



NEW SOUTH WALES
MINISTER FOR PLANNING AND ENVIRONMENT

The Hon. T.J. Moore, LL.B., M.P.
Minister for the Environment
and Assistant Minister for Transport,
9th level,
8-18 Bent Street,
SYDNEY, 2000 200

- 6 OCT 1988

Dear Minister,

I have received the attached report on an Inquiry pursuant to Section 29(b) of the Heritage Act, 1977 into objections to the making of an Interim Conservation Order in respect of a natural area known as the Horton's Creek Rainforest in Nymboida Shire. The Commissioner recommends that action be taken under the Heritage Act to make a Permanent Conservation Order over the site. The National Parks and Wildlife Service is negotiating to purchase the site and much of the evidence at the Inquiry was presented by the Service.

I refer to my letter to you dated 18 August, 1988 which related specifically to suggestions that action should be taken under the Heritage Act regarding the Koala Colony at Wedderburn. In the light of my advice to you in that letter, that in my view the Heritage Act should be properly directed to protection of built or cultural matters and the ability under the National Parks and Wildlife Act to place Protection Orders on sites, I would like your advice now about the appropriateness of action being taken under the National Parks and Wildlife Act to protect the Hortons Creek Rainforest.

The issue of the protection of the Horton's Creek Rainforest under the Heritage Act has caused considerable local controversy and our colleague, the Hon. Ian Causley, M.P., Minister for Natural Resources, has written to me expressing his concern about placing a Conservation Order on this land. I understand that Mr. Causley has also written to you on the subject.

At this stage I do not intend to take any action under the Heritage Act. I would like your advice as soon as possible to enable me to make a final decision on the matter.

Yours sincerely,

DAVID HAY
Minister for Local Government and
Minister for Planning and Environment

POLWATCH PUBLIC MEETING 18 MAY 1991

SPEECH BY TIM ROBERTSON

I hate driving the Pacific Highway and yet in the nature of my profession, I have to go up the north coast frequently, so when I return from court to Sydney, I always travel the back roads. This is what I did the other day on the way back from Grafton. I took the Grafton-Armidale road. Now those of you that have been on it will know that for about half of the way to Ebor that road is dirt and then it is tarmac, and at the point where the dirt joins the tarmac there is a little stretch of Crown Land, a picnic area and Horton's Creek. Above Horton's Creek is one of the rarest subtropical rainforests in New South Wales. Surrounded by dry rainforest, and a rare eucalypt forest is a subtropical rainforest with a red cedar-white cedar-bumpy ash suballiance.

This land is owned by the Towns family of Nymboida. When Carr was Minister for the Environment, he placed what is known as an Interim Conservation Order over the Towns' land at Horton's Creek. That prevented development such as the clearing to graze cattle. The Towns objected to the Interim Conservation Order, which meant that under the Heritage Act there was then constituted a Commission of Inquiry chaired by Mr Woodward, a person experienced in planning and environmental matters and independent of the Government. In late 1988, Commissioner Woodward recommended that it was appropriate for the Minister for Planning to make a Permanent Conservation Order under the Heritage Act because the rainforest was environmental heritage of State significance.

What happened? On 13 July 1988, Mr Peter Stavely, who is the senior policy advisor to the Minister for Planning, wrote a memorandum to the Director of Planning, Mr Hay's senior bureaucrat. Mr Stavely said that:

"the Minister has asked whether you can investigate and provide an outline of issues in respect of a matter raised with him by the Minister for Natural Resources, the Hon. R. Causley, MP. Information provided by Mr Causley states."

Then it recites the history of the Towns' land. In August 1988, the Commissioner of Inquiry reported to the Minister for Planning and urged him to place a Permanent Conservation Order over the land to protect this important rainforest.

The Minister for Planning then wrote to Mr Moore, who is Minister for the Environment. Now Mr Moore administers some environmental protection laws but he is a much less powerful Minister than Mr Hay. Mr Moore administers the National Parks and Wildlife Act, and Mr Moore

can place an Interim Protection Order on land to prevent development but the Protection Order only lasts 12 months and it cannot be renewed. Mr Hay administers the Heritage Act under which he can make a Permanent Conservation Order. A PCO prevents irresponsible development of a natural area which is recognised as part of the State environmental heritage. Mr Hay writes this to Mr Moore on 6 October 1988:

"I refer to my letter to you dated 18 August 1988, which related specifically to suggestions that action should be taken under the Heritage Act regarding the Koala Colony at Wedderburn."

You have all heard of the Wedderburn Koala Colony at Campbelltown.

"In the light of my advice to you in that letter that in my view the Heritage Act should be properly directed to protection of built or cultural matters.."

That is, not the natural environment, not our natural heritage but merely to the urban environment:

"...and the ability under the National Parks and Wildlife Act to place Protection Orders on sites, I would like your advice now about the appropriateness of action being taken under the National Parks and Wildlife Act to protect the Horton's Creek Rainforest. The issue of the protection of the rainforest under the Heritage Act has caused considerable local controversy and our colleague, Mr Causley, has written to me expressing his concern about placing a Conservation Order on this land. At this stage I do not intend to take any action under the Heritage Act".

Mr Moore wrote back to Mr Hay several days later to correct a dangerous solecism:

"As I have indicated to you informally, your department appears under the erroneous impression that the 1987 amendments to the National Parks and Wildlife Act provide me with the power to make Permanent Protection Orders on natural areas. This is definitely not the case. The relevant provisions allow me to place Interim Protection Orders on sites but specifically fails to make provision for any Permanent Order."

On 14 November 1989, almost a year later, this question is asked of Mr Hay in the Parliament:

"Did the Minister for Natural Resources, [Mr Causley] ask you to reject the recommendation from Commissioner Woodward that a Permanent Conservation Order be placed over land in Nymboida

Shire owned by WJ and LG Towns? Did the Minister reject the recommendation? Is a Mr Towns the brother-in-law of the National Party President of Nymboida Shire in the electorate of Clarence?"

The answer Mr Hay gave was:

"The Minister for Natural Resources and I have never discussed the matter".

Two days later Mr Moore finally responded to Mr Hay's earlier letter. He explained that he had been engaged in negotiations with the Towns over the voluntary purchase of their property by the National Parks and Wildlife Service. No agreement had been reached:

"The other alternative under the National Parks and Wildlife Act is an Interim Protection Order. In the absence of any guarantee that after expiry of the twelve-month of the IPO there will be some mechanism in place to ensure permanent protection, this option would not seem to be appropriate. Given the Service's past lack of success, since 1976 in its negotiations for purchase and the present impasse on a Conservation Agreement, it is unlikely that Mr Towns' stance will change during the life of the IPO. The path of compulsory acquisition for national park purposes, as you know, is contrary to our Government's philosophy and policy."

What does this mean? There is a rainforest at Horton's Creek which is unique to this State, recognised after an independent Commission of Inquiry as an item of State environmental heritage.

The Inquiry also found that the Towns would not suffer hardship if Mr Hay made a Permanent Conservation Order. Hay refuses to make the Interim Conservation Order permanent. He kicks the ball to the Minister for Environment, who says, 'Sorry it is useless asking me because the only power I have is to protect this area for a year. This fellow won't sell it to us and won't enter into a conservation agreement protecting the land under the National Parks Act. The only alternative is to purchase the land from him compulsorily and that is contrary to the Government policy notwithstanding the fact that every day the Government compulsorily acquires land for road easements, gas mains, electricity lines and even for incinerators.'

Mr Moore saw through Mr Hay:

"Of the various pieces of legislation which the Government has at its disposal, a Permanent Conservation Order under the Heritage Act appears in these circumstances to afford the most appropriate and effective means of protecting the Horton's Creek rainforest."

Planning in March 1990 and told him that, the Forestry Commission proposed to start logging 10 old growth forests containing rare and endangered species without first preparing Environmental Impact Statements. As he was the Minister administering the Environmental Planning and Assessment Act, could he please direct the Forestry Commission to obey the law and prepare Environmental Impact Statements or prosecute the Commission to compel it to obey the law.

The law is that if development by a public authority is likely to have a significant impact on the environment, then it must first prepare and publicly exhibit an environmental impact statement and take public submissions on it. What did Mr Hay do?

Generally speaking Mr Hay does not reply personally to correspondence which raises controversial issues. He hides behind Mr Stavely or Patricia Forsyth, who is his executive officer. Ms Forsyth replied to this letter:

"In your correspondence, matters are raised concerning the Forestry Commission's alleged failure to comply with Part V of the Environmental Planning and Assessment Act and you request the Minister to take proceedings to compel the Commission to comply with such provisions of the Act. I would indicate initially that the Environmental Planning and Assessment Act does not impose a special regulatory duty on the Department of Planning to ensure that the provisions of the Act are fully complied with."

As a lawyer perhaps I am a pedant, but I always thought that when Parliament makes a law and responsibility for administering that law is given to a Minister, one of the Minister's sworn duties as an Officer of the Crown is to uphold the law that he administers. Apparently not.

But it is worse. It is worse because Ms Forsyth did not read the Environmental Planning and Assessment Act and her Minister obviously does not have the faintest idea of his public duties. This is what it says about the duty of the Minister under the heading "Responsibility of the Minister": **s. 7.**

...the Minister is charged with the responsibility of promoting and co-ordinating environmental planning and assessment for the purpose of carrying out the objects of this Act, and in discharging that responsibility, shall have the following functions:

- f) to monitor progress and performance in environmental planning and assessment, and to initiate the taking of remedial action where necessary.*

That is what the law says. The Minister for Planning is the person responsible for enforcing this Act and for ensuring that breaches of it do



NATIONAL PARKS AND WILDLIFE SERVICE

HORTONS CREEK - PERMANENT CONSERVATION ORDER

ISSUE: The placing of a Permanent Conservation Order under the Heritage Act over land at Hortons Creek - Portion 57, Parish of Shannon, County of Fitzroy - in order to protect rainforest and a rare eucalypt.

BACKGROUND:

Portion 57 is owned by W. J. and L. G. Towns. It consists of approximately 334 hectares supporting an exceptionally diverse subtropical rainforest vegetation with trees of record size and the southernmost occurrence of the rare and endangered Dunn's white gum.

Since 1976, the Service has tried unsuccessfully to purchase Portion 57. To protect the rainforest from logging, the Service sought an Interim Conservation Order (ICO) under the Heritage Act which was granted in 1985 and renewed in 1987.

Objections to the ICO by the owner led to a Commission of Inquiry which recommended in September 1988 that a Permanent Conservation Order (PCO) under the Heritage Act be made for Portion 57.

The Hon. David Hay, Minister for Local Government and Minister for Planning declined to take any action on the Commission's recommendation but instead wrote to the Minister for the Environment on 6 October 1988 (copy attached) that the Service consider action for protection of the land under the National Parks and Wildlife Act.

The Service then sought to enter into a conservation agreement under the National Park and Wildlife Act with the owner. However, the owner was unwilling to enter into such an agreement.

The Hon. Ian Causley, MP Member for Clarence and Minister for Natural Resources agreed to discuss again with the owner the possibility of entering into a conservation agreement.

Option 5 The Minister seek a PCO from Mr Hay as recommended by the Commission of Inquiry, either by letter or in Cabinet. Although Mr Hay wishes to apply the Heritage Act exclusively to the built environment, the Act is proclaimed as "an Act to conserve the environmental heritage of the State", which includes in the definition "places of scientific, natural or aesthetic significance for the State". This is the most appropriate and effective means of protecting the rainforest. It also complies with the Heritage Councils procedures as outlined. It would also demonstrate the Governments' commitment to preserve the natural environment, in particular rare and threatened species. This is especially important as the Federal Government is now considering joining a World Convention (for conservation of biological diversity) which would delegate responsibilities to the States to protect all rare and threatened species.

Option 6 Compulsory acquisition of Portion 57 is not desirable, being contrary to Government policy.

Letter to Mr Hay proposing
③ in light of continued
not persistent refusal re UCA
even with Mr Chambers intervention to promote a UCA.
29/8/89
I. Sim
Acting Director
Minister for the Environment
1/9/89.

The Hon. David Hay, M.P.,
Minister for Local Government
and Minister for Planning,
SYDNEY, N.S.W., 2000.



15 MAR 1989

Dear Mr Hay,

HORTONS CREEK LAND - CONSERVATION PROCESSES

You will recall that, on 30th January last, I advised you that the National Parks and Wildlife Service would make a further attempt to negotiate a voluntary conservation agreement with the legal representatives of Mr F. J. Towns. I approved this further course of action occurring after discussing the matter with our Parliamentary and Ministerial colleague, the Hon. Ian Causley, M.P., Member for Clarence and Minister for Natural Resources. Mr Causley indicated to me that the Towns had softened their attitude to the establishment of a conservation agreement. A further approach by the Service has led to a further refusal by the Towns to consider a voluntary conservation agreement. I have informed Mr Causley of this and he has indicated that he will approach the Towns further on the subject. I have agreed that, if he is able to "breathe life into the process", I am happy to have that occur within a reasonable period of time.

The purpose of this letter is to indicate to you my strongly held belief that nothing should be done to discharge any conservation orders over the property until I am able to advise you that the nature conservation issues have been adequately dealt with.

Yours sincerely,

(SGD) TIM MOORE

TIM MOORE,
Minister for the
Environment



The Hon. Ian Causley, M.P.,
Minister for Natural Resources,
SYDNEY, N.S.W., 2000.

15 MAR 1989

Dear Mr Causley,

HORTONS CREEK

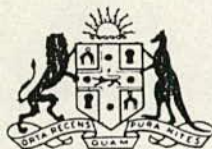
Attached is a copy of a letter I have written to our Parliamentary and Ministerial colleague, the Hon. David Hay, M.P., Minister for Local Government and Minister for Planning, concerning the land owned by Mr F. J. Towns at Hortons Creek. As I indicated to you when we last discussed the matter, I am happy to have you further approach Mr Towns with a view to resolving the matter by a voluntary conservation agreement with the National Parks and Wildlife Service.

If this does not prove possible, however, I would feel the necessity to advise Mr Hay of this within a reasonable period of time.

Yours sincerely,

(SGD) TIM MOORE

TIM MOORE,
Minister for the
Environment



HORTONS CREEK

NEW SOUTH WALES

MINISTER FOR LOCAL GOVERNMENT
MINISTER FOR PLANNING

37th Floor
Legal and General House
8-18 Bent Street
Sydney, N.S.W. 2000
Telephone: 221 3244

copy to MPRWS

Mr K Jacques
P O Box 333
SOUTH GRAFTON

from David Page 28/3/89

2461 294

15 MAR 1989

Dear Mr. Jacques,

The Hon. David Hay, M.P., Minister for Local Government and Minister for Planning, has asked me to reply to your recent letter regarding the Commission of Inquiry in respect of the interim conservation order over the natural area known as Hortons Creek, Nymboida Shire.

The Minister is at present considering the findings and recommendations of the Commissioner as contained in his report on the matter. Mr. Hay has asked me to assure you that his final decision will be based on all the relevant issues.

Your concerns as to the continued interim protection of the area have been noted. Section 30 of the Heritage Act, 1977 (as amended) provides that where an inquiry is held into the making of an interim conservation order, the order continues in force until it is either revoked under Section 34 or a permanent conservation order is made under Section 35A.

I trust the foregoing clarifies the position for you.

Yours sincerely,

Patricia Forsythe

PATRICIA FORSYTHE,
Executive Officer.

On the 26th May 1989, Mr Causley advised the superintendent of Grafton District of the outcome of these discussions with the owner, Mr Towns. He was advised that Mr Towns still does not wish to enter into a conservation agreement with the Service.

CURRENT

POSITION: Portion 57 is currently protected by an ICO.

The Service has been unable to negotiate a conservation agreement with the owner of Portion 57.

COMMENT:

Protection under an Interim Protection Order (IPO) is inappropriate. After the expiry of the twelve month term of an IPO an agreement would need to be in place to afford permanent protection. Considering the present failure to reach a conservation agreement or negotiate sale of the land to the Service future short-term agreement is unlikely.

Under the "Procedures for Dealing with Areas Nominated for Protection under the Heritage Act, 1977" the making of a Conservation Order over Portion 57 is appropriate given that the Service is unable to acquire the land within twelve months (see attached Procedures).

Resumption of the land is likely to be unacceptable.

RECOMMENDATION:

The following options are presented as the courses of action available to the Minister at this stage.

Option 1 Do nothing. This approach would be in agreement with Mr Causley and Mr Murray who, it is believed, will be meeting with Mr Hay seeking that the matter be dropped. This action could be interpreted as the Government lacking commitment to protect rare and threatened species from extinction.

Option 2 Service seek voluntary purchase. This has been attempted for eleven years to no avail.

Option 3 Service seek voluntary Conservation Agreement. Owners unwilling to enter agreement as outlined.

Option 4 Minister make an IPO. Inappropriate as discussed, as order lasts 12 months and there is no reason to believe that during that year an agreement for conservation or for purchase, were funds available, would be achieved.

SYDNEY

AUGUST 1988

TO: THE HONOURABLE DAVID HAY, MINISTER FOR LOCAL GOVERNMENT
AND MINISTER FOR PLANNING

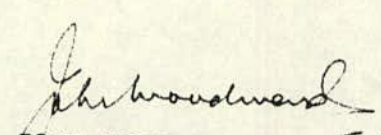
This report concerns an inquiry into the submission by way of objection to the making of an Interim Conservation Order on land being Portion 57, Parish of Shannon, County of Fitzroy, Nymboida Shire (also known as the natural area, Hortons Creek) by Pollock Greening and Hampshire, Solicitors, on behalf of the owners, W J Towns and L G Towns, on 15 April 1988.

In accordance with Section 29B of the Heritage Act, you appointed me to hold an inquiry into the owners' submission. The owners objected under all of the four grounds pursuant to Section 41 of the Heritage Act.

After public notice being given by the Office of the Commissioners of Inquiry, ten parties registered to make submissions. A schedule of submissions made is set out in **Appendix 1** and list of appearances in **Appendix 2**. Primary submissions were heard on Tuesday, 14 June 1988 at the Nymboida Shire Council Chambers, South Grafton. An inspection of the site, in the presence of parties, took place on the same day. Submissions in reply were held on Tuesday, 21 July 1988.

This report provides a summary of submissions made to the Inquiry in respect of the proposed Permanent Conservation Order and my comments, findings and recommendations.

I find that the owners objections are not sustained and recommend that a Permanent Conservation Order be made in respect of the above property as described in map, **Appendix 4**.


JOHN WOODWARD
Chairman

The Hon. David Hay MP
Minister for Local Government and
Minister for Planning
Level 37, Legal & General House
8-18 Bent Street
SYDNEY NSW 2000

NEW SOUTH WALES



*Minister
for the Environment*

Level 9 Legal & General House
8 - 18 Bent Street
Sydney N.S.W. 2000
Tel: 221 6477
Fax: 233 7195

Dear Mr Hay,

16 NOV 1989

I refer to your letter of 6 October 1988 concerning the recommendation of the Commission of Inquiry for issue of a Permanent Conservation Order, under the Heritage Act, on the Hortons Creek rainforest site (Portion 57, Parish of Shannon, County Fitzroy). You will recall that you had postponed a final decision on making the order pending my advice on the feasibility of alternative action under the National Parks and Wildlife Act.

I apologise for delaying my response while the various alternatives were being explored. During this interval the National Parks and Wildlife Service has been strenuously seeking to enter into a Conservation Agreement with the landowner but has met with no success. Even with the intercession of our colleague the Hon. Ian Causley, Minister for Natural Resources and Member for Clarence, Mr Towns' reluctance to conclude such an agreement has persisted.

The other alternative under the National Parks and Wildlife Act is an Interim Protection Order. In the absence of any guarantee that after expiry of the twelve-month term of the IPO there will be some mechanism in place to ensure permanent protection, this option would not seem to be appropriate. Given the Service's past lack of success, since 1976, in its negotiations for purchase, and the present impasse on a Conservation Agreement, it is unlikely that Mr Towns' stance will change during the life of the IPO.

The path of compulsory acquisition for national park purposes, as you know, is contrary to our Government's philosophy and policy.

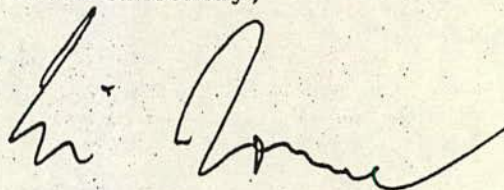
Of the various pieces of legislation which the Government has at its disposal therefore, a Permanent Conservation Order under the Heritage Act appears in these circumstances to afford the most appropriate and effective means of protecting the Hortons Creek rainforest. Such action would comply with the Heritage Council's own 'Procedure for dealing with areas nominated for protection under the Heritage Act, 1977', which indicates that an order over a natural area such as Portion 57 is appropriate in circumstances where the Service cannot acquire or otherwise reach agreement to protect the land within twelve months.

2.

I very much fear that failure to apply the provisions of the Heritage Act for protection of the natural environment, especially rare and threatened species, is likely to cast doubt on the strength of this Government's commitment to conserving the State's natural heritage. In particular, it will be interpreted in the wider community as a lack of commitment towards the protection of rare and threatened species from extinction. At a time when the Federal Government is addressing a proposal to join a world convention (Convention for the Conservation of Biological Diversity) that would confer a national obligation to protect all rare and threatened species, it would be preferable to avoid any appearance in this State of reluctance to take action where necessary.

Clearly there is more at stake in Hortons Creek than protection of the rainforest and its rare and threatened species from an antagonistic landholder. The case has wider ramifications for the protection of items of the natural heritage, rare and threatened species included. I ask you to recognise these implications and reconsider your position on the application of the Heritage Act.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Tim Moore', with a stylized, flowing script.

TIM MOORE
Minister for the
Environment