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Opinion Piece

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Property Rights – Private Rights V Public Good?

The property rights issue means different things to different people.

Some would suggest that on freehold land the landowner should have the ‘right’ to do what they like on their land. In other words government or the community should have no say on private land.

Others suggest that the community can have some influence over landuse in the ‘public good’ but that there should be compensation paid for any removal of any rights from the landowner.

As the MP for Tamworth in the hung parliament of 1991, I was able to ensure that “Just Terms” payments were made where the NSW Government acquired or “blighted” private lands. Prior to this if government proposed to build a dam, for example, on certain land at some time in the future they were not required to pay for that land until such time that the dam was to go ahead sometimes not for decades. Hence “blight” on the value of that land.

Landholders need to be wary of promoting the view that they have the “right” to do anything they want on their land.

A coal miner may have the same view - that is purchase land and ruin it or the water resources under it without regard to offsite impact or the community within the catchment.

A wind farmer may believe they have the right to install towers in close proximity to neighbours because they own the land where the towers are to be built. Others may argue for some form of government (local, state or federal) to regulate the coal miner or the wind farmer.

A plantation owner may believe he has the “right” to intercept water on his land that may well have formed part of a broader catchment.

A land holder may believe he should be able to subdivide his land for urban development as a “right” but then impinge on the right of his neighbour to use certain chemicals or have a “right” to develop intensive industries such as piggeries or poultry sheds or feedlots.

In 1994 the Keating government established National Competition Policy to deal with reforms that needed a national approach but were under the jurisdiction of state governments – such policy areas as electricity, gas, water and transport. As part of the original policy, property rights for water reform for instance were to be defined and where government policy had a detrimental impact to be compensated. Competition policy payments from the Commonwealth to the State would not flow unless compensation ensued.

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In 1996 the Howard Government maintained competition policy and for a decade refused to use their power to force the states to comply. Hence we saw many landholders have their entitlements to water removed without any compensation. John Howard, John Anderson, Mark Vaile, Warren Truss and Barnaby Joyce were all complicit in their disregard for these people's rights.

Also under the Howard Government, land clearing rules were changed at a state level to comply with Kyoto rules (even tho' Australia did not ratify the agreement). The Native Vegetation Conservation Act in NSW was born as part of a deal with the Commonwealth Government.

The BILLIONS of dollars of Competition payments flowed from the Commonwealth Government to the State Governments and both levels continued to blame each other.

Recently NSW Farmer of the Year, Michael O'Brien made statements to the effect that landuse regulation should be based on land capability and productivity rather than blanket policy. Attendees of the Canberra rally may well like to examine what he means.

Also recognition of soil carbon as a "potential" offset against Kyoto arrangements in the future may have greater positive consequences than a wholesale prevention of clearing for the same reason in certain areas.

Walgett for example where the natural state of land is sparse scrublands, a much higher state of carbon sequestration may be achieved by farming than not farming. Deep rooted perennial plants that are harvested annually for lignocellulose ethanol for instance may be more productive in a carbon and economic sense than a pure environmental lockup.

The logic that Howard and Carr used in locking up land for carbon purposes may well lead to unlocking it for the same reason in a carbon world.

Other less productive land in a farming sense would usually be seen as less capable of adding value in terms of soil carbon storage and could be dealt with differently at a policy level.

Farmers who demand that all land be treated the same fall for the same trap as Governments that pass all encompassing laws that treat all land the same.

Property rights are a legitimate issue today as they were when Peter Spencer begged John Howard for help in 2006 and when water entitlement holders suffered major reductions in allocation.

Parading the Magna Carta as a document to prove a case does not assist those who are dealing with the substantive issue.