

Forests Assessment  
Natural Resources Commission  
By Email: [forests@nrc.nsw.gov.au](mailto:forests@nrc.nsw.gov.au)

30<sup>th</sup> August 2009

Dear Commissioners,

### Submission to the Red Gum Forests Assessment

Thank you for the opportunity to provide input into your assessment into the health of river red gum and associated ecosystems in the Riverina. I apologise for the lateness of this submission and thank Felicity Calvert for permitting me to submit at this time (via email 28/08/2009 6:13 PM).

Friends of the Earth Australia is an independent not-for-profit environment group. We recognise the Traditional Owners of the assessment study area, including the Wiradjuri, Yorta Yorta, Barapa Barapa, Wamba Wamba, Wadi Wadi and Mutti Mutti peoples, with whom we work closely through the federation Murray Lower Darling Rivers Indigenous Nations (MLDRIN). We would like to make the following points regarding the Red Gum Forests Assessment:

#### 1. Consultation with Traditional Owners

**Traditional Owners must be consulted early and throughout the assessment and must be adequately resourced to participate in these consultations. Traditional Owner interests should be given primacy where they conflict with non-Indigenous interests.**

It is pleasing to see that the Terms of Reference (ToR) require a consideration of “opportunities for indigenous involvement in forest management” and that the Commission must consult with Traditional Owners. Red gum forests are sites of ongoing cultural practice for Aboriginal people and contain some of the most intact cultural landscapes in the Riverina. The majority of lands in the Riverina are alienated as freehold or long-term leasehold and subsequently unavailable to Traditional Owners to carry on their culture and obligations to care for country. Crown land red gum forests, therefore, are of prime importance to Traditional Owners. As Aboriginal people’s culture and heritage is vested in the land it cannot be found anywhere else in the world. Traditional Owner interests in red gum forests should therefore be given primacy where they compete with non-Indigenous interests.

We urge the Commission to recognise the importance and integrity of internal decision-making and representation structures within Traditional Owner groups. Whilst we respect that the Commission has an obligation to consult with Local Aboriginal Land Councils, these may or may not represent the interests of

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Traditional Owners. Only Traditional Owners have the right to 'speak for country,' a right which has been defined by MLDRIN thus:

- *The context for this right is the recognition that Traditional Owners have responsibilities towards their land and waters – the people, the land and water are one – and under traditional law plants, animals and places must be respected and cared for.*

- *Within Indigenous communities Traditional Owners hold the right to “speak for country”, a right that is inherited from ancestors and country, involving protocols and decision making structures within clans/nations - which regulate who can speak and what they can speak about. In traditional law, Owners are associated with particular places, and through ancestors, an extended landscape. Knowledge and authority to speak for particular places or on particular issues is governed by protocols involving kinship, seniority, gender and so on.*

- *“Speaking for country” within Indigenous communities is the Traditional Owners’ birth right and responsibility to speak on the care of Country and their inherent rights to land and water. It also refers to the unique right of Traditional Owners to speak for Country in negotiation and consultation processes around land and water. This includes but is not limited to Native Title, Government and NGO policies and programs relevant to land and water, natural resource management, cultural heritage, sites management and protection including cultural sites and artefacts and sources of native food, State and National Park and Reserve management, water management including cultural flows, and engineering and other works that may impact on sites of significance.*

Source: Cooperation Agreement between Murray Lower Darling Rivers Indigenous Nations and Environmental Non-Government Organisations; 23<sup>rd</sup> February 2007.

We urge the Commission to engage directly with Traditional Owners throughout the assessment area, through their chosen representative structures such as the Yorta Yorta Nation Aboriginal Corporation, which represents the Yorta Yorta people. If the necessary financial resources are made available, MLDRIN may be able to facilitate consultation with Traditional Owners in the same way that it did so for Forests NSW in their recent Red Gum Environmental Impact Statement consultations.

In consulting with Traditional Owners we also urge the Commission to allow extra time for Traditional Owner groups to conduct their own internal consultations in order that submissions to the assessment have the informed consent of all Traditional Owners in that group.

Finally, the Commission should ensure that financial resources are made available to Traditional Owners to attend consultation meetings, seek legal and other expert advice, and conduct their own internal consultations. Aboriginal people are the most marginalised and economically disadvantaged people in the Riverina and

special measures need to be taken to ensure they are able to participate on the same playing field as industry and other interest groups.

## 2. Aboriginal Ownership of Conservation Reserves

**The Commission should recommend to the Director-General of the Department of Environment, Climate Change and Water that any new or existing conservation reserves are added to Schedule 14 of the *National Parks and Wildlife Act (1974)* where that is the express wishes of the Traditional Owners of the reserve.**

In South-Eastern Australia the New South Wales Government is a leader in Indigenous conservation, having amended the *National Parks and Wildlife Act (1974)* in 1996 to allow for Aboriginal Ownership of conservation reserves, and the handover of its first Aboriginal Owned National Park, Mutawintji, in 1998. Since then another four conservation reserves (Biamanga, Gulaga, Worimi and Mount Grenfell) have been handed back to Traditional Owners. Additionally, a number of other Traditional Owner groups have negotiated (or are in the process of negotiating) co-management agreements over conservation reserves on their traditional country. These joint and co-management agreements have brought a range of unique benefits to Aboriginal people and the wider community, including Aboriginal employment and socio-economic outcomes, greater understanding of local Aboriginal cultures, and enhanced conservation outcomes.

There are two pathways to the creation of Aboriginal Owned National Parks under the *National Parks and Wildlife Act (1974)*:

*Either:*

*The land must be registered as having particular cultural significance for Aboriginal people. Schedule 14 of the National Parks and Wildlife Act includes a list of parks and reserves of particular cultural significance to Aboriginal people, which can be returned to the LALC to hold on behalf of the Aboriginal owners. The Act describes 'significant' in terms of Aboriginal traditions, observances, customs, beliefs or history.*

*Or:*

*The Aboriginal Land Rights Act 1983 has provisions that allows that, where a land claim by a Local Aboriginal Land Council is needed for the essential public purpose of nature conservation, with the Land Council's agreement it can be resolved via the grant of the land claim to the Land Council subject to the creation of a reserve under the National Parks and Wildlife Act 1974, which is then leased back to the NSW Government.*

Source: [Department of Environment, Climate Change and Water website 30/08/09](#)

The first of these is directly relevant to the Commission in conducting its Assessment, as the ToR require it to “recommend conservation, protection,

economic and ecological sustainable use of public land in the bioregion,” in light of “Nationally agreed criteria for a comprehensive, adequate and representative reserve system.” We expect the Commission, in fulfilling these requirements, to recommend a significant expansion to the reserve system. In doing so, and where the Traditional Owners of any proposed reserves have expressed a desire to jointly manage these reserves under Part 4A of *National Parks and Wildlife Act (1974)*, the Commission ought to recommend that the Director-General immediately commence an assessment of the lands in question under Section 71AT of the *Act*, in order to expedite their listing under Schedule 14.

We make this recommendation as the pathway to Aboriginal Owned reserves is a lengthy one and in the interests of meeting the aspirations of Traditional Owners, it should be initiated at the earliest possible time. Under Part 4a, Division 7 of the *National Parks and Wildlife Act (1974)*, upon receipt of a submission that lands ought to be added to Schedule 14, the Director-General must assess the cultural significance of the lands in question and recommend to the Minister whether they should be added to the Schedule. The Minister may then recommend to the Governor that lands be added to the schedule, and finally an Act of Parliament is required to add the lands to the schedule. Following this, negotiations may take some years before a joint management lease is finalised and Traditional Owners are able to finally have a say over the management of their country. Such delays must be minimised to an acceptable level and therefore we urge the Commission, in addition to initiating early consultation with Traditional Owners, to speak with the Director-General and the Minister on this matter immediately so as to ensure that unnecessary delays are avoided.

### **3. The Precautionary Principle**

It is crucial that the Commission apply the precautionary principle in developing its recommendations. There is a general paucity of detailed environmental surveys in the Riverina Bioregion, and therefore in many situations an inadequate scientific basis to claim that high impact land uses such as logging and stock grazing are ecologically sustainable. The likely impacts of human-induced climate change must also increase the emphasis placed on a precautionary approach, given the likely stresses faced by ecosystems from forecast hotter and drier conditions. It is essential that the Commission’s recommendations are aimed at bolstering the natural resilience of ecosystems to best enable them to adapt to climatic change and for individual species to migrate through intact vegetation corridors.

Large new permanent conservation reserves are the only effective way to apply the precautionary principle to red gum forests in the Riverina.

### **4. Create large new conservation reserves**

We note that the Commission is required to take into consideration the nationally agreed criteria for a comprehensive, adequate and representative reserve system. At present there is no permanent reserve system to protect NSW red gum forests

(we note the valuable conservation contribution of Yanga National Park, however an interconnected system across the Riverina is required.) This must be addressed by the Commission in its recommendations. Large new conservation reserves and protection of interconnecting corridors is essential.

**5. The continued logging of red gum forests whilst the assessment is being conducted is illegal and must be halted immediately.**

Logging in NSW red gum forests lacks the necessary approvals under both the NSW *Environmental Planning and Assessment Act (1979)* and the Commonwealth *Environment Protection and Biodiversity Conservation Act (1999)*. Whilst we appreciate that it is not within the scope of the Commission's powers to order a logging moratorium, we wish to register our strong objection to the continued logging of red gum forests during the conduct of the Assessment. The NSW government undermines its own credibility by allowing the continuation of illegal logging. Such disregard for environmental laws is a gross abuse of the privilege of government and sets an appalling example for the community to follow.

**6. Experts in forest ecology and conservation planning must be engaged**

It is essential that the Commission engage the services of recognised and respected ecologists in conducting its services.

**7. All data gathered by the Commission should be made available to the community.**

We believe that informed public debate and scrutiny of policy is essential to good governance. In order to allow this we urge the Commission to make all data gathered in the conduct of its assessment available to the public on request.

**Conclusion**

Friends of the Earth thanks the Commission for the opportunity to have input into the Red Gum Forests Assessment. Should you require clarification on any of the points I have raised, please do not hesitate to contact me.

Kind regards,

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