence of noxious weeds on lands in its area. In that case the Council may be able to refer to that information in a planning certificate via advice under section 149(5) of the Environmental Planning and Assessment Act 1979. Prospective purchasers could also make separate, additional enquiries with the Council/'local control authority' about whether noxious weeds may be present.

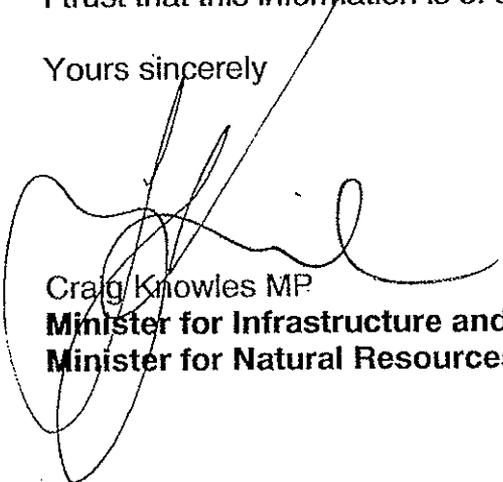
I understand that some Councils issue 'new resident kits' upon notification of the transfer of title for rural land. Those kits alert new landowners to their rights and responsibilities on the land. It may be possible to make prospective purchasers more aware of these kits. Enquiries in this regard could be made directly to Councils and NSW Agriculture.

Given the above existing provisions for notifying the presence or risk of noxious weeds, I do not consider that an additional item in respect of this issue needs to be incorporated in section 149(2) planning certificates at this time.

For more information regarding the identification and control of noxious weeds please contact NSW Agriculture or visit their website ([www.agric.nsw.gov.au](http://www.agric.nsw.gov.au)).

I trust that this information is of assistance.

Yours sincerely



Craig Knowles MP  
**Minister for Infrastructure and Planning**  
**Minister for Natural Resources**

## Attachment 4

From the draft *Southern Tablelands & South Coast Noxious Plant Committee Regional Extension Plan & Strategy: Rural Residential Development and Bush Blocks (2003)*

**2.1.1 Dept. Primary Industries' recommended role**

Dept. Primary Industries currently supports agricultural industries by encouraging Councils to promote sustainable agricultural land development. Dept. Primary Industries' primary role in land use planning and farm subdivision has been the provision of advice to local and state government (Grosskopf 2003). This is usually only in response to requests from local government (Grosskopf 2003). In advising a council of the agricultural impacts of a proposal, Dept. Primary Industries currently takes into consideration the impact on the long-term sustainability of agriculture in the locality, the potential for conflict between residential and farming neighbours, and the impact on land and water resources used for agriculture (Grosskopf 2003 (b)). Weeds also have a great impact on all three of these factors and should be a major consideration.

Although responsibility for developing LESs, LEPs, DCPs, and determining development applications ultimately rests with the local council, it is recommended that Dept. Primary Industries take a more pro-active role in advising councils on the agricultural impacts of strategic planning decisions. This advisory role is to include considerations of noxious weed management.

**2.1.2 Local Control Authorities' (LCA) recommended role**

Council weed and environment officers potentially have a major role in reducing the impacts of rural lifestyle development on noxious weed management at the DCP level and during development approval stage.

**Development approval stage**

Upon receipt of a development application (DA) for the subdivision of rural land and at the discretion of the LCA, an inspection of the property concerned is recommended prior to approval. In most cases, especially if priority weeds are present, there will usually be a management plan/program or agreement over the land with the landowner. Provided this weed program is implemented through the stages of subdivision and sale of the land, the 'best' response for the Weeds Officer may be to continue the normal inspection and visit the new owner when the land is sold. The initial visit should be a friendly and informative visit. However, if the process of subdivision is, or is considered likely to be disruptive to the weed control program, a weed control notice is recommended.

Recommendations to the Council's DA assessment officer should also be provided as conditions of development consent. These conditions may include;

1. Proponent to control noxious weeds and/or provide weed management Plan prior to operational approval.
2. Proponent to control noxious weeds and/or provide Weed Management Plan prior to release of subdivision linen plan.
3. Implementation of Weed Management Plan tied to individual lots by Section 88b (Conveyancing Act) instruments.
4. Proponent to provide a bond to the council for the amount that it will cost to undertake initial weed control.

Successful implementation of these actions will result in weed control and/or weed management planning undertaken prior to subdivision approval. The strategies will also link well with the buyer beware education strategies as Section 18 weed notices should appear on Section 64 (*Noxious Weeds Act 1993*) Certificates (see Section 2.3 p.9).

It is essential that weed management plans prepared by proponents as part of the conditions of approval, are endorsed by the relevant LCA.

### **Development Control Plans (DCPs)**

DCPs can be used to control or better consider the impacts of subdivision in rural areas prior to the development application stage. A number of DCPs covering rural lifestyle areas in the Region ensure consideration of building siting, disposal of wastes, visual impacts of services, water supply, fencing standards, landscaping, flora, fauna and habitat, drainage, fire protection and access roads, and soil erosion. Assessments, management plans and drainage and bushfire protection construction works are usually required prior to subdivision approval. Existing DCPs covering rural lands may be difficult to amend, however, it is recommended that all new DCPs in the Region, incorporate a consideration of noxious weed management.

DCPs should be written in such away that development applications affecting these areas must contain a detailed assessment of the potential impact of the proposed development on noxious weed management.

#### **Summary of recommended actions: Planning**

- LCAs to develop close ties with respective development sections of Council to enable effective communication concerning planning instruments and subdivision development applications.
- New DCPs are to consider the impact of development on noxious weed management.
- LCAs are to undertake inspections of all rural lands subject to rural subdivision development approval. Section 18 notices to be issued where appropriate.
- Procedures are to be developed to ensure noxious weed management is to be undertaken by the proponent of the subdivision as part of the development consent (Section 2.1.2).
- Dept. Primary Industries and LCAs are to take a more pro-active role in the development of Council planning instruments.
- Dept. Primary Industries to open up improved communication channels with local councils as to advise councils on weed impacts of rural land subdivision.

## 2.2 Section 149 certificates

Certificates issued under Section 149 of the *Environmental Planning and Assessment Act 1979* provide details to prospective property purchasers about zonings and other council policies that may affect the land. A Section 149 (2) certificate is a legal document, which the *NSW Conveyancing Act* requires to be part of the contract of sale.

S. 149(5) certificates also provide that a council may in a Planning Certificate include advice on such other relevant matter affecting the land of which it may be aware. In theory, this may include outstanding orders/notices under the *Noxious Weeds Act 1993*. However, S. 149 (5) Certificates are not required to be attached to contracts of sale of land, and because of the higher fees involved for issuance of the Certificate and the uncertainty of what is included on certificates, S. 149 (5) Certificates are generally not obtained by prospective purchasers.

The legal ramifications of including weed information on S149 (5) certificates is also unclear (Mallick 2002, WSC 2002). Legal advice given to a number of shire councils indicates that if specific information under S. 149 (5) regarding noxious weeds is given to prospective buyers and as a result, the sale falls through, Council may be found liable (WSC 2002), especially if it is applied inconsistently or is misused. Conversely, local councils have also been found liable by not including certain information on the S. 149 (5) (Mallick 2002). Additionally, if they were to be used, S. 149 Certificates would only provide information regarding outstanding notices or payments from the last inspection. As a result, the information provided may be out of date and not reflective of the current noxious weeds situation. The use of Section 149(5) Certificates to provide weed information to prospective buyers is, therefore, fraught with danger and is not recommended.

## 2.3 ‘Buyer beware’ education

The principle of caveat emptor “buyer beware” is central to our system of commerce and law. However, in regard to some issues, the community has a particularly vested interest in buyers comprehending the ramifications of committing to ownership. For example, legislation has been enacted to ensure that prospective purchasers of land in bushfire or flood prone areas are informed of the risk and obligations associated with ownership of the land prior to purchase. One of the ways this is achieved is through inclusion of notices on the S. 149 (2) certificate for the property (see above).

As identified above (Section 2.2), prospective land purchasers currently have very few avenues for obtaining advice from Council regarding Council’s knowledge of the noxious weeds on the property in question. Indeed, prospective purchasers are generally limited to requesting a certificate under Section 64 of the *Noxious Weeds Act 1993*, on exchange of contracts. A Section 64 certificate will however only identify any weed notices affecting the property and any outstanding expenses payable for weed control works carried out by council under Section 18 and 20 of the Act. No other information regarding the status of noxious weeds on the property may be disclosed. As a result, prospective land purchasers only obtain information regarding the noxious weed status of a property if the property has been recently inspected and has had a Section 18 notice issued to the owner requesting control of noxious weeds. If the property has not been inspected recently, and is not encumbered with a Section 18 Notice, the Section 64 Certificate will not reveal any useful noxious weed information to prospective purchasers.

According to a Wingecarribee Report (WSC 2002), a neighbouring Council charges a fee for a property weed inspection/reports if requested by prospective buyers. This approach may have many problems. Apart from other potential liabilities, the *Noxious Weeds Act* specifically requires written notification to be given to landowner/occupier before an authorised Weed Officer may enter property. The law will be broken if a Council Officer accompanies a potential purchaser on a property inspection without the owner’s consent, not to mention an adverse reaction from the owner if the sale falls through as a result of the inspection report.

The buyer beware principle is well established in other areas of property pre-purchasing procedures as it is extremely rare that pest and building inspections are not undertaken prior to purchase of established buildings. Similarly, prospective land purchasers should be encouraged to engage professionals (if unable to do it themselves) to assess the likely weed management obligations associated with any impending land purchase.

The engagement of an independent professional is preferable to having council weed officers undertaking the weed assessment for a variety of reasons, including;

- an independent assessor can accompany a prospective buyer during a pre-purchase viewing of the property without formal notification;
- Council officers can be potentially found liable for misinformation; and
- Resource limitations of most LCAs preclude this activity on a regular basis.

Wingecarribee Shire Council have produced a ‘flier’ prompting potential purchasers of land to follow the steps currently available to obtain a comprehensive pre-purchase understanding of the noxious weed obligations associated with a property. It is recommended that all Councils within the Region consider the development of such a flier based on the example shown in Figure 2. Legal advice should be sought prior to release.

It is recommended that the flier be disseminated through the following means:

- posted on Council’s Website;
- distributed as a fact sheet through the Customer Services Centre;
- printed within the property section of local newspapers; and
- whatever other avenues are available to reach prospective purchasers of land in the council area.

One of the more important communication vehicles is through conveyancing service providers. It is recommended that the flier with an accompanying letter (see appendix 1 for an example) be sent to all conveyancing service providers within each Council area and also to every conveyancing service providers on council’s records and databases. To increase the spread of education through conveyancing service providers, dialogue should be initiated with the *Australian Institute of Conveyancers* (AIC). The institution is also willing to place information items on member newsletters (Liz Westwood pers.comm 2003). The letter and accompanying flier is to encourage conveyancers, when providing legal services for purchasers of rural and rural-residential land, to recommend a Section 64 notice (NW Act) and an independent weed assessment (Figure 2 p.12). The draft letter produced and displayed as Appendix 1 is to be approved by the Noxious Weeds Advisory Committee (NWAC), placed on an appropriate letterhead (Dept. Primary Industries or NWAC) and signed by an appropriate person (*i.e.* chair of the Southern Tablelands and South Coast Noxious Plant Committee or the NWAC).

Increasing buyer awareness in conjunction with consistent approaches to inspecting every rural land subdivision development will be one of the more powerful tools that can be applied.

**Summary of recommended actions – Buyer beware education:**

- Seek legal advice on the ramifications of a buyer beware flier based on Figure 2.
- If legally acceptable, produce flier based on Figure 2 for all Council areas.
- Disseminate flier through the various means listed in Section 2.3.

- Seek assistance through the Australian Institute of Conveyancers (AIC) to disseminate to all NSW members.

## **2.4 Extension for Council Weed Officers**

Extensions that empower Council Weed Officers with the skills and knowledge to become more involved with council planning and development approval processes is critical. The relevant Development and Strategic Planning Sections of each Council should be able to provide training or information explaining the concepts of land-use planning and avenues for involvement. This action may also facilitate improved consultation between respective council departments.

### **Summary of Actions – Extension for weed officers:**

- LCAs are to seek training through Strategic Planning and Development Sections of respective councils in regard to land use planning decisions and development approval processes.

Figure 2: Mock fact-sheet flier (adapted from Wingecarribee Shire Council 2002)

# **ATTENTION ALL PROSPECTIVE RURAL LAND BUYERS!**

## **Don't be caught out!**

**To avoid potentially inheriting a financial burden - check for noxious weeds prior to the purchase of rural and rural residential land within the X Shire/City Council**

To avoid inheriting a noxious weed problem resulting in a potential financial burden, there are two simple steps to follow when buying rural-residential and rural land in the X shire Council.

### **Step 1: Arrange to have a someone with knowledge of weeds to inspect the property with you.**

*Because of the number of properties in X shire, it is not possible to inspect every property as often as desired, therefore, not all properties affected by declared noxious weeds have Weed Control Notices on them. Unless Council is notified of an existing problem, some properties severely infested with declared noxious weeds may go undetected for many years.*

During your initial inspection of the property, you should arrange to have a reputable Weed Control Operator accompany you. They will be able to advise you on likely costs and outcomes of noxious weeds present on the property. Contact details of Weed Control Operators experienced in this matter are available from Council's Weed Officers (tel: xxxxxxxxx).

### **Step 2: On exchange of contracts, your solicitor should request a Section 64 Certificate from your Council**

A Section 18 Weed Control Notice will encumber **owners** of properties that have been inspected, and have declared noxious weeds present. By requesting a Section 64 Certificate from Council, you will be advised if there is a notice or outstanding charges as a result of weed control carried out on that property.

*The small cost of an independent inspection and a Section 64 Certificate may save you thousands of dollars in noxious weed eradication*

### 3. REACTIVE STRATEGIES

The three primary reactive strategies available to weed managers to minimise the undesirable impacts of the rural lifestyle on noxious weed management are:

1. **Regulation:** enforcement of the *Noxious Weeds Act 1993* where rural lifestyle managers fail to meet their statutory obligations.
2. **Education:** extension of information, skills, knowledge, and resources necessary for rural lifestyle managers to manage noxious weeds.
3. **Facilitation:** provision of contractor lists, coordination of joint projects, assisting in establishing Landcare or other cooperative schemes.

#### 3.1 Enforcement of the Noxious Weeds Act 1993

Weed inspections under *Noxious Weeds Act 1993 (NW Act)*, have been a critical component of weed management in the Region. It is recommended that enforcement of the NW Act remains one of the more powerful tools to reduce the impacts of rural land subdivision on noxious weed management. However, a more strategic (or prioritised) response, combining field observations and prioritising recently subdivided rural-lifestyle lands is proposed.

All properties within each LCA should be inspected every 5 – 7 years minimum. Priority sites in the LGA are also to be reinspected and/or inspected annually. Local Weed Officers, at the time of the inspection, are to determine whether the property is a priority site based on the following prioritising criteria:

10. There are absentee landholders and new 'rural lifestyle' landowners that need regulation and/or extension and/or support.
11. The area of land has been recently subdivided for rural lifestyle purposes.
12. Properties where a *Section 18 Notice* has been issued.
13. To assist landholders undertaking high-quality weed control measures but who are surrounded by properties where inadequate control is being undertaken. Annual inspections are to occur on adjoining properties.
14. Properties where landowners and/or occupiers have a history of insufficient control and who use questionable land management practices, which may exacerbate weed problems.
15. Properties where there has been an increase in weed infestation levels.
16. Where there are new weed infestations in an area (neighbouring properties also to be inspected). Annual inspections ensure swift action.
17. Any areas where rare or isolated infestations are recorded. Annual inspections in these areas ensure that any isolated infestations are prioritised for control to prevent the spread of the weed.
18. Infestations in otherwise clean catchments. Annual inspections in these areas recognise the importance of keeping catchments weed free.

An Access database, preferably linked to a Geographic Information System, could be developed that would not only list properties to be inspected in the year (or other designated timeframe), it could also automatically list properties requiring reinspection or annual inspections. To achieve this, the above criteria would be used as a trigger allowing the database to generate a list of priority

properties (based on previous inspections) to be also inspected in that particular year (or season or month).

It is expected that the implementation of this process may require additional funding to develop the database and to undertake the possible increased numbers of inspections. This requirement will vary from Council to Council and the need for extra inspectors may not be known until the above inspection regime is implemented. However, it is recommended that additional funding is sought for the development of the database and where required, additional weed officers.

Until additional funding is available, inspections are to be undertaken as per existing local procedures. This may result in a less strategic approach and will not target rural land subdivision at the most opportune time (*i.e.* early stages).

Inspections are also to be undertaken as soon as possible after a rural land subdivision development application is lodged. Section 18 notices are to be applied where necessary.

Many LCAs currently undertake inspections of land for sale on an ad-hoc basis. Inspecting all land for sale may be an effective strategy, as it will ensure information obtained during Section 64 searches is current. However, the limited resourcing levels of most LCAs may preclude this from becoming a region-wide strategy. This action is to be undertaken at the discretion of local weed officers, but will need to be applied consistently to avoid perceived biases and victimisation. A council based policy should also be developed prior to this action.

**Summary of recommended actions – Regulation:**

- Funding is to be sought for the development of Council databases to assist in the prioritisation of inspections based on criteria listed in Section 3.1.
- Implement strategic inspection regime based upon the database and the criteria listed in Section 3.1. If required, funding is to be sought for additional weed inspectors to facilitate this.
- Where considered appropriate by LCAs, LCAs are to develop a council-approved policy regarding inspections of land for sale. LCAs are to undertake inspections as per policy.
- Inspections are to be undertaken on all land subjected to a rural land subdivision application.