

**REPORT ON FREEDOM OF  
INFORMATION COMPLAINT BY  
MR JOHN CORKILL ABOUT THE  
ENVIRONMENT PROTECTION  
AUTHORITY**

**NSW**

**OMBUDSMAN**

**FINAL REPORT**

**ISSUED 31 AUG 1995**



## 1. The complaint

- 1.1 The complainant is Mr John Corkill, who at the time of making the complaint was the Sydney Coordinator of the North East Forest Alliance.
- 1.2 The public authority subject of investigation is the Environment Protection Authority.
- 1.3 Mr Corkill made a complaint under section 52 of the Freedom of Information (FOI) Act requesting a review of the Authority's decision to refuse access to certain documents which Mr Corkill had applied for under the FOI Act. The documents were related to a road in Oakes State Forest.

The FOI Act provides two avenues of external review of agency decisions made under the Act - the Ombudsman and the District Court. Under section 52 of the FOI Act the request for external review is made by way of complaint to the Ombudsman about conduct in relation to agency determinations under the Act. Any investigation of such conduct is to be made under the Ombudsman Act 1974.

## 2. Ombudsman's Policy

- 2.1 In line with the clear intention of the Legislature as set out in the objects of the FOI Act, the Ombudsman's policy in the assessment of Freedom of Information complaints is based upon:
  - (1) a general **presumption** that access should be provided to all requested documents; and
  - (2) the **onus** being on the agency to:
    - (a) justify, to the satisfaction of the Ombudsman, that any claimed exemption applies and, on balance, that disclosure would be contrary to the public interest; and
    - (b) prove, to the satisfaction of the Ombudsman, that the procedures specified in the FOI Act were complied with.
- 2.2 These policies are set out in the *Ombudsman's FOI Policies and Guidelines*, annexed to the Ombudsman's FOI Annual Report for 1993/94 tabled in Parliament on 23 November 1994.
- 2.3 Hence where a complaint is made under section 52 of the FOI Act, it is the Ombudsman's policy that the relevant agency must justify to his satisfaction why each and every individual document or item of information determined to be exempt warrants such exemption from disclosure under the FOI Act.
- 2.4 Given the clear objects specified in the FOI Act the Ombudsman is of the opinion that it is reasonable to require agencies to justify that they have acted in



accordance with those objects. This is a similar onus to that which applies to claims for legal professional privilege where it is up to the person who claims that privilege to prove that the privilege applies. As succinctly stated by Casey J in *Commissioner of Police v Ombudsman* [1988] 1NZLR 385 (at p.391):

*"In the nature of things he who alleges that good reason exists for withholding information would be expected to bring forward material to support that proposition."*

- 2.5 The Ombudsman's policy also accords with the views expressed by Kirby P in a decision handed down by the NSW Court of Appeal (*The Commissioner of Police v The District Court of NSW & Perrin* (1993) 31 NSW LR 606) that, *prima facie*, a document must be disclosed in its entirety, with the onus being on the agency to make out an application for an exemption. In that case Kirby P also stated that:

*"I tend to favour the view that the Act ... must be approached by decision-makers with a general attitude favourable to the provision of the access claimed. It is important that the decision-makers ... should not allow their approaches to be influenced by the conventions of secrecy and anonymity which permeated public administration in this country before the enactment of the Act and its equivalents."*

- 2.6 In interpreting the FOI Act it is relevant to note the provisions of section 33 of the *Interpretation Act 1987* which provides that:

*"In the interpretation of a provision of an Act . . . , a construction that would promote the purpose or object underlying the Act . . . shall be preferred to a construction that would not promote that purpose or object."*

- 2.7 The Ombudsman is primarily concerned to ensure that the objects of the FOI Act are achieved. In this regard, the public interest will generally be the ultimate test or determining factor as to whether documents should be released.
- 2.8 Even where access to a document has been validly refused on the basis that it is an exempt document, the Ombudsman may still recommend release of the document concerned if he is of the opinion that this would, on balance, be in the public interest (see section 52(6) of the FOI Act).

### 3. The investigation

- 3.1 The investigation as stated in the notice of investigation dated 26 May 1994 encompassed both the complaint covered by this report, and a separate complaint by Mr Corkill about a further FOI determination by the Authority. The terms of the investigation were:

*"the conduct to be made the subject of investigation is the determining of Mr Corkill's Freedom of Information initial applications dated 15 September 1992 and 10 November 1992 and applications for internal review dated 10 November 1992 and 8 December 1992 and any conduct in relation thereto."*



3.2 The applications relevant to this report are the initial application of 15 September 1992 and the internal review application of 10 November 1992.

3.3 The Authority initially determined Mr Corkill's FOI application of 15 September 1992 on 9 October 1992. Mr Corkill was however dissatisfied with the notice of determination on procedural grounds and a further notice containing additional information was issued by the Authority on 30 October 1992.

The determination of Mr Corkill's request for internal review was dated 25 November 1992.

Mr Corkill's complaint to this Office was received on 24 January 1993.

3.4 Inquiries into the complaint proceeded by way of:

- a letter of preliminary inquiry;
- copies of all documents covered and generated by the application being supplied to this Office and analysed;
- numerous telephone conversations with the Authority and the complainant throughout the process;
- a meeting between the Ombudsman, the Director General, and other officers. This meeting was part of an attempted resolution of the matter which did in fact lead to the Authority's decision to release some documents. During the resolution process this Office suggested to the Authority that given the passage of time the Authority's view of the sensitivity of the documents may have changed and that disclosure may now be possible;
- the receipt and consideration of a submission from the Authority;
- the issue of the notice of investigation;
- the subsequent receipt and consideration of another submission from the Authority; and
- further analysis by this Office of the documents and the submissions;
- the issue of a preliminary report to the Authority on 28/11/94 for comment;
- the receipt and consideration of a submission by the Authority arising from the preliminary report;
- the report in draft form issued to the Minister on 29 May 1995;
- consultation with the Minister on 26 June 1995;



- consideration of legal advice sought from the Solicitor General by the Authority; and
- the issue of this report.

#### 4. The documents, determinations and submissions:

- 4.1 The two submissions from the Authority referred to above signalled the release of some material but not the majority.
- 4.2 During this Office's preliminary inquiries every document withheld from release was numbered for the first time. The determination of 30 October had numbered only four **classifications** of documents into which the withheld documents presumably fell. Once the numbering was complete it became clear that some documents were not covered by the broad classifications of the letter of 30 October. Consequently it is not possible to say for every document which exemption clauses were claimed. These documents are some of those which the Authority has subsequently decided to release.
- 4.3 The determination of 30 October provided, for each of the four document classifications, a brief description of the document, followed by a statement justifying the exemption. The statement usually begins by identifying which exemption clause is claimed and goes on to expound the clause, relating it specifically to the relevant document. For example: *"These documents are considered to be exempt under clause 10 of Schedule 1 on the basis that they would be privileged from production in legal proceedings on the ground of legal professional privilege."* The exemption clauses claimed for each document type were one or more of clauses 4, 9 and 10. Whilst not identified by the sub-clause small case alphabet letter, the parts of clause 4 expounded in the determination were parts (a) and (d).
- 4.4 The determination of the internal review confirmed all claimed exemptions *"on the same basis as set out in detail in the letter dated 30 October 1992 to [Mr Corkill]...."* Apart from this statement two facts were mentioned which were apparently considered relevant to the continued exemption of the documents:
1. *"... no final decision has been made concerning any possible action arising out of the alleged incident."*
  2. *"... as recognised in the FOI Act, there will be some occasions when confidentiality is in the public interest."*
- 4.5 The submission by the Authority to the Ombudsman dated 27 April 1994 mentioned, in relation to documents 1A, 1B, 2A-2H and 3, that all attracted legal professional privilege and that it was not appropriate, despite the passage of time, for the privilege to be waived in matters which relate to prosecutions or other enforcement of the environment protection legislation.



- 4.6 The second submission to the Ombudsman, dated 11 June 1994, held that, as proceedings for breach of environmental laws against the Forestry Commission in respect of the incident at Oakes State Forest had not been instituted when the internal review determination was made, it was clear that clauses 4(1)(a) and (d) were appropriate heads of exemption in relation to documents 1A and 1B. The submission also stated that the question of public interest includes on assessment of the sensitivity of the information at the relevant time.
- 4.7 The Authority's submission arising out of the preliminary report argued in more detail than previous submissions that the determinations were correct. It also took issue with the Ombudsman's policy that in the assessment of FOI complaints the onus was on agencies to justify any claimed exemptions, with the use of section 52(6)(a) of the FOI Act in relation to clause 10, and with the conclusion that there was a public interest in the release of the documents recommended for release.
- 4.8 On the basis of the above submission the preliminary report was changed. The resultant report (the draft report) agreed that document 2B was exempt under clause 10. However it held that the case for the exempt status of the other documents was incorrect or was questionable to varying degrees, and that in any case their release was on balance in the public interest.
- 4.9 In the consultation with the Minister on 26 June the Minister made clear that, while she did not claim any ownership of the matter, as it had occurred prior to her stewardship, the Authority remained very concerned and was seeking legal advice from the Solicitor General.
- 4.10 That advice confirmed the Ombudsman's lawful right to adopt a policy which placed the onus of proving the exempt status of documents on agencies, and also supported Finding 6.1, and that document 2C was not exempt. The Solicitor General did not agree however that document 2A, a memorandum from Ms Dorelle Pinch to the Director General, was not exempt, and suggested the EPA *"consider doing what is commonplace in disputed privilege claims before the courts, and providing a statement or affidavit from Ms Pinch deposing as to her actual purpose in preparing the document."*
- 4.11 In further correspondence to the Authority the Solicitor General agreed that *"... the Ombudsman may recommend waiver of legal professional privilege if of the view that the public interest would be better served by doing so."* He did however commend to the Ombudsman his view that public interest issues are built into the principle of legal professional privilege, which existed in order to maintain a free flow of advice between lawyer and client.
- 4.12 Acting on the Solicitor General's advice the Authority advised Mr Corkill of its willingness to release document 2C, and provided a statutory declaration from Dorelle Pinch to the effect that the sole purpose of the creation of document 2A was to provide legal advice to Dr Shepherd about the alleged breaches of



environmental laws and the further actions to be taken in preparation for litigation.

- 4.13 The table on the following page lists the present status of the documents initially claimed to be exempt by the Authority in the determination of 30 October, and the exemption clauses claimed.



Documents released during resolution and investigative processes	Content of document	Exemption clause initially claimed	Documents still withheld	Content of document	Exemption clause still claimed
Attachments to 1A	1 - Amended Standard Erosion Mitigation Conditions for Logging in New South Wales - June, 1984, and Glossary of terms - 10pp. 2 - Excerpts from Code of Logging Practices, Crown Timbered Lands, Port Macquarie Region, Forestry Commission, June 1988 - 4 pp.	1. Not specified in determinations  2. Not specified in determinations	1A	Report on Alleged Breach of Pollution Control Legislation Logging Practices at the Oakes State Forest, signed 5/5/92 - 5pp.	4(parts (a) and (d) implied), 9 and 10.
Attachments to 2A	Draft letters to Woolf Associates and the Forestry Commission from the Director General - 2pp & 1p.	Not specified in determinations	1B	Report on Alleged Breach of Pollution Control Legislation Logging Practices at the Oakes State Forest, signed 18/5/92 - 6pp.	4(parts (a) and (d) implied), 9 and 10.
2C	Memo from Manager Litigation to Director General via DLS,ED-PEL re Logging operations in Oakes State Forest - 1p.	10	2A, 2B, 2D - 2H	2A - Memo from Manager Litigation to Director General re breaches of environmental laws in relation to logging operations in Oakes State Forest - 5 pp. 2B - Memo from Manager Litigation to A/EDO re Logging in Oakes State Forest - 2pp. 2D-2H - File notes of Dorelle Pinch, each entitled Oakes State Forest - each 1 p.	10
4A with irrelevancies deleted	Submission for meeting on 14 July 1992 of the EPA Board - from Dr Shepherd, signed 6 July 1992 - 4pp.	4(parts (a) and (d) implied), 9 and 10.	3	Handwritten notes regarding logging in Oakes State Forest - 1p.	9, 10
4B	Submission for meeting on 8 September 1992 of the EPA Board - from Dr Shepherd, signed 27 August 1992 - 2pp.	4(parts (a) and (d) implied), 9 and 10.	Attachment to 4B	Identical to 1B	As for 1B
5	Fax cover sheet for 1A from Grafton Regional Office to Mr P Yates - 1p.	Not specified in determinations			



## 5. Conclusions

### 5.1 Determinations and submissions

5.1.1 In my view the Authority's detailed determination - that of 30 October - did not provide sufficient reasons for the exemption of the documents withheld. In this case the determination (as described in section 4 above) really amounted, for the most part, merely to quoting the exemption clauses claimed and stating which clauses applied to which documents. The Ombudsman does not and has never considered this approach to satisfactorily meet the requirements to give reasons in the FOI Act. The internal review determination added little to support the Authority's case. In my view, in terms of section 28, insufficient reasons and findings on material questions of fact, and no references to sources of information on which those findings were based, were included in the determinations.

5.1.2 The submissions by the Authority to the Ombudsman of April and June 1994 also did little if anything to support the case for exemption. The facts they presented - that matters may have been related to prosecutions or other enforcement of legislation, that proceedings had not been instituted, and that the question of the public interest included an assessment of the sensitivity of the information at the relevant time - are matters of fact and of themselves not in the least persuasive in supporting the case for exemption. I recognise however that these facts may not have been highlighted to argue the case for exemption but rather to respond to this Office's suggestion (which was made as part of the attempted resolution) that the passage of time may have reduced the claimed sensitivity of the documents sufficiently to allow their release. In either case the submissions are not helpful in making out a case for exemption.

5.1.3 The Authority's submission arising from the preliminary report was persuasive in pointing to the sole purpose of, and therefore the exempt status under clause 10 of, document 2B (see 5.4.8).

### 5.2 Clause 4 - Documents affecting law enforcement and public safety:

5.2.1 Clause 4(1)(a) and (d) - *"Prejudice the investigation of any contravention or possible contravention of the law, or prejudice the fair trial of any person or the impartial adjudication of any case"*:

5.2.2 In my view insufficient information has been provided by the Authority to justify any claim that disclosure of documents 1A, 1B, and attachment to 4B would have prejudiced the investigation of the alleged incident in Oakes State Forest, and no grounds have been outlined which would justify the claim that disclosure of these documents would have prejudiced the impartial adjudication of any case.

5.2.3 The Authority's response to the preliminary report states that disclosure of the documents in question to the persons potentially liable for a breach of the environmental laws *"could have prejudiced either the ongoing investigation or the eventual outcome of the case..."*. The expression *"could have"* does not capture the force of the expression in the relevant clause *"could reasonably be expected"*. Little is required to satisfy a test of *"could have"*, certainly less than what is required to satisfy the test applied by clause 4.

5.2.4 Furthermore there is still no explanation of how the particular information in the documents if disclosed could reasonably be expected to bring about such



prejudice. The Act very clearly requires such reasoning to have been included in the notices of determination. The failure of the Authority to do so in those notices has not been redressed by the Authority's subsequent submissions. The response goes on to refer to the former Ombudsman's letter of 18 May 1994, in which he "*pointed to the existing provisions in clause 4 and 10*". There seems to be the implication that the Ombudsman recognised those clauses' application to such documents as are in question. In fact the Ombudsman stated that the clauses offered ample protection for documents which it is really necessary to protect. I agree with the former Ombudsman but am of the view that a successful case for the application of clause 4(a) and (d) to these particular documents has not been made out.

### 5.3 Clause 9 - Internal working documents:

- 5.3.1 While it is possible the documents claimed as exempt under this clause meet the test of 9(1)(a), the Authority has not demonstrated that disclosure would on balance be contrary to the public interest test in 9(1)(b).
- 5.3.2 The Authority's response to the preliminary report argues that disclosure could impair the integrity of the decision making process by inhibiting the full and frank disclosure in documents or by affecting the candour with which advice may be given and recorded. Such an argument has been attacked in several decisions by courts and tribunals in this country (eg *Sunderland v Department of Defence* (1986) 11 ALD 258; *Sankey v Whitlam* (1978) 42 CLR 1; *VXF v Human Rights and Equal Opportunity Commission* (1989) 17 ALD 491; *Fenster v Department of Prime Minister and Cabinet No 2* (1987) 13 ALD 139). Indeed, in the *Sankey v Whitlam* case, the High Court observed that **the argument that government employees may be less candid with their advice in the future should documents disclosing their opinions be released is of such slight concern that it may be dismissed.**
- 5.3.3 I think it is highly unlikely the officers of the Authority will allow the quality of their clearly important work in the public interest, even where it relates to possible prosecutions or other action for breach of the environment protection legislation, to be impaired by the possibility that what they write **might** be subject to a future FOI application and, if so, **might** not be exempt.
- 5.3.4 Neither do I accept that the fact the matter has now been finalised in open court nullifies any public interest in disclosure. As I have discussed below there is a clear public interest in openness surrounding the basis of the Authority's decision to pursue a certain course of litigation.

### 5.4 Clause 10 - Documents subject to legal professional privilege:

- 5.4.1 Apart from the statutory declaration of Ms Dorelle Pinch little evidence has been presented to indicate that the documents claimed as exempt under the clause were prepared solely for the purpose of seeking legal advice or in relation to reasonably contemplated legal proceedings.
- 5.4.2 The Authority's response to the preliminary report, however, claimed that the documents were created solely because of the possibility of taking legal



proceedings against the Forestry Commission. This claim was made on the basis that the context in which the documents occur in the files show this to be the case.

- 5.4.3 In my opinion, without further details, this is clearly insufficient to prove legal professional privilege. It is unfortunate that the Authority holds that there is **not** *"any particular onus on the EPA to establish the existence of the privilege beyond a prima facie stage."* In my view section 28(2)(e) of the FOI Act requires such a complete justification of any exemptions claimed as to effectively establish a clear onus on the Authority.
- 5.4.4 This said, it is nevertheless clear the Authority sought the reports (1A, 1B & attachment to 4B) after receiving information from Woolf Associates on behalf of John Corkill which urged legal action be taken. The introductory paragraph to the reports mentions this. The response from the Authority to the preliminary report adds that the documents *"were produced for the purposes of production to qualified legal advisers in Legal Services Branch with a view to advising on possible legal proceedings."*
- 5.4.5 Legal professional privilege will only apply in this case if it can be shown that the documents were brought into existence for the **sole** purpose of obtaining legal advice or for use in litigation which is either pending or within the reasonable contemplation of the client. The reports were not written by a lawyer and therefore do not qualify as legal advice. It could however be argued that the reports, having being written by an officer of the Authority, are from the client to the lawyer for the purpose of obtaining legal advice. Alternatively the sole purpose test in relation to litigation may apply here. However, as stated in both the Premier's FOI Procedure Manual and the *Ombudsman's FOI Policies and Guidelines* the privilege does not cover documents drawn up to inform an agency of the existence of facts or circumstances which may give rise to the need for legal advice. In my view it is not clear that these documents are covered by legal professional privilege.
- 5.4.6 Documents 2A-2H were generated by the Manager Litigation, in the words of the Authority's response to the preliminary report, *"in connection with advices/attendances concerning possible legal proceedings arising out of the pollution incident."*
- 5.4.7 As regards document 2A, while it appears from its terms that it may have been brought into existence for more than one purpose (six purposes are listed in the first paragraph, at least four of which do not appear to be for the purpose of providing legal advice), Ms Pinch's statutory declaration to my mind provides sufficient evidence that it was created solely for the purpose of legal advice to justify that it may be appropriately exempted under clause 10.
- 5.4.8 In relation to document 2B, on its face it is confirming oral advice from the Manager Litigation to the A/EDO (Acting Environmental District Officer?), and appears to be confidential in nature and have been written for the sole purpose of providing legal advice to a client, in this case an officer of the Authority.



- 5.4.9 As for document 2C, its content does not appear to be legal advice. Its purpose, as stated in the document, is to inform the Director-General of the current status of the matter. That the update is in relation to a matter which may have resulted in litigation is probably not sufficient in my opinion to attract the privilege. I have made further comment on this document in the discussion on public interest later in this report.
- 5.4.10 In relation to documents 2D-2H, in my view the Authority's brief statement in relation to them quoted above does not provide sufficient evidence of sole purpose to carry a successful argument for privilege. It is arguable that the fact that they are file notes of telephone and face to face conversations which the Manager conducted in relation to this matter is insufficient to obtain the privilege. As an example it could be argued that the contents, admittedly innocuous, of documents 2E and 2G could not be said to contain or to be seeking or to bear any relationship on their face to legal advice, and only a distant relationship to litigation. I have made further comment on these documents in the discussion on public interest later in this report.
- 5.4.11 Document 3 *"is a printout of a white board note written by Lisa Corbyn, Executive Director, Planning, Education and Legal Division, generated during a conference with legal advisers on possible actions and strategies arising out of the incident."* I think it is doubtful this is a communication between client and adviser, though it was clearly created in connection with likely legal proceedings and may therefore meet the sole purpose test in relation to litigation and/or legal advice.
- 5.4.12 In summary, in my view a sufficient case in support of exemption of documents 2A and 2B has been made out by the Authority, but not so in relation to the other documents claimed as exempt, particularly document 2C which does not appear to me to be exempt. Having considered the Authority's response to the preliminary report, it appears to me that the status of the remaining documents is questionable to varying degrees (ie documents 1A, 1B, 2D-2H, 3 and attachment to 4B, which is identical to 1B).
- 5.5 Public interest
- 5.5.1 There remains the question of the public interest in the release of the documents. In the Authority's response to the preliminary report the Authority argued that there was *"nothing in the public interest which would be served by the release of [the] documents"* as the incident to which they related resulted in legal action being taken against the Forestry Commission, the outcome of which was on the public record. The Authority also questioned whether the Ombudsman had the power under section 52(6) to recommend the release of documents exempt under clause 10.
- 5.5.2 In *Re Smith and Attorney General's Department and Director of Public Prosecutions* (1989) 2 VAR 543, the AAT held that even though legal professional privilege applied to the documents access should be granted:

*"In my opinion there is a clear public interest in ensuring that the community is satisfied that the administration of the criminal justice system.....is above suspicion"*



*and is conducted without fear or favour....In my view the public are entitled to know why the whole of the circumstances do not constitute conduct which could be regarded as criminal" (p 548).*

- 5.5.3 The matter went to appeal and the AAT's decision was upheld. The court observed that there are many areas of national and community activities which may be the subject of the public interest, one being the public interest to ensure that justice should always be done and be seen to be done.
- 5.5.4 During the investigation of the matter under discussion Mr Corkill informed this Office that he had considered the litigation actions of the EPA insufficient in comparison to his view of the seriousness of the alleged breach by the Forestry Commission, and that he had sought the Authority's documents with the intention to examine the basis upon which it had made its litigation decisions.
- 5.5.5 I consider there is a public interest in such examinations being made, and in government agencies being open to outside perusal, and possibly criticism, of their internal decisions. This is particularly so where those decisions may or do impact significantly on issues of vital public concern, for example pollution of waterways and preservation of native fauna. I believe it is possible to state as a general principle that the quality of decision-making is improved by the prospect of external scrutiny or review. In my opinion public feedback to the EPA and similar agencies on such matters could be of great value in protecting such bodies from insularity, from being out of touch with community feeling, no matter how well they consider they collect and reflect such sentiment.
- 5.5.6 Having regard to the content of these documents, I cannot see how their release would adversely affect the Authority's ability to fulfil its charter in the least. As I have already indicated, there is to my mind no reasonable prospect or grounds to assume that officers of the Authority would provide advice of lesser quality if these documents were released. While I agree with the Solicitor General's point of view that public interest issues are built into the principle of legal professional privilege, I consider in this case the release of the documents will not inhibit the free flow of advice between lawyer and client.
- 5.5.7 Given my view on the public interest, I do not consider it necessary to come to a final conclusion in relation to those documents the status of which I have said is questionable. All the subject documents should in my view be released in the public interest. That is, the documents which may be exempt under clause 10 should be released in the public interest, namely documents 1A, 1B, 2D-2H, 3 and attachment to 4B. Documents 2A and 2B should be released in the public interest although they are exempt. Document 2C should be released as it is not exempt in my view.
- 5.5.8 At this point I think it is important to reassure the Authority in relation to my decision. The Authority's response to the preliminary report expressed such serious reservations about the release of this material that it claimed, if the exemption clauses used by the Authority were to be construed as they were in the preliminary report, there would be a need for the Authority and other agencies to seek legislative changes which would protect such information. I would point



out to the Authority that this is the only occasion when this Office has seen necessary to report on any FOI decision of the Authority, and this is a clear indication that the provisions of the FOI Act are quite sufficient to meet the legitimate confidentiality concerns of the Authority. The structure of the Act is very clear - documents which really do need protection can have it.

- 5.5.9 In its role as an external review agency under the FOI Act, this Office is of the view that the particular documents the subject of this report do not need that protection. This decision **by no means** creates a precedent which requires all such documents of the Authority to be released in the future if FOI applications are made for their release. The Authority may quite legitimately apply its mind to any future FOI applications on a case by case examination of the documents concerned.
- 5.5.10 This decision is not meant to, nor does it, cast aspersions on the other FOI work of the Authority. This Office recognises the genuine commitment of the Authority to FOI as illustrated for example by the valuable work of the Authority in compiling its internal FOI procedural guide and in sending staff to FOI training seminars.
- 5.5.11 The fact that these particular documents belong to a particular class relating to the enforcement of environment protection legislation is not of itself sufficient to claim exemption, neither should it be. The Authority's commitment to the exemption of this type of material, and the relative importance of this material, is no greater in this Office's experience than the importance of, and the commitment of many agencies at the external review stage to the exemption of, material they consider sensitive. If every agency sought legislative change every time a decision at external review recommended release of material to the confidentiality of which the agency was deeply committed - the latter being the case in every external review - it would make a mockery of the Act and of the government's commitment to the legislation.

## 6. Findings

- 6.1 I find that the Authority's determinations of Mr Corkill's application were, in terms of section 26(1)(g) of the Ombudsman Act 1974, otherwise wrong in that the requirements of section 28(2)(e) of the Freedom of Information Act were not fulfilled in the notices of those determinations.
- 6.2 I find that the Authority's determination to refuse access to document 2C was, in terms of section 26(1)(e) of the Ombudsman Act, based wholly or partly on a mistake of law or fact.

## 7. Recommendations

- 7.1 I recommend that document 2C be released to Mr Corkill immediately.
- 7.2 In terms of section 52(6)(a) of the Freedom of Information Act I recommend that disclosure of documents 1A, 1B, 2A, 2B, 2D-2H, 3 and the attachment to 4B



would on balance be in the public interest even though access may have been or was duly refused because they were or may have been exempt documents. I therefore recommend that these documents be released to Mr Corkill immediately.

- 7.3 I recommend that the Authority inform this Office of its compliance with recommendations 7.1 and 7.2 within 2 weeks of the date of my final report on this matter.
- 7.4 I recommend that the Authority review its procedures in relation to compiling notices of determination with reference to the *Ombudsman's FOI Policies and Guidelines*, and take steps to ensure future notices meet the detailed requirements imposed by the Act in relation to their contents, particularly the requirements of section 28(2)(e). This recommendation is made in the knowledge the quality of notices issued by the Authority may have improved in the period since this complaint was received.
- 7.5 I recommend that the Authority inform this Office of the steps taken as a result of recommendation 7.4 within 1 month of the date of my final report on this matter.

A handwritten signature in dark ink, appearing to read 'Chris Wheeler', is written over a light blue horizontal line.

Chris Wheeler  
Deputy Ombudsman



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**WOOLF**  
**ASSOCIATES**

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BRUCE WOOLF  
BA LLB Dip URP  
Principal

OUR REF      BSW 3759/5

YOUR REF

DATE            19 December 1995

Mr J.R Corkill  
1 Oliver Place  
LISMORE NSW 2480

Dear John

DISTRICT COURT APPEAL AGAINST FOI REFUSAL BY EPA  
DISTRICT COURT NO.7975 OF 1995

I note I await your instructions in this matter. In this regard for your assistance I enclose a copy of my letter of 6 November 1995.

With kind regards

Yours sincerely



Bruce Stephen Woolf



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**WOOLF**  
**ASSOCIATES**

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Principal

OUR REF      BSW 3759/5

YOUR REF

DATE          6 November 1995

Mr J.R Corkill  
1 Oliver Place  
LISMORE NSW 2480

Dear John

DISTRICT COURT APPEAL AGAINST FIO REFUSAL BY EPA  
DISTRICT COURT NO.7975 OF 1995

The Notice of Appeal was filed on 31 October 1995 which in Tim Robertson's view may have been the last day for lodging the appeal. Given the urgency of filing the notice and only having just receive your papers we were not able to lodge the application for Legal Aid by that date. We have however now forwarded the Legal Aid application to the Legal Aid Commission.

Tim advises that the argument appears to centre on the question of legal professional privilege and that it is likely to require approximately one days work to settle the affidavit required in the proceedings. This would also serve the purpose of providing the advice that will be likely to be necessary to be given to Legal Aid. Tim has already spent some 3.5 hours on the matter. I estimate fees for Tim Robertson (at \$180.00 per hour) for work in preparing the Notice of Appeal, providing advice and initial affidavit at say \$1,890.00 which he is likely to agree to reduce to say \$1,050.00. My fees (at \$175.00 an hour) are likely to be, say, \$700.00 which I could reduce to say \$400.00. These estimates are provided in relation to filing the notice, preparing initial affidavit and advice by Tim in order to assess the prospects for success and to provide the advice to Legal Aid. We would then need to reassess the situation upon the completion of that stage.

Accordingly could you please arrange to forward the sum of \$1,450.00 being the above moneys together with a further \$100.00 on account of disbursements.

I enclose copy letter dated 1 November 1995 which I have received from Tim Robertson.

Regards

Bruce Stephen Woolf

cc. T.F Robertson, barrister



**WOOLF  
ASSOCIATES**  
**SOLICITORS**

10th Fl, 82 Elizabeth Street  
SYDNEY NSW 2000  
TELEPHONE (02) 221 8522  
FACSIMILE: (02) 223 3530  
DX 1556 SYDNEY

BRUCE WOOLF  
BA LLB Dip URP  
Principal

OUR REF BSW 3759/5

YOUR REF

DATE 6 November 1995

Mr J.R Corkill  
1 Oliver Place  
LISMORE NSW 2480

Dear John

DISTRICT COURT APPEAL AGAINST FIO REFUSAL BY EPA  
DISTRICT COURT NO.7975 OF 1995

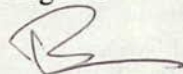
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Bruce Stephen Woolf

cc. T.F Robertson, barrister



=====

John R Corkill  
Public Interest Advocate, Environmental Educator, Planner, Policy Adviser  
*1 Oliver Place, Lismore. 2480. Phone 066 21 6824h. 066 224 737 w.*

Mr Bruce Woolf, Woolf Associates,  
10th Floor, 82 Elizabeth Street, Sydney. 2000.

31 October 1995

Dear Bruce,

Re: FOI Appeal for EPA refusal to release documents

Thank you for agreeing to accept instructions on this matter in our telephone conversation last Friday.

Enclosed is a cheque for \$200.00 made out to your favour. I am still seeking additional funding from other sources to meet your request for adequate funds for disbursements etc. Hopefully I shall be able to provide another cheque in a weeks time.

Please also find enclosed a copy of further correspondence from Dr Shepherd recieved today, which indicates that EPA *"do not propose to engage in further debate on this issue."*

This letter answers my letter of 11/10/95, a copy of which has been supplied to you. Dr Shepherd's earlier letter had not come to my attention when I wrote on 11 October. I assume he is mistaken in believing that no further debate is possible.

I seek your confirmation that *"EPA's strongly held view that the exemption should stand"* is reviewable in the District Court in the appeal I have requested be commenced this week.

I shall be phone contact shortly. Please note my contact phone and fax no.s are as follows:  
066 21 6824h. 066 224 737 w. Fax 066 222 676.

Thank you for your assistance in this matter.

Yours sincerely,

*J.R. Corkill.*  
JR Corkill

*NEFA Cheque No. 000041 062 565 1018 1269. 30/10/95*



JORDAN CHAMBERS L2  
01 2 2210944 01 11 95 10:54AM [19] #1

Tel: (02) 229 7337  
Fax: (02) 221 6944  
(02) 221 5747  
(02) 810 7590 A.H.  
DX: 450 SYDNEY

**TIM ROBERTSON**

Frederick Jordan Chambers  
53 Martin Place  
SYDNEY NSW 2000

1 November 1995

Bruce Woolf  
Woolf Associates  
Fax 223 3530  
-----

Dear Bruce

**CORKILL v. EPA**

Thank you for your instructions in this matter.

I have settled a notice of appeal after conferring with Mark Anderson this afternoon on jurisdictional matters, including the question whether time for appeal had expired. I set out below the reasoning which led us to conclude that Mr Corkill was probably within time for appealing:

1. Section 53(1) of the FOI Act confers a right of appeal "in accordance with rules of Court" to the District Court by any person aggrieved by a determination made by an agency under s.24.
2. The EPA made a determination under s.24 to refuse Mr Corkill access to certain documents which are set out in a table on p.7 of the report of the Ombudsman dated 31 August 1995.
3. Section 54(b)(ii) provides that an appeal shall be made, if a complaint is made to the Ombudsman and he investigates it, within 60 days after the results of the investigation are reported to the complainant.
4. I note that the Court has power pursuant to Part 5, Rule 11 to extend time for appeal, but this power is subject to any provision of the Freedom of Information Act: Part 5, Rule 9(1). I do not believe that the power of the Court to extend the time in which to appeal avails Mr Corkill because the FOI Act expressly limits appeals and contains no provision for extension of time. The Rules are inconsistent with the FOI Act and the Act prevails.
5. By letter of 31 August 1995 Mr Corkill was notified by the Ombudsman that a report had been completed. The report was enclosed with the letter. The report bears the date of 31 August 1995. Mr Corkill instructs me that the letter would have been received at the Big Scrub Environment Centre within several days of the date of the letter. 31 August was a Thursday and, in the ordinary course of the post, the letter would not have been received at the Big Scrub until Monday 4 September 1995 at the earliest.
6. Section 60 of the FOI Act provides that a notice that an agency is required to cause to be given to a person may be served by post and:

*"shall, if it is served by means of a letter be taken to have been given to the person at the end of the fifth day after the letter was posted to the person."*



7. It is arguable that the Ombudsman's report is a notice required to be served by the Act. Unfortunately, the FOI Act does not expressly require the Ombudsman to report to the complainant. Investigations by the Ombudsman are at his or her discretion. Section 52(1) of the FOI Act provides that the conduct of any person or body in relation to a determination under the FOI Act may be the subject of a complaint and may be investigated under the Ombudsman Act 1974. It appears that any obligation to report to the complainant is created by the Ombudsman Act 1974 and not the FOI Act. However, the Ombudsman is an agency within the meaning of s.6(1) of the FOI Act because it is not exempt from the operation of the Act in relation to all of its functions and the Ombudsman's report certainly notified the complainant of the results of his or her investigation. On the other hand, the FOI Act expressly refers to notices of determination of applications for access to documents and amendment of records (ss.28 and 45). The word "notice" may be a reference to notices properly so called, that is, as a term of art. In all the circumstances, it is probably unwise to rely upon s.60 of the FOI Act to support an argument that the results of the investigation are taken to be reported to the complainant five days after the Ombudsman mailed the report.
8. Under s.29(b) of the Ombudsman Act 1974, the Ombudsman must report to the complainant on the results of an investigation undertaken by him or her but is not otherwise required to serve the report in any particular manner or by any particular time.
9. Section 76 of the Interpretation Act 1987 provides that:

*"If an Act ... authorises or requires any document to be served by post (whether the word "serve", "give" or "send" or any other word is used) service of the document -*

*.....*  
*(b) shall, until the contrary is proved, be taken to have been effected at the time the letter would have been delivered in the ordinary course of post."*

It is perhaps implicit in s.26 of the Ombudsman Act 1974 that it authorises (but does not require) the Ombudsman to serve his or her report on the complainant by post and hence it is arguable that s.76 of the Interpretation Act is picked up and applied by the Ombudsman Act 1974.

10. Unfortunately, in all other respects the making of a report under the Ombudsman Act does not enliven any jurisdiction for appeal and it was therefore unnecessary for the Ombudsman Act to deal expressly with the time at which events are taken to have occurred. The FOI Act appeal mechanism was engrafted on the Ombudsman Act. It creates a jurisdiction to review the original determination of the agency by reference to an event which takes place under the Ombudsman Act 1974.
11. In the circumstances, perhaps the most appropriate approach to the construction of s.54 of the FOI Act is to read it without reference to deeming provisions. It could have said but does not say that time for appeal commences after the Ombudsman issues his or her report. The report was issued on 31 August 1995. Section 54 requires the results of the Ombudsman's investigation to be reported to the complainant before any right of appeal arises. This must mean that the relevant date is the date at which the report was brought to the attention of Mr Corkill, or perhaps the date at which he ought first to have known of it. There is little reason to interpret the section as requiring an earlier date, because the complainant may not have become aware of the existence of the report until after the time for appeal had expired. It is usual in limiting time for appeal to fix upon the date on which the subject matter of the appeal was brought to the attention of any potential appellant. This is the approach I expect the Court to take to the interpretation of s.54.
12. The Ombudsman reported to Mr Corkill by post. Section 160 of the Evidence Act 1995 provides:
 

*"(1) It is presumed (unless evidence sufficient to raise doubt about the presumption is advanced) that a postal article sent by prepaid post addressed to a person at*



*a specified address in Australia ... was received at that address on the fourth working day after having been posted.*

(3) *In this section: "working day" means a day that is not ... a Saturday or Sunday..."*

The law therefore presumes that Mr Corkill received the report constructively on Wednesday 6 September 1995.

13. Accordingly, I conclude (after conferring with Mr Anderson on this issue) that the time for appeal probably commenced on 6 September 1995, and expired on 5 November 1995. It is just possible that the report actually arrived at the Big Scrub and was therefore notionally brought to Mr Corkill's attention on Friday 1 September 1995, in which case the time for an appeal expired on 31 October 1995.

The District Court Rules deal with statutory appeals at Part 5, Rules 9-11 and Part 6, Rules 8-14.

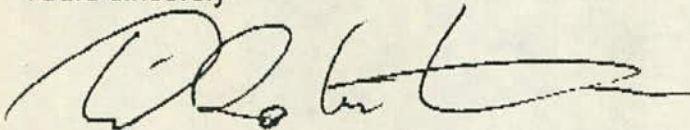
I note that Part 5, Rule 10(3) provides that the appellant at the time of lodging a notice of appeal shall lodge a copy of the application or other originating process which was before the authority which made the decision appealed against and shall lodge a copy of the decision or determination the subject of the appeal. In my opinion, this provision is directory, not mandatory: **Woods v. Bate** (1987) 7 NSWLR 560. The notice of appeal itself refers to the relevant applications and determinations by date and has therefore been substantially complied with. In my opinion, it will be satisfactory if Mr Corkill or you annex an affidavit setting out the history of the matter and the relevant documents. The purpose of this provision is to notify the respondent of the matter appealed against, but that matter appears unmistakably from the reference to the decision in the notice to appeal.

We should aim to have the matter set down as soon as possible and, if we have adequate grounds for such an application, we should apply to expedite it. Unfortunately, we have slept on our appeal rights which rather suggests that we do not have good grounds for expedition. Mr Corkill should inform us whether the matter is still urgent.

An affidavit must be prepared as soon as possible by Mr Corkill and I should be briefed to advise on prospects for success in the action for the purposes of legal aid. I shall send you a fee disclosure in due course.

Best regards.

Yours sincerely



TIM ROBERTSON



# NORTH EAST FOREST ALLIANCE

Sydney Office: C/- NSW Environment Centre, 39 George St., The Rocks. 2000. Ph 02 2474 206 Fx 02 2475 945

Dr Neil Shepherd,  
Director-General,  
Environmental Protection Authority,  
Level 20. Westfield Tower,  
100 William Street, East Sydney. 2011.

6 July 1992

Dear Dr Shepherd,

Re: Pollution Control Licences issued to Forestry Commission of NSW

I refer to our recent discussion concerning the issuing on 7 May 1992 of Pollution Control Licences to Forestry Commission of NSW (FCNSW) by the Environmental Protection Authority (EPA) under s.17D of the Pollution Control Act.

I recall that, in response to my request for copies of documents relevant to the above matter, you indicated a preparedness to allow access to and provide copies of both EPA's and FCNSW's material considered in the process of issuing pollution control licences.

You also indicated at our meeting that such information would have to be made available in response to a request under the Freedom of Information Act, but that 'in principle', you foresaw no difficulty in providing such information without need for a formal FOI request.

Accordingly, I seek copies of:

- the original application for a pollution control licence made by FCNSW in late January, 1992, and any amended application(s);

- all information or documents provided by FCNSW in support of its application(s);

- all documents considered by the EPA in granting the pollution control licences to FCNSW, including any reports prepared by EPA in the process of considering such application(s) by FCNSW;

- all correspondence relating to FCNSW's application or EPA's consideration of same, from FCNSW to EPA, from EPA to FCNSW and from EPA to other NSW government agencies, or from other NSW government agencies to EPA;

- any records of EPA's decision making in regard to the issuing of pollution control licences to FCNSW i.e. minutes of meetings etc.;



# NORTH COAST ENVIRONMENT COUNCIL<sup>Inc</sup>

Hon. Sec. Mr Jim Tedder, Pavans Road, Grassy Head via Stuarts Point 2441. Ph/Fax 065 690 802

draft 1 - 20/10/1995 [ 1996 WC Lic Req ->EDO for legal advice ]

Mr James Johnson & Ms Lisa ???  
Environmental Defenders Office,  
Suite 82, 280 Pitt St, Sydney. 2000  
per fax no. 02 267 7548

20 October 1995

Dear James and Lisa,

**Re: Further challenge by NCEC Inc to the grant of woodchip export licences to  
Sawmillers Export P/L by the Commonwealth**

Thank you for EDO's hard work on this issue to date: NCEC remains committed to challenging the legal basis of any further woodchip export licences and is keen to pursue further remedies which may prevent the continuance of woodchip exports and prevent further impacts on the forest environments of the north eastern region of NSW.

NCEC at its last meeting agreed to seek EDO's and senior counsel's further advice on possible avenues of legal action which NCEC Inc might pursue towards this aim.

This letter seeks EDO's agreement to receive further instructions from NCEC Inc, to obtain advice from Mr Basten QC, & possibly prepare further litigation, on:

- a) injunctive measures to prevent the further issue of a 96 woodchip export licence to SEP/L;
- b) challenges to the Minister's for Resources power to issue a further licence, either prior to, or following the issue of any 1996 export licence to SEP/L;
- c) the Minister for the Environment's decision to waive the need for further environmental impact assessment for the 1996 licence for SEP/L;
- d) the 'effectiveness of' or 'certainty' attached to any conditions placed on the licence by the Minister for Resources, following the issue of any 1996 export licence to SEP/L;

NCEC appreciates that if EDO agrees, arrangements similar to those for earlier proceedings would need to be made relating to legal aid, payment to EDO trust fund; costs agreement etc. Would you agree that a mutual 'refresher/ briefing seems necessary as an early part to a further conference. Also are you able to advise: have our FOI requests been yet answered?

? Do we have obtained a copy of the 1996 designation yet?

In order to expedite matters, if EDO agrees to accept these instructions, may we request that the necessary papers and any recent documents be forwarded a.s.a.p. to The President, Mr Terry Parkhouse at ??? Grassy Head Road, Yarrahapinni, via Stuarts Point. 2441.

Thank your for your consideration of this matter.

A reply at your earliest convenience would be much appreciated.

Yours sincerely,

Terry Parkhouse  
President NCEC Inc



Further, I seek your agreement to allow:

inspection of all EPA's files relating to FCNSW application(s) and EPA's consideration of same; and

copying of any parts of EPA files provided for my inspection.

If my understanding of your agreement to provide copies of relevant information without resort to a formal application under the Freedom of Information Act is mistaken, please take this letter to be such a formal application for access to information under the FOI Act.

Please advise where and when I can inspect the files to which access is sought.

As you appreciate the NSW environment movement's serious concern with the EPA's actions in this matter, may I request your response at your earliest opportunity.

Naturally, I would be prepared to meet any reasonable costs incurred in the provision of the information sought.

Your sincerely,

John R. Corkill  
Sydney Area Co-ordinator

[Aa: kkk\epa-ltp.foi]



## 8 Returning Officer's Report

→ 10 printed copies

- 8.1 Except where no nominations are received, the RO shall provide in association with the DRO a Report on the pre-selection ballot to a joint meeting of TSG and TCVG called <sup>in whole or in part</sup> for that purpose.
- 8.2 The RO's Report, in the event of only one nomination being received, shall include advice of the only nomination, a report that no ballot was held and a recommendation that the nominee be declared 'elected unopposed' as the The Greens candidate in the Federal seat of Page;
- 8.3 The RO's report in the event of more than one nomination being received shall include;
- 8.3.1 the number & names of nominees, and any subsequent withdrawals;
- 8.3.2 the date of the draw for order on the ballot paper and the order drawn;
- 8.3.3 the <sup>the completion of the Roll of Pre-selectors +</sup> preparation and despatch of postal ballot packages;
- 8.3.4 a full account of the number of valid primary votes lodged and the order of candidates eliminated in the count;
- 8.3.5 the result of ballot and a recommendation that the winner be declared 'The Greens Candidate in the Federal seat of Page';
- 8.3.6 information on the <sup>any</sup> behaviour <sup>contrary to the Greens principles</sup> of any member of TSG or TCVG during any stage of the pre-selection process and any relevant recommendations deemed appropriate by the RO and/or DRO.

8.3-7  
8.4-

## 9 Declaration of the Pre-selection Poll

- 9.1 A joint meeting of TSG and TCVG shall be called for the purpose of receiving the RO's Report and making a Declaration of the Pre-selection Poll;
- 9.2 The joint meeting pursuant to s.9.1 above, shall be called by the Secretaries of TSG and TCVG respectively, in accordance with their agreements and practices in giving notice of meetings, and shall be held within 7 days of the Close of receipt of votes.
- 9.3 Following the receipt of the RO's report, the Declaration of the Poll shall take the form of a resolution to declare the successful pre-selection nominee the winner of the poll and 'The Greens Candidate in the Federal seat of Page';
- 9.4 A resolution pursuant to s.9.3 shall be carried by consensus, or failing consensus, by the majority of Pre-selectors present;

## 10 Announcement of the pre-selected Candidate

- 10.1 The RO shall make a public announcement of the results of the pre-selection ballot, following the adoption of a resolution pursuant to s.9.3 declaring the Poll, at a time date and place suitable to and agreed upon by the successful pre-selection candidate.



+-----+  
**JOHN R. CORKILL**  
**ENVIRONMENTAL EDUCATOR, PLANNER,**  
**POLICY ADVISER**

Executive Officer: Green Appeal Inc.; Sydney Co-ordinator: North East Forest Alliance (NEFA);  
Vice President: North Coast Environment Council Inc.; Environment representative: Coastal Committee of NSW.

NSW Environment Centre, 39 George St, The Rocks. 2000. Ph 02 2474 206; Fx 02 2475 945;  
'The Big Scrub' Environment Centre, 149 Keen Street, Lismore. 2480 Ph 066 21 3278; Fx 066 222 676;

+-----+  
Mr Bruce Woolf,  
Woolf Associates,  
10th Floor, 82 Elizabeth Street,  
Sydney. 2000.

8 September, 1992

Dear Bruce,

Re: Oakes State Forest and EPA/FCNSW 'licences to pollute'.

I have obtained from the EPA and FCNSW copies of the documents which relate to the issuing of 'pollution control' licences by EPA to FCNSW, in line with the FOI request dictated by counsel, Mr Robertson. FCNSW processed my request as a FOI Matter while EPA did not require the FOI procedures to be invoked. I have provided these documents to Mr Robertson.

The documents obtained do not include information which was withheld by the EPA (see attached note from EPA file). Should we seek other material not released, through a formal FOI application, or wait and include them in subpoenas at a later time?

I have today discussed the Oakes State Forest matter again with Ms Penny Figgis, a member of the EPA Board, who advises that EPA has formally determined to take no action in this matter. This decision would clear the way for us to begin a criminal prosecution, would it not, if we could finalise the evidence and commence proceedings?

I understand that the EPA Board has recieved a (6 page) report from a Mr Ian Greenbank, the EPA field officer who inspected the site with Dailan earlier this year. This report 'talks down' any impacts and is written in language which repeatedly minimises our concerns and the effect in the field.

Further, I understand that Dr Shepherd has written a information/ (in)action paper for the Board which reports that the EPA need do nothing at all further.

Can you write to the EPA requesting the provision of copies of all correspondence, notes, reports, draft reports, minutes, from and to the EPA, including instructions or internal memos between Dr Shepherd or other senior officers of EPA and Mr Greenbank, on the Oakes SF pollution matter, please?



## 7.4 Voting Instructions

- 7.4.1 in accordance with s.7.2.2 the RO shall provide <sup>both the covering letter and</sup> on the ballot paper, written voting instructions to each Pre-selector advising them to:
- use numbers to record an optional preferential vote;
  - ensure the RO receives their vote by the time & date specified;

## 7.5 Receipt of Postal Votes <sup>+ Security</sup>

- 7.5.1 The RO shall collect and store <sup>in</sup> at a safe <sup>locked</sup> place, ~~unopened~~ <sup>returned</sup>, all completed postal votes returned by pre-selectors, until the time and date for the close of the receipt of votes.

## 7.7 Counting of Votes

- 7.7.1 <sup>7.5.3 Late votes rec'd and unopened</sup> At the specified time on the date of close of the receipt of votes, the RO, DRO and AROs shall process the returned completed votes in the following manner: <sup>as soon as practicable thereafter</sup>

- 7.7.1 all return mail envelopes shall be counted then opened to remove the smaller containing the ballot papers;

- 7.7.2 the smaller envelopes shall be counted and the return mail envelopes <sup>recalled or</sup> discarded; ~~removed~~

- 7.7.3 any ~~discrepancy~~ <sup>discrepancy</sup> between the numbers of large & small envelopes should be noted by the RO;

- 7.7.4 all smaller envelopes shall be opened and their ballot papers removed;

- 7.7.5 the number of ballot papers shall be counted and the smaller envelopes discarded;

- 7.7.6 any discrepancy between the number of small envelopes and the number of ballot papers should be noted by the RO;

- 7.7.7 <sup>recording a pre-selection</sup> the ballot papers should be counted <sup>placed in piles arranged in the same order as on the ballot paper</sup> according to each pre-selection candidate's primary votes and the numbers of primary votes shall be recorded by the RO;

- 7.7.8 preference votes should be allocated by eliminating the pre-selection candidate with the fewest primary votes, and distributing their preferences to the remaining pre-selection candidates;

- 7.7.9 the RO shall record the ~~preference~~ <sup>eliminated</sup> distribution of each candidate ~~eliminated~~ <sup>remaining</sup> and the aggregate total for each candidate following each preference distribution;

- 7.7.10 The RO shall repeat step g) until one pre-selection candidate gains the majority of distributed preferences;

- 11 <sup>nos of exhausted votes and</sup> pre-selection candidates, on their scrutineers <sup>only</sup> authorised in writing) may attend the count of postal votes
- 12 RO shall advise pre-selection candidates at the time date + place of the counting of the postal ballot.



Should we make this request a formal FOI application to EPA or attempt, in this instance, to again obtain documents on a 'friendly' basis only? If we make a 'friendly' request will we be granted all the information sought?

In addition, I understand that the Forestry Commission has now recieved a report, or reports, on inspections of Catbird Road from the Soil Conservation Service, AND possibly another consulting engineer, with recommendations attached.

FCNSW has also recieved the results of the koala survey required to be undertaken by the NPWS. This results of this survey were not completed and supplied to NPWS by the end of June as was required by the 'licence to take and kill' issued to FCNSW by NPWS.

My colleague Lyn Orrego, on behalf of the Nambucca Valley Conservation Association (NVCA), through its Secretary, Ms Pope, has pursued the provision of these documents.

After a initial outright rejection by FCNSW and a restated request from NVCA, Ms Pope recieved the attached response from FCNSW. I believe the Commission is playing for time and will not release the information unless forced to do (Nothing new about that!)

Are the Commission's reasons for refusing to supply the information defensible in terms of s. 26(c) of the FOI Act as Mr Ball claims?

Can we now pursue the forced provision of this information, either via a fresh FOI by me or through a recommendation to Lyn Orrego that they (NVCA) contest John Ball's response of 4 August, and request the Ombudsman's intervention?

I'd hoped the relationship between NEFA and FCNSW would have improved with the recent appointment of a new regional forester to replace John Bruce, (who has been sent to the new Taree regional office), but Mr Graeme King seems quite antagonistic, perhaps as much as John Bruce before him, and has refused requests for him to volunteer the information.

Thanks for your attention to these matters.

Yours sincerely,

John R. Corkill  
Sydney Area Co-ordinator.

CC Tim Robertson.

Encl. EPA file note  
FCNSW John Ball's response to Pope (NVCA) request for info



- 5.3 ~~6.10~~ Nominations may be withdrawn, via a written notice signed by the nominee being provided to the RO, at any time up until the commencement of the draw for order on the pre-selection ballot paper;
- 5.4 ~~6.11~~ Where no nominations are recieved by the Close of Nominations, the RO shall prepare a short Report to the Secretaries of TSG and TCVG and await further advice on a new joint resolution, to either abandon the preselection, or to re-open nominations.
- 6.12 *Where no nominations recieved by a date specified in a resolution made under 1.4.16, the FEWG of TSG + TCVG shall meet to consider either re-opening or abandoning preselection in Page*
- 7 **Conduct of the Ballot for Pre-selection**

7.1 Unopposed nominees

- 7.1.1 Where only one person nominates for pre-selection, no postal ballot shall be held, and the nominee shall be declared by the RO, pursuant to s.9.2 of these SO, as 'elected unopposed';

7.2 Secret Ballot by Postal Vote

- 7.2.1 Where the number of nominees is two or more, *with the help of the DRO + AROs,* a secret ballot shall be carried out by means of a Postal Vote;
- 7.2.2 The RO shall conduct a postal vote, by sending to each Pre-selector, via Australia Post, an envelope containing:
- a) a covering letter from the RO & DRO which gives:
    - i) an explanation of the process of the postal vote
    - ii) directions for the use of the enclosures (b,c & d); and
    - iii) voting instructions for a valid vote;
  - b) one ballot paper initalled on one corner of the reverse side of the paper by the RO;
  - c) a small envelope for enclosing the completed ballot paper;
  - d) a second, larger envelope *(for enclosing the small envelope)* which has the RO's address for return of ballots marked upon it;
  - e) the A4 sheets prepared by each pre-selection nominee;

7.3 Order on pre-selection ballot paper;

- 7.3.1 The order of nominees on the pre-selection ballot paper shall be the order determined by the DRO drawing ~~the~~ names from a hat held by the RO;
- 7.3.2 Nominees for pre-selection shall be advised by the RO of the time and place ~~for~~ the draw to determine the order on the ballot paper, so that they may, if they wish, attend and witness the draw.
- 7.3.3 The draw to determine the order on the ballot paper shall be held within 3 days of the close of nominations.

*See sample ballot Annexed, to these st/notes*  
*Re names of the Greens parties in Page. TSG + TCVG*  
*Recycled paper where possible*  
*A strictly limited no. to be made*



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# NORTH EAST FOREST ALLIANCE

C/- Big Scrub Environment Centre Inc, 149 Keen St Lismore. 2480.  
Ph 066 21 3278, Fax 066 222 676

---

Mr Chris Wheeler, Deputy Ombudsman,  
3rd Floor, Coopers & Lybrand Building,  
580 George Street, Sydney. 2001.

11 October 1995

Dear Mr Wheeler,

Re: NSW Ombudsman's Final Report on FOI complaint by JR Corkill about the EPA, 31/8/1995.

Thank you for your Final Report which I read with considerable delight.  
I am especially pleased that the importance of the "public interest" test has been highlighted and the claims as to 'a lower standard of staff reporting' have been put to rest. Thank you very much.

Unfortunately, the Final Report appears not to have disturbed the EPA's commitment to maintaining the confidentiality of the 11 documents "still withheld". I still have not been supplied with copies, nor have I been able to obtain them when I have phoned the EPA to request them.

I enclose a copy of my letter to Dr Shepherd of today's date which requests, again, the release of these documents pursuant to your recommendation 7.2.

In s. 7.3 of the Final Report, you recommend that EPA inform the Ombudsman "of its compliance with recommendations 7.1 and 7.2 within 2 weeks of the date of my final report on this matter."

I advise that:

- \* Document 2C was provided to me soon after 2/8/1995 after nearly three years of waiting;
- \* 11 documents remain "still withheld" despite your explicit recommendation;
- \* I have received no further communication from EPA since the issue of the Final Report on 31/8/1995

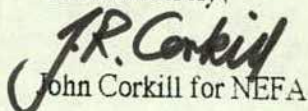
I continue to be dissatisfied with the EPA's handling of this FOI request, in that:

- \* documents supplied on 2/8/1995 are marked misleadingly; and
- \* the EPA has not complied with your Recommendation 7.2;
- \* I have had to again formally request the release of documents which have been already recommended to be provided to me "immediately".

I seek your advice about the actions the Ombudsman will now take to enforce its recommendations.  
What action will you take against EPA's D-G who appears personally intent on flaunting your ruling?

Must I now approach the District Court to order EPA to produce the documents?

Thank you for your attention to this important matter.  
Yours sincerely,

  
John Corkill for NEFA



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# NORTH EAST FOREST ALLIANCE

C/- Big Scrub Environment Centre Inc, 149 Keen St Lismore. 2480.

Ph 066 21 3278, Fax 066 222 676

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Dr Neil Shepherd,  
Director General, Environmental Protection Authority,  
PO Box 1135 Chatswood 2057

11 October 1995

Dear Dr Shepherd,

Re: Release of documents under FOI requests nos. 92/28 & 92/31.

Thank you for your correspondence of 2 August 1995 enclosing copies of "a number of documents" which you agreed to release to me following discussions with the Ombudsman.

I am dissatisfied with your provision of this information since documents numbered 1A & 1B are plainly not Documents 1A and 1B the subject of the Final Report. In addition, Document 3 is said to be a 1 page handwritten note regarding logging in Oakes SF, yet the document supplied to me as no. 3 is a type-written extract from DG Report to EPA Board (59/92) 14/9/1992. A document numbered with an 8 appears to be Document 2C, but is it?

I refer to the Final Report on FOI complaint by JR Corkill about the EPA, issued on 31/8/1995. As you know, this complaint arose from EPA's handling of my FOI applications, made in late 1992, regarding logging operations in Oakes SF and the EPA's response to allegations of breach of the Clean Water Act in the headwaters of the Belligen River, within the boundaries of a proposed wilderness areas and extension of the World Heritage New England National Park.

I note on page 13, the Ombudsmans Findings that the EPA

6.1 "was wrong" in failing to fulfill the requirements of the FOI Act s.28(2)(e), and

6.2 based its refusal of Document 2C, "either wholly or partly, on a mistake of law or fact".

These Findings were made under ss.26(1)(g) & 26(1)(e) of the Ombudsman Act 1974, respectively.

I further note that in s.7.2 of the Final Report, it is recommended that all documents still withheld (Docs 1A, 1B, 2A, 2B, 2D - 2H, 3 and attachment to 4B) be released to me "immediately" (see pp 13-14).

I advise that I still have not received copies of the 11 "withheld documents".

I further advise that since the release of the Final Report, while in Sydney, I have twice phoned the EPA's Chatswood Office to gain access to the documents, but have been unable to do so.

I note the Ombudsmans recognition of the overwhelming priority of the "public interest" test, (see for e.g. s.5.5.5) but am disturbed to learn of the EPA's high level of "commitment" to maintaining the confidentiality of the documents, (s.5.5.11) notwithstanding legal obligations imposed by the FOI Act.

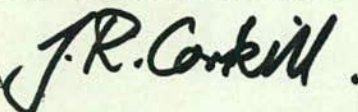
I request, again, the release of these 11 withheld documents (Docs 1A, 1B, 2A, 2B, 2D - 2H, 3 and attachment to 4B) pursuant to Recommendation 7.2 of the Final Report by the Ombudsman, 31/8/1995.

Since you were wrong & in error, I request a personal apology from you in reply to this letter, enclosing ALL the relevant documents a.s.a.p., in keeping with the 'best practice' of senior government officials.

I assure the EPA that if you intend to continue to suppress these documents, despite the explicit ruling of the Ombudsman, I will take whatever further actions my lawyers deemed appropriate.

Yours sincerely

John Corkill for NEFA





# NORTH EAST FOREST ALLIANCE

Sydney Office: C/- NSW Environment Centre, 39 Geogre St., The Rocks. 2000. Ph 02 2474 206 Fx 02 2475 945

Mr Ross Brown, 10 November, 1992  
Freedom of Information Officer,  
Environment Protection Authority,

Bankstown.

Dear Sir,

Re: FOI Application relating to  
EPA's issuing of 'pollution control' licences to FCNSW

I apply under the Freedom of Information Act, 1989 for access by way of inspection and copying to documents relating to the EPA's consideration, decisions and actions on the issuing of 'pollution control' licences under the Clean Waters Act, 1970 to the Forestry Commission of NSW.

The documents to which access is sought are those documents which were withheld in the previous informal arrangement for the inspection of documents earlier this year.

A description of these documents is attached.

I am deeply disappointed that I now have to make a formal FOI application for documents after the Director-General agreed to open access to all relevant documents.

This situation does not augur well for the public accountability of the EPA nor does it signify EPA's staff's willingness to deliver on commitments made at the highest level with the Authority.

I apply for a 50% reduction in fees and charges for this application since I am of the opinion that it is in the public interest that all relevant information be disclosed relating to the pollution, and/or the pollution control of the waters of the state.

That this is in the public interest is beyond doubt following the judgement of Mr Justice Stein in granting Mr AJ Brown standing under the EO&P Act for the matter of Brown vs EPA in relation to the APPM Shoalhaven pollution control licence.

Please find enclosed a \$30.00 cheque as application fee.

Please advise me a.s.a.p. at which location(s) such inspection and copying may be effected. Thank you for your assistance.

Yours sincerely,

John R. Corkill

draft as @ 29 October, 1992

ENVIRONMENT PROTECTION AUTHORITY



The Greens NSW, as the only state registered Greens party, have approved The Summerland Greens as its local member group which has exclusive 'coverage' of the state seat of Lismore & the local council area of Lismore City.

The Summerland Greens stood a candidate in the Lismore City council area in the recent local council elections and succeeded in achieving local representation as The Greens, through the election as a Councillor of our nominee Gray Wilson.

7 The continued use of the name The Lismore Greens, or Lismore Greens is inappropriate, misleading, without any legal basis and is deliberately fraudulent.

We wish to have no association between our group The Summerland Greens and the ~~defunct~~ Lismore Greens or its spokespersons.

We want to end the public confusion and ensure that The Summerland Greens and our Lismore City Councillor, Cr Gray Wilson are not mistaken as, or held responsible for actions by, persons claiming to be acting on behalf of The Lismore Greens.

### **Mr Oshlack cannot now claim the name The Lismore Greens**

During the run up to the local elections a Mr Oshlack registered as a local group name, the Richmond Clarence Independents. Mr Oshlack is also a member of and spokesperson for The Richmond Clarence Greens, a separately federally registered Greens political party.

During the local election campaign Mr Oshlack attempted to use the names of the ~~defunct~~ Lismore Greens and The Richmond Clarence Greens despite the fact that he had just registered a local group name as Independents. No person was elected to Lismore City Council from the group, the Richmond Clarence Independents.

The Richmond Clarence Greens were once related to the federally registered parties The Greens NSW and The Australian Greens.

Following the expulsion of The Lismore Greens from The Greens NSW, The Australian Greens proscribed The Richmond Clarence Greens and has de-related from them. All other separately federally registered Greens parties have been asked by The Australian Greens to formally de-relate from The Richmond Clarence Greens.

The continued separate federal registration of The Richmond Clarence Greens has been formally objected to and the Australian Electoral Commission have been requested to carry out a compliance audit of The Richmond Clarence Greens, since The Richmond Clarence Greens membership has fallen below the 500 members required for a separate federal registration.

### **Conclusion** **Conclusion**

X The point of this recitation of the recent history of The Greens parties in NSW is to demonstrate that The Lismore Greens, have lost all credibility amongst the local Greens party members, the member groups which comprise The Greens NSW and apparently the local electorate.



ENVIRONMENT PROTECTION AUTHORITY

SCHEDULE OF DOCUMENTS SOUGHT UNDER FREEDOM OF INFORMATION ACT

Other than documents provided by EPA to Mr Corkill under informal access (which are listed in the attached Scedule EPA1)

1. all documents considered by the EPA in granting the pollution control licences to FCNSW, including any reports prepared by EPA in the process of considering such application(s) by FCNSW;
2. "the remaining documents" referred to in the memorandum from D. Campbell to B. Train dated 21 July, 1992 concerning the informal request (also attached);
3. all documents considered in, and records of, EPA's decision making in regard to the issuing of pollution control licences to FCNSW i.e. reports, discussion papers, minutes of meetings;
4. all documents considered, taken into account or prepared by the EPA in purportedly fullfilling its functions under:
  - a) s.111 of the Environmental Planning and Assessment Act, 1979 ("the EPA Act");
  - b) s.112 of the EPA Act;
  - c) s.17D of the Pollution Control Act, 1970;in making decisions concerning:
  - i) the application for pollution control licences by the Forestry Commission of NSW;
  - ii) the issuing of the said licences;
  - iii) the conditions attached to the said licences;
  - iv) the investigations of complaints of breaches of the said licences.
5. records of the said decisions.
6. all documents prepared for or supplid to the EPA Board, or Board members, concerning the said decisions.
7. Minutes of the EPA Board concerning any discussions of the said decisions.



In contrast, our credibility as The Greens, led to the election of The Greens candidate as a local councillor on Lismore City. Thus the only Greens group which has a legitimate legal right under electoral law to coverage of the state seat of Lismore or the Lismore City Council area is our group The Summerland Greens, a local member group of The Greens NSW.

While we contend that Australians have a constitutionally implied freedom of speech, we view the continued use of the name The Lismore Greens as an abuse of this freedom, which misleads the public.

APN would not permit another publisher to continue to misleadingly trade on the name of a well known APN newspaper if that person no longer had a legal or moral right to the name, other than a claimed right of 'freedom of speech'. We now find ourselves in similar circumstances: having legally obtained the right to The Greens name in the Lismore area, others use The Greens name misleadingly.

### Action requested

We seek your co-operation to ensure that your publications, such as The Northern Star, are not unwittingly used as vehicles for further misrepresentations and misinformation by persons claiming to act on behalf of The Lismore Greens.

We request that the editorial and advertising staff of your publications, such as The Northern Star, be instructed that if any media releases, comments or ads are submitted in the name The Lismore Greens, or Lismore Greens, they decline to use the comments or accept the ad and / or substitute a natural person's name.

We request that editorial staff of your publications, seeking a local comment by The Greens, be instructed to contact Cr Wilson 066 298 325 h or The Secretary on 066 222 478 h. Comment on NSW issues should be addressed to Mr Ian Cohen MLC 02 230 2204 while requests for comment on federal issues should be directed to The Greens NSW No.1 Senate candidate Ms Karla Sperling ph 042 566 792 or 042 214 653.

In addition to comments made by Cr Wilson, authorised media releases will be issued by The Summerland Greens from time to time and will be faxed to The Northern Star in keeping with the usual practice.

We do not wish to prevent public statements being made by Mr Oshlack or others. We seek to ensure that any statements or ads do not misleadingly use the name The Lismore Greens, or the Lismore Greens.

If you wish to obtain more information on this matter please contact the Secretary, The Summerland Greens on 066 222 478 h; The Greens NSW Convenor, Catherine Moore 048 428 055 h or The Greens NSW Registered Officer, Mr Geoff Ash 02 365 3837 h.

We would appreciate your reply acknowledging this letter, and advising what action APN will take to prevent further public confusion. Thank you for your assistance.  
Yours sincerely,

Joy Wallace  
Secretary TSG and  
former member of  
The Lismore Greens

John R Corkill  
Member TSG and  
recent past Secretary of  
The Greens NSW ('94/'95)



+-----+  
**JOHN R. CORKILL**  
**ENVIRONMENTAL EDUCATOR, PLANNER,**  
**POLICY ADVISER**

Executive Officer: Green Appeal Inc.; Sydney Co-ordinator: North East Forest Alliance (NEFA);  
Vice President: North Coast Environment Council Inc.; Environment representative: Coastal Committee of NSW.

NSW Environment Centre, 39 George St, The Rocks. 2000. Ph 02 2474 206; Fx 02 2475 945;  
'The Big Scrub' Environment Centre, 149 Keen Street, Lismore. 2480 Ph 066 21 3278; Fx 066 222 676;

+-----+  
Mr Bruce Woolf,  
Woolf Associates,  
10th Floor, 82 Elizabeth Street,  
Sydney. 2000.

17 September, 1992

Dear Bruce,

Re: Sundry matters

Further to our telephone conference of 17/9/'92 I would like to confirm my instructions in the following various matters:

**OAKES STATE FOREST - KILLIEKRANKIE MOUNTAIN**

FOI Act applications

I have completed 3 applications for documents under the FOI Act as requested by counsel in our earlier conference. I have applied to FCNSW, EPA and SCS/CALM for all documents relevant to the construction of Catbird Road. Attached are the schedules of documents sought from each agency. These schedules were settled by Tim. I enclose a copy of one covering letter only: a similar letter was sent to all three agencies.

I wonder if in 21 days there will be an avalanche of information or will we have to fight out our FOI access before the Ombudsman or the District Court?

Killiekrankie costs

Please find attached two cheques for expenses associated with the preparation of litigation. One from North Coast Environment Council Inc = \$1,500.00 and a second from Big Scrub EC = \$3,000.00. Please deposit these cheques in the usual way and pay outstanding bills from the balance.

I would be grateful if you would pay the following accounts immediately:

Coffey Partners International                      \$1151.43

Access Aviation                                      \$1580.00

Copies of the relevant invoices are attached.



5. Nominations

5.1 Calling For

5.2 Making of

5.3 Withdrawal of

5.4 Lack of

The RO shall call for

## 5 Call for Nominations

5.1 Nominations shall be called for 'Candidates for pre-selection as The Greens candidate in the Federal seat of Page' in accordance with the timetable set out in the resolution made pursuant to s.1.4.1 of this SO;

5.2 the Call for Nominations shall be made in both Lismore & Grafton via:

5.2.1. paid ads in at least one local newspaper circulating in each city; *Members*

5.2.2 community announcements on radio and TV stations; *Kyogle*

5.2.3 notices on community notice and bulletins boards; *casino?*

5.2.4 word of mouth advice from the members of TSG and TCVG;

5.3 The Call for Nominations shall specify:

5.3.1 a that a prospective nominee for pre-selection must be a *financial* member of TSG or TCVG;

5.3.2 b that nominations must be in writing, signed by two (2) members of TSG or TCVG and include the nominee's written acceptance of the nomination and a short written statement by the nominee;

5.3.2 c the closing date for nominations;

5.3.3 d the address for seeking further information and/ or lodging a nomination. *and for contact phone no.*

## 6 Nominations

6. Nominations must:

6.1 be in writing;

6.2 be signed by two (2) financial members, of either TSG or TCVG, or by a financial member from each party;

6.3 include the nominee's written acceptance of the nomination;

6.4 be accompanied by a short written statement, not greater than one A4 sheet, which explains why the nominee should be elected The Greens candidate for Page;

6.5 be received by the Returning Officer by the advertised date and time for Closure of Nominations;

6.6 not be accepted by the RO or DRO if they are received after the advertised date and time of the Closure of Nominations;

6.7 Nominations may include (with the short written statement) a photo or graphics *which together is not greater than one A4 sheet in size;*

6.8 Nominees shall be encouraged to attend at least one meeting each of TSG and TCVG during the nomination period, to declare their interest in being pre-selected and to meet the local members;

6.9 While a nominee, *with the permission of their nominator* or their nominator may disclose a nomination, nominations will be treated as confidential by the RO & DRO and will not be disclosed until the close of Nominations; *specified in 14.1.6*

*to the parties after*



TIMBER INDUSTRY (INTERIM PROTECTION) ACT, 1991

Ombudsmans inquiry

Thank you for your advice that you will consider the documents in FCNSW's response to The Big Scrub EC's complaint of FCNSW conduct prior to and during the passage of the Timber Industry (Interim Protection) Bill 1991.

I confirm that BSEC will seek verbal confirmation from the Office of the Ombudsman of an extension of time to prepare detailed comments on the range of matters raised in FCNSW's response.

Please forward to the Big Scrub EC any corrections, or comments on FCNSW's response, at your earliest opportunity.

Public Interest Law Conference paper

Thank you also for your agreement to review the draft of my paper for the above. I shall fax it to you later next week.

Washpool costs recovery

Please continue to pursue this matter as you see fit. I am still very anxious to have the Washpool accounts settled. I am all the more keen to have done so before the PIL Conference on 9/10/92 (now 2 weeks away) when I will wish to make some public comment on the pluses and minuses of public interest litigation.

Would it be relevant to mention the length of time we've been waiting for settlement of costs and the date of my speech at the conference in your next phone conversation with the relevant officer at LAC?

Thank you for your continuing diligence in executing my requests Bruce. I appreciate your willingness to deal with so many issues, so competently. Cheers!

Your sincerely,

John R. Corkill



## 2 Election of Returning Officers

- 2.1 The RO and DRO are responsible for compiling the Roll of Pre-Selectors and conducting the pre-selection ballot in accordance with Green principles, these Standing Orders and the resolution carried pursuant to s.1.4.2. *2.12 Accountable to individual parties + The Greens NSW + The Aust Greens.*
- 2.2 Nominations for the positions of RO & DRO shall rotate, such that at each Federal election the group which last nominated the DRO nominates the RO and vice versa; *2.1.1 Report to Special Joint Meeting of The Greens in Page*
- 2.3 TSG / TCVG may make their own procedures for electing a RO or DRO; *each*
- 2.4 As soon as possible after their election, the RO and DRO shall write to the Secretary of The Greens NSW and The Australian Greens advising them of their appointment and the terms of the resolution made pursuant to s.1.4.2. *2.4 convene a meeting to*
- 2.5 The RO and DRO may appoint by mutual consensus, up to four (4) Pre-selectors, not being nominees or nominators, as Assistant Returning Officers (AROs) to assist with the collation of voting packages and the receipt and counting of postal votes

## 3 Eligibility to vote in Pre-selection in Page

- 3.1 All members of The Summerland Greens (TSG) and The Clarence Valley Greens (TCVG) shall be eligible to vote in The Greens pre-selection provided that *nominate for and*
- a) they are not a member of any proscribed political party pursuant to s.5.3 of The Greens NSW Constitution;
  - b) they are a paid-up financial members of either TSG or TCVG at the closure of the Roll of Pre-selectors;
  - c) they have not within the last year resigned or died.

## 4 Closure of Roll of Pre-selectors

- 4.1 The RO shall compile a Roll of Pre-selectors for the purposes of conducting a ballot of members to determine who shall be The Greens candidate in the Federal seat of Page; *with the assistance of financial to DRO, list to be confidential to TSG + TCVG*
- 4.2 The Roll of Pre-selectors shall be the combined membership lists of TSG and TCVG, current up to the date of the Closure of the Roll pursuant to the resolution carried under s.1.4.2 of these SO; *specified in*
- 4.3 Once closed, no names may be added to the Roll of Pre-selectors by the RO or DRO;
- 4.4 Within 7 days of the date of Closure of the Roll of Pre-selectors, the Secretaries of TSG and TCVG shall forward to the RO the names and addresses of all financial members current at the date of Closure of the Roll;
- 4.5 The Roll of Pre-selectors shall be available for inspection by any member of TSG or TCVG or any nominee of The Greens NSW or The Australian Greens;



# NORTH EAST FOREST ALLIANCE

Sydney Office: C/- NSW Environment Centre, 39 Geogre St., The Rocks. 2000. Ph 02 2474 206 Fx 02 2475 945

The Freedom of Information Officer,  
Environment Protection Authority,  
Level 20, Westfield Tower,  
100 William Street, East Sydney. 2011.

15 September, 1992

Dear Sir,

Re: FOI Application relating to  
Catbird Road construction and water pollution, Oakes State Forest

I apply under the Freedom of Information Act, 1989 for access by way of inspection and copying of documents, relating to the construction and maintenance of Catbird Road, in the Oakes State Forest, No. 609, in the Bellinger River catchment, including any subsequent soil erosion and/or water pollution incidents and steps made to attempt pollution control.

A Schedule of documents to which access is sought is attached.

I apply for a 50% reduction in fees and charges for this application since I am of the opinion that it is in the public interest that information be disclosed relating to:

- \* management of state forests, a public resource; and
- \* erosion incidents and pollution control within the headwaters of the Bellinger River, being the catchment for drinking water supply in the region.

Please find enclosed a \$30.00 cheque as application fee.

Please advise me a.s.a.p. at which location(s) such inspection and copying may be effected.

Thank you for your assistance in this matter.

Yours sincerely,

John R. Corkill



The Lismore Greens credibility was so poor that all but a handful of its earlier membership deserted it prior to it being formally expelled from The Greens NSW after more than 2 years of conflict. Its lack of credibility has led local people seeking credible political representation by The Greens to form a new group.

In contrast, our credibility as The Greens, led to the election of The Greens candidate as a local councillor on Lismore City. Thus the only Greens group which has a legitimate legal right under electoral law to coverage of the state seat of Lismore or the Lismore City Council area is our group The Summerland Greens, a local member group of The Greens NSW.

While we contend that Australians have a constitutionally implied freedom of speech, we view the continued use of the name The Lismore Greens as an abuse of this freedom, which misleads the public.

We do not believe that the Court would permit a person claim to be a Judge of the L&E Court on the basis of 'freedom of speech' when that person has no legal or moral right to publicly make such claims.

#### Action requested from the Court

We seek your co-operation to ensure that the Court is not unwittingly used as a vehicle for the perpetration of ~~further frauds and~~ misrepresentations by persons claiming to act on behalf of The Lismore Greens.

We request that if any matters are currently listed, or further applications are made, in the name The Lismore Greens, that the Court strike out that name and request the person who made, or is making, the application to substitute, either that natural person's name or the name of an organisation which actually exists.

Mr Oshlack has available to him the names of organisations he has registered: The Richmond Clarence Greens or the Richmond Clarence Independents. He well knows that he does not have the name The Lismore Greens available to him.

We wish to make it clear that we do not wish to prevent applications being made to the Court by Mr Oshlack or ~~other~~ third party groups. We wish only to ensure that any such applications do not use the name The Lismore Greens, or the Lismore Greens.

We would appreciate your reply acknowledging receipt of this letter, and advising whether any application by persons purporting to represent the Lismore Greens are before the Court, and if so what action the Court will take to correct this application.

If you wish to obtain more information on this matter please contact the Secretary, The Summerland Greens on 066 222 478 h; The Greens NSW Convenor, Catherine Moore 048 428 055 h or The Greens NSW Registered Officer, Mr Geoff Ash 02 365 3837. Thank you for your assistance in this matter.

Yours sincerely,

Joy Wallace  
Secretary TSG and  
former member of  
The Lismore Greens

John R Corkill  
Member TSG and  
recent past Secretary of  
The Greens NSW ('94/'95)



ENVIRONMENT PROTECTION AUTHORITY

SCHEDULE OF DOCUMENTS SOUGHT UNDER FREEDOM OF INFORMATION ACT

Documents for which access, by way of inspection and copying, is sought:

1. all documents considered or created by or on behalf of the Environment Protection Authority (or its predecessor) in the exercise of its duties, pursuant to s. 17D of the Pollution Control Act 1970, (as amended), in processing in 1992 applications for pollution control licences by Forestry Commission of NSW, other than documents already made available to Mr Corkill in response to his request of 6 July, 1992 for information on pollution control licences generally.
2. all draft and final documents created and / or referred to in considering soil erosion, mass soil movement on the Catbird Road or the pollution of tributary streams of the Bellinger River, as a result of forestry and roading operations in Oakes State Forest in 1991 and 1992;
3. all records of water quality sampling, including monitoring methodologies and locations, undertaken in the Bellinger River catchment since 1/1/92;
4. all documents created since 1/1/92 relating to proposed water quality monitoring for forestry operations in NSW state forests, including proposed locations, methodologies, water quality standards, minutes of meetings, correspondence, scientific papers;
5. all reports, comments, memos, minutes of meetings, or other correspondence relating to the effectiveness of the Standard Erosion Mitigation Conditions 1990 (SEMC) in ameliorating the impacts of soil erosion and any proposed amendments to SEMC 1990 or any new or draft Conditions;



**REPORT ON FREEDOM OF  
INFORMATION COMPLAINT BY  
MR JOHN CORKILL ABOUT THE  
ENVIRONMENT PROTECTION  
AUTHORITY**

NSW

**OMBUDSMAN**

**FINAL REPORT**

ISSUED 31 AUG 1995



## 1. The complaint

- 1.1 The complainant is Mr John Corkill, who at the time of making the complaint was the Sydney Coordinator of the North East Forest Alliance.
- 1.2 The public authority subject of investigation is the Environment Protection Authority.
- 1.3 Mr Corkill made a complaint under section 52 of the Freedom of Information (FOI) Act requesting a review of the Authority's decision to refuse access to certain documents which Mr Corkill had applied for under the FOI Act. The documents were related to a road in Oakes State Forest.

The FOI Act provides two avenues of external review of agency decisions made under the Act - the Ombudsman and the District Court. Under section 52 of the FOI Act the request for external review is made by way of complaint to the Ombudsman about conduct in relation to agency determinations under the Act. Any investigation of such conduct is to be made under the Ombudsman Act 1974.

## 2. Ombudsman's Policy

- 2.1 In line with the clear intention of the Legislature as set out in the objects of the FOI Act, the Ombudsman's policy in the assessment of Freedom of Information complaints is based upon:
  - (1) a general **presumption** that access should be provided to all requested documents; and
  - (2) the **onus** being on the agency to:
    - (a) justify, to the satisfaction of the Ombudsman, that any claimed exemption applies and, on balance, that disclosure would be contrary to the public interest; and
    - (b) prove, to the satisfaction of the Ombudsman, that the procedures specified in the FOI Act were complied with.
- 2.2 These policies are set out in the *Ombudsman's FOI Policies and Guidelines*, annexed to the Ombudsman's FOI Annual Report for 1993/94 tabled in Parliament on 23 November 1994.
- 2.3 Hence where a complaint is made under section 52 of the FOI Act, it is the Ombudsman's policy that the relevant agency must justify to his satisfaction why each and every individual document or item of information determined to be exempt warrants such exemption from disclosure under the FOI Act.
- 2.4 Given the clear objects specified in the FOI Act the Ombudsman is of the opinion that it is reasonable to require agencies to justify that they have acted in



accordance with those objects. This is a similar onus to that which applies to claims for legal professional privilege where it is up to the person who claims that privilege to prove that the privilege applies. As succinctly stated by Casey J in *Commissioner of Police v Ombudsman* [1988] 1NZLR 385 (at p.391):

*"In the nature of things he who alleges that good reason exists for withholding information would be expected to bring forward material to support that proposition."*

- 2.5 The Ombudsman's policy also accords with the views expressed by Kirby P in a decision handed down by the NSW Court of Appeal (*The Commissioner of Police v The District Court of NSW & Perrin* (1993) 31 NSW LR 606) that, *prima facie*, a document must be disclosed in its entirety, with the onus being on the agency to make out an application for an exemption. In that case Kirby P also stated that:

*"I tend to favour the view that the Act ... must be approached by decision-makers with a general attitude favourable to the provision of the access claimed. It is important that the decision-makers ... should not allow their approaches to be influenced by the conventions of secrecy and anonymity which permeated public administration in this country before the enactment of the Act and its equivalents."*

- 2.6 In interpreting the FOI Act it is relevant to note the provisions of section 33 of the *Interpretation Act 1987* which provides that:

*"In the interpretation of a provision of an Act . . . , a construction that would promote the purpose or object underlying the Act . . . shall be preferred to a construction that would not promote that purpose or object."*

- 2.7 The Ombudsman is primarily concerned to ensure that the objects of the FOI Act are achieved. In this regard, the public interest will generally be the ultimate test or determining factor as to whether documents should be released.
- 2.8 Even where access to a document has been validly refused on the basis that it is an exempt document, the Ombudsman may still recommend release of the document concerned if he is of the opinion that this would, on balance, be in the public interest (see section 52(6) of the FOI Act).

### 3. The investigation

- 3.1 The investigation as stated in the notice of investigation dated 26 May 1994 encompassed both the complaint covered by this report, and a separate complaint by Mr Corkill about a further FOI determination by the Authority. The terms of the investigation were:

*"the conduct to be made the subject of investigation is the determining of Mr Corkill's Freedom of Information initial applications dated 15 September 1992 and 10 November 1992 and applications for internal review dated 10 November 1992 and 8 December 1992 and any conduct in relation thereto."*



3.2 The applications relevant to this report are the initial application of 15 September 1992 and the internal review application of 10 November 1992.

3.3 The Authority initially determined Mr Corkill's FOI application of 15 September 1992 on 9 October 1992. Mr Corkill was however dissatisfied with the notice of determination on procedural grounds and a further notice containing additional information was issued by the Authority on 30 October 1992.

The determination of Mr Corkill's request for internal review was dated 25 November 1992.

Mr Corkill's complaint to this Office was received on 24 January 1993.

3.4 Inquiries into the complaint proceeded by way of:

- a letter of preliminary inquiry;
- copies of all documents covered and generated by the application being supplied to this Office and analysed;
- numerous telephone conversations with the Authority and the complainant throughout the process;
- a meeting between the Ombudsman, the Director General, and other officers. This meeting was part of an attempted resolution of the matter which did in fact lead to the Authority's decision to release some documents. During the resolution process this Office suggested to the Authority that given the passage of time the Authority's view of the sensitivity of the documents may have changed and that disclosure may now be possible;
- the receipt and consideration of a submission from the Authority;
- the issue of the notice of investigation;
- the subsequent receipt and consideration of another submission from the Authority; and
- further analysis by this Office of the documents and the submissions;
- the issue of a preliminary report to the Authority on 28/11/94 for comment;
- the receipt and consideration of a submission by the Authority arising from the preliminary report;
- the report in draft form issued to the Minister on 29 May 1995;
- consultation with the Minister on 26 June 1995;



- consideration of legal advice sought from the Solicitor General by the Authority; and
- the issue of this report.

#### 4. The documents, determinations and submissions:

- 4.1 The two submissions from the Authority referred to above signalled the release of some material but not the majority.
- 4.2 During this Office's preliminary inquiries every document withheld from release was numbered for the first time. The determination of 30 October had numbered only four **classifications** of documents into which the withheld documents presumably fell. Once the numbering was complete it became clear that some documents were not covered by the broad classifications of the letter of 30 October. Consequently it is not possible to say for every document which exemption clauses were claimed. These documents are some of those which the Authority has subsequently decided to release.
- 4.3 The determination of 30 October provided, for each of the four document classifications, a brief description of the document, followed by a statement justifying the exemption. The statement usually begins by identifying which exemption clause is claimed and goes on to expound the clause, relating it specifically to the relevant document. For example: *"These documents are considered to be exempt under clause 10 of Schedule 1 on the basis that they would be privileged from production in legal proceedings on the ground of legal professional privilege."* The exemption clauses claimed for each document type were one or more of clauses 4, 9 and 10. Whilst not identified by the sub-clause small case alphabet letter, the parts of clause 4 expounded in the determination were parts (a) and (d).
- 4.4 The determination of the internal review confirmed all claimed exemptions *"on the same basis as set out in detail in the letter dated 30 October 1992 to [Mr Corkill]...."* Apart from this statement two facts were mentioned which were apparently considered relevant to the continued exemption of the documents:
1. *"... no final decision has been made concerning any possible action arising out of the alleged incident."*
  2. *"... as recognised in the FOI Act, there will be some occasions when confidentiality is in the public interest."*
- 4.5 The submission by the Authority to the Ombudsman dated 27 April 1994 mentioned, in relation to documents 1A, 1B, 2A-2H and 3, that all attracted legal professional privilege and that it was not appropriate, despite the passage of time, for the privilege to be waived in matters which relate to prosecutions or other enforcement of the environment protection legislation.



- 4.6 The second submission to the Ombudsman, dated 11 June 1994, held that, as proceedings for breach of environmental laws against the Forestry Commission in respect of the incident at Oakes State Forest had not been instituted when the internal review determination was made, it was clear that clauses 4(1)(a) and (d) were appropriate heads of exemption in relation to documents 1A and 1B. The submission also stated that the question of public interest includes on assessment of the sensitivity of the information at the relevant time.
- 4.7 The Authority's submission arising out of the preliminary report argued in more detail than previous submissions that the determinations were correct. It also took issue with the Ombudsman's policy that in the assessment of FOI complaints the onus was on agencies to justify any claimed exemptions, with the use of section 52(6)(a) of the FOI Act in relation to clause 10, and with the conclusion that there was a public interest in the release of the documents recommended for release.
- 4.8 On the basis of the above submission the preliminary report was changed. The resultant report (the draft report) agreed that document 2B was exempt under clause 10. However it held that the case for the exempt status of the other documents was incorrect or was questionable to varying degrees, and that in any case their release was on balance in the public interest.
- 4.9 In the consultation with the Minister on 26 June the Minister made clear that, while she did not claim any ownership of the matter, as it had occurred prior to her stewardship, the Authority remained very concerned and was seeking legal advice from the Solicitor General.
- 4.10 That advice confirmed the Ombudsman's lawful right to adopt a policy which placed the onus of proving the exempt status of documents on agencies, and also supported Finding 6.1, and that document 2C was not exempt. The Solicitor General did not agree however that document 2A, a memorandum from Ms Dorelle Pinch to the Director General, was not exempt, and suggested the EPA *"consider doing what is commonplace in disputed privilege claims before the courts, and providing a statement or affidavit from Ms Pinch deposing as to her actual purpose in preparing the document."*
- 4.11 In further correspondence to the Authority the Solicitor General agreed that *".... the Ombudsman may recommend waiver of legal professional privilege if of the view that the public interest would be better served by doing so."* He did however commend to the Ombudsman his view that public interest issues are built into the principle of legal professional privilege, which existed in order to maintain a free flow of advice between lawyer and client.
- 4.12 Acting on the Solicitor General's advice the Authority advised Mr Corkill of its willingness to release document 2C, and provided a statutory declaration from Dorelle Pinch to the effect that the sole purpose of the creation of document 2A was to provide legal advice to Dr Shepherd about the alleged breaches of



environmental laws and the further actions to be taken in preparation for litigation.

- 4.13 The table on the following page lists the present status of the documents initially claimed to be exempt by the Authority in the determination of 30 October, and the exemption clauses claimed.



Documents released during resolution and investigative processes	Content of document	Exemption clause initially claimed	Documents still withheld	Content of document	Exemption clause still claimed
<b>Attachments to 1A</b>	1 - Amended Standard Erosion Mitigation Conditions for Logging in New South Wales - June, 1984, and Glossary of terms - 10pp. 2 - Excerpts from Code of Logging Practices, Crown Timbered Lands, Port Macquarie Region, Forestry Commission, June 1988 - 4 pp.	1. Not specified in determinations  2. Not specified in determinations	<b>1A</b>	Report on Alleged Breach of Pollution Control Legislation Logging Practices at the Oakes State Forest, signed 5/5/92 - 5pp.	4(parts (a) and (d) implied), 9 and 10.
<b>Attachments to 2A</b>	Draft letters to Woolf Associates and the Forestry Commission from the Director General - 2pp & 1p.	Not specified in determinations	<b>1B</b>	Report on Alleged Breach of Pollution Control Legislation Logging Practices at the Oakes State Forest, signed 18/5/92 - 6pp.	4(parts (a) and (d) implied), 9 and 10.
<b>2C</b>	Memo from Manager Litigation to Director General via DLS,ED-PEL re Logging operations in Oakes State Forest - 1p.	10	<b>2A, 2B, 2D - 2H</b>	<b>2A</b> - Memo from Manager Litigation to Director General re breaches of environmental laws in relation to logging operations in Oakes State Forest - 5 pp. <b>2B</b> - Memo from Manager Litigation to A/EDO re Logging in Oakes State Forest - 2pp. <b>2D-2H</b> - File notes of Dorelle Pinch, each entitled Oakes State Forest - each 1 p.	10
<b>4A with irrelevancies deleted</b>	Submission for meeting on 14 July 1992 of the EPA Board - from Dr Shepherd, signed 6 July 1992 - 4pp.	4(parts (a) and (d) implied), 9 and 10.	<b>3</b>	Handwritten notes regarding logging in Oakes State Forest - 1p.	9, 10
<b>4B</b>	Submission for meeting on 8 September 1992 of the EPA Board - from Dr Shepherd, signed 27 August 1992 - 2pp.	4(parts (a) and (d) implied), 9 and 10.	<b>Attachment to 4B</b>	Identical to 1B	As for 1B
<b>5</b>	Fax cover sheet for 1A from Grafton Regional Office to Mr P Yates - 1p.	Not specified in determinations			



## 5. Conclusions

### 5.1 Determinations and submissions

5.1.1 In my view the Authority's detailed determination - that of 30 October - did not provide sufficient reasons for the exemption of the documents withheld. In this case the determination (as described in section 4 above) really amounted, for the most part, merely to quoting the exemption clauses claimed and stating which clauses applied to which documents. The Ombudsman does not and has never considered this approach to satisfactorily meet the requirements to give reasons in the FOI Act. The internal review determination added little to support the Authority's case. In my view, in terms of section 28, insufficient reasons and findings on material questions of fact, and no references to sources of information on which those findings were based, were included in the determinations.

5.1.2 The submissions by the Authority to the Ombudsman of April and June 1994 also did little if anything to support the case for exemption. The facts they presented - that matters may have been related to prosecutions or other enforcement of legislation, that proceedings had not been instituted, and that the question of the public interest included an assessment of the sensitivity of the information at the relevant time - are matters of fact and of themselves not in the least persuasive in supporting the case for exemption. I recognise however that these facts may not have been highlighted to argue the case for exemption but rather to respond to this Office's suggestion (which was made as part of the attempted resolution) that the passage of time may have reduced the claimed sensitivity of the documents sufficiently to allow their release. In either case the submissions are not helpful in making out a case for exemption.

5.1.3 The Authority's submission arising from the preliminary report was persuasive in pointing to the sole purpose of, and therefore the exempt status under clause 10 of, document 2B (see 5.4.8).

### 5.2 Clause 4 - Documents affecting law enforcement and public safety:

5.2.1 Clause 4(1)(a) and (d) - *"Prejudice the investigation of any contravention or possible contravention of the law, or prejudice the fair trial of any person or the impartial adjudication of any case"*:

5.2.2 In my view insufficient information has been provided by the Authority to justify any claim that disclosure of documents 1A, 1B, and attachment to 4B would have prejudiced the investigation of the alleged incident in Oakes State Forest, and no grounds have been outlined which would justify the claim that disclosure of these documents would have prejudiced the impartial adjudication of any case.

5.2.3 The Authority's response to the preliminary report states that disclosure of the documents in question to the persons potentially liable for a breach of the environmental laws *"could have prejudiced either the ongoing investigation or the eventual outcome of the case..."*. The expression *"could have"* does not capture the force of the expression in the relevant clause *"could reasonably be expected"*. Little is required to satisfy a test of *"could have"*, certainly less than what is required to satisfy the test applied by clause 4.

5.2.4 Furthermore there is still no explanation of how the particular information in the documents if disclosed could reasonably be expected to bring about such



prejudice. The Act very clearly requires such reasoning to have been included in the notices of determination. The failure of the Authority to do so in those notices has not been redressed by the Authority's subsequent submissions. The response goes on to refer to the former Ombudsman's letter of 18 May 1994, in which he "*pointed to the existing provisions in clause 4 and 10*". There seems to be the implication that the Ombudsman recognised those clauses' application to such documents as are in question. In fact the Ombudsman stated that the clauses offered ample protection for documents which it is really necessary to protect. I agree with the former Ombudsman but am of the view that a successful case for the application of clause 4(a) and (d) to these particular documents has not been made out.

### 5.3 Clause 9 - Internal working documents:

5.3.1 While it is possible the documents claimed as exempt under this clause meet the test of 9(1)(a), the Authority has not demonstrated that disclosure would on balance be contrary to the public interest test in 9(1)(b).

5.3.2 The Authority's response to the preliminary report argues that disclosure could impair the integrity of the decision making process by inhibiting the full and frank disclosure in documents or by affecting the candour with which advice may be given and recorded. Such an argument has been attacked in several decisions by courts and tribunals in this country (eg *Sunderland v Department of Defence* (1986) 11 ALD 258; *Sankey v Whitlam* (1978) 42 CLR 1; *VXF v Human Rights and Equal Opportunity Commission* (1989) 17 ALD 491; *Fenster v Department of Prime Minister and Cabinet No 2* (1987) 13 ALD 139). Indeed, in the *Sankey v Whitlam* case, the High Court observed that **the argument that government employees may be less candid with their advice in the future should documents disclosing their opinions be released is of such slight concern that it may be dismissed.**

5.3.3 I think it is highly unlikely the officers of the Authority will allow the quality of their clearly important work in the public interest, even where it relates to possible prosecutions or other action for breach of the environment protection legislation, to be impaired by the possibility that what they write **might** be subject to a future FOI application and, if so, **might** not be exempt.

5.3.4 Neither do I accept that the fact the matter has now been finalised in open court nullifies any public interest in disclosure. As I have discussed below there is a clear public interest in openness surrounding the basis of the Authority's decision to pursue a certain course of litigation.

### 5.4 Clause 10 - Documents subject to legal professional privilege:

5.4.1 Apart from the statutory declaration of Ms Dorelle Pinch little evidence has been presented to indicate that the documents claimed as exempt under the clause were prepared solely for the purpose of seeking legal advice or in relation to reasonably contemplated legal proceedings.

5.4.2 The Authority's response to the preliminary report, however, claimed that the documents were created solely because of the possibility of taking legal



proceedings against the Forestry Commission. This claim was made on the basis that the context in which the documents occur in the files show this to be the case.

- 5.4.3 In my opinion, without further details, this is clearly insufficient to prove legal professional privilege. It is unfortunate that the Authority holds that there is **not** *"any particular onus on the EPA to establish the existence of the privilege beyond a prima facie stage."* In my view section 28(2)(e) of the FOI Act requires such a complete justification of any exemptions claimed as to effectively establish a clear onus on the Authority.
- 5.4.4 This said, it is nevertheless clear the Authority sought the reports (1A, 1B & attachment to 4B) after receiving information from Woolf Associates on behalf of John Corkill which urged legal action be taken. The introductory paragraph to the reports mentions this. The response from the Authority to the preliminary report adds that the documents *"were produced for the purposes of production to qualified legal advisers in Legal Services Branch with a view to advising on possible legal proceedings."*
- 5.4.5 Legal professional privilege will only apply in this case if it can be shown that the documents were brought into existence for the **sole** purpose of obtaining legal advice or for use in litigation which is either pending or within the reasonable contemplation of the client. The reports were not written by a lawyer and therefore do not qualify as legal advice. It could however be argued that the reports, having being written by an officer of the Authority, are from the client to the lawyer for the purpose of obtaining legal advice. Alternatively the sole purpose test in relation to litigation may apply here. However, as stated in both the Premier's FOI Procedure Manual and the *Ombudsman's FOI Policies and Guidelines* the privilege does not cover documents drawn up to inform an agency of the existence of facts or circumstances which may give rise to the need for legal advice. In my view it is not clear that these documents are covered by legal professional privilege.
- 5.4.6 Documents 2A-2H were generated by the Manager Litigation, in the words of the Authority's response to the preliminary report, *"in connection with advices/attendances concerning possible legal proceedings arising out of the pollution incident."*
- 5.4.7 As regards document 2A, while it appears from its terms that it may have been brought into existence for more than one purpose (six purposes are listed in the first paragraph, at least four of which do not appear to be for the purpose of providing legal advice), Ms Pinch's statutory declaration to my mind provides sufficient evidence that it was created solely for the purpose of legal advice to justify that it may be appropriately exempted under clause 10.
- 5.4.8 In relation to document 2B, on its face it is confirming oral advice from the Manager Litigation to the A/EDO (Acting Environmental District Officer?), and appears to be confidential in nature and have been written for the sole purpose of providing legal advice to a client, in this case an officer of the Authority.



- 5.4.9 As for document 2C, its content does not appear to be legal advice. Its purpose, as stated in the document, is to inform the Director-General of the current status of the matter. That the update is in relation to a matter which may have resulted in litigation is probably not sufficient in my opinion to attract the privilege. I have made further comment on this document in the discussion on public interest later in this report.
- 5.4.10 In relation to documents 2D-2H, in my view the Authority's brief statement in relation to them quoted above does not provide sufficient evidence of sole purpose to carry a successful argument for privilege. It is arguable that the fact that they are file notes of telephone and face to face conversations which the Manager conducted in relation to this matter is insufficient to obtain the privilege. As an example it could be argued that the contents, admittedly innocuous, of documents 2E and 2G could not be said to contain or to be seeking or to bear any relationship on their face to legal advice, and only a distant relationship to litigation. I have made further comment on these documents in the discussion on public interest later in this report.
- 5.4.11 Document 3 *"is a printout of a white board note written by Lisa Corbyn, Executive Director, Planning, Education and Legal Division, generated during a conference with legal advisers on possible actions and strategies arising out of the incident."* I think it is doubtful this is a communication between client and adviser, though it was clearly created in connection with likely legal proceedings and may therefore meet the sole purpose test in relation to litigation and/or legal advice.
- 5.4.12 In summary, in my view a sufficient case in support of exemption of documents 2A and 2B has been made out by the Authority, but not so in relation to the other documents claimed as exempt, particularly document 2C which does not appear to me to be exempt. Having considered the Authority's response to the preliminary report, it appears to me that the status of the remaining documents is questionable to varying degrees (ie documents 1A, 1B, 2D-2H, 3 and attachment to 4B, which is identical to 1B).

## 5.5 Public interest

- 5.5.1 There remains the question of the public interest in the release of the documents. In the Authority's response to the preliminary report the Authority argued that there was *"nothing in the public interest which would be served by the release of [the] documents"* as the incident to which they related resulted in legal action being taken against the Forestry Commission, the outcome of which was on the public record. The Authority also questioned whether the Ombudsman had the power under section 52(6) to recommend the release of documents exempt under clause 10.
- 5.5.2 In *Re Smith and Attorney General's Department and Director of Public Prosecutions* (1989) 2 VAR 543, the AAT held that even though legal professional privilege applied to the documents access should be granted:

*"In my opinion there is a clear public interest in ensuring that the community is satisfied that the administration of the criminal justice system.....is above suspicion"*



*and is conducted without fear or favour....In my view the public are entitled to know why the whole of the circumstances do not constitute conduct which could be regarded as criminal" (p 548).*

- 5.5.3 The matter went to appeal and the AAT's decision was upheld. The court observed that there are many areas of national and community activities which may be the subject of the public interest, one being the public interest to ensure that justice should always be done and be seen to be done.
- 5.5.4 During the investigation of the matter under discussion Mr Corkill informed this Office that he had considered the litigation actions of the EPA insufficient in comparison to his view of the seriousness of the alleged breach by the Forestry Commission, and that he had sought the Authority's documents with the intention to examine the basis upon which it had made its litigation decisions.
- 5.5.5 I consider there is a public interest in such examinations being made, and in government agencies being open to outside perusal, and possibly criticism, of their internal decisions. This is particularly so where those decisions may or do impact significantly on issues of vital public concern, for example pollution of waterways and preservation of native fauna. I believe it is possible to state as a general principle that the quality of decision-making is improved by the prospect of external scrutiny or review. In my opinion public feedback to the EPA and similar agencies on such matters could be of great value in protecting such bodies from insularity, from being out of touch with community feeling, no matter how well they consider they collect and reflect such sentiment.
- 5.5.6 Having regard to the content of these documents, I cannot see how their release would adversely affect the Authority's ability to fulfil its charter in the least. As I have already indicated, there is to my mind no reasonable prospect or grounds to assume that officers of the Authority would provide advice of lesser quality if these documents were released. While I agree with the Solicitor General's point of view that public interest issues are built into the principle of legal professional privilege, I consider in this case the release of the documents will not inhibit the free flow of advice between lawyer and client.
- 5.5.7 Given my view on the public interest, I do not consider it necessary to come to a final conclusion in relation to those documents the status of which I have said is questionable. All the subject documents should in my view be released in the public interest. That is, the documents which may be exempt under clause 10 should be released in the public interest, namely documents 1A, 1B, 2D-2H, 3 and attachment to 4B. Documents 2A and 2B should be released in the public interest although they are exempt. Document 2C should be released as it is not exempt in my view.
- 5.5.8 At this point I think it is important to reassure the Authority in relation to my decision. The Authority's response to the preliminary report expressed such serious reservations about the release of this material that it claimed, if the exemption clauses used by the Authority were to be construed as they were in the preliminary report, there would be a need for the Authority and other agencies to seek legislative changes which would protect such information. I would point



out to the Authority that this is the only occasion when this Office has seen necessary to report on any FOI decision of the Authority, and this is a clear indication that the provisions of the FOI Act are quite sufficient to meet the legitimate confidentiality concerns of the Authority. The structure of the Act is very clear - documents which really do need protection can have it.

- 5.5.9 In its role as an external review agency under the FOI Act, this Office is of the view that the particular documents the subject of this report do not need that protection. This decision **by no means** creates a precedent which requires all such documents of the Authority to be released in the future if FOI applications are made for their release. The Authority may quite legitimately apply its mind to any future FOI applications on a case by case examination of the documents concerned.
- 5.5.10 This decision is not meant to, nor does it, cast aspersions on the other FOI work of the Authority. This Office recognises the genuine commitment of the Authority to FOI as illustrated for example by the valuable work of the Authority in compiling its internal FOI procedural guide and in sending staff to FOI training seminars.
- 5.5.11 The fact that these particular documents belong to a particular class relating to the enforcement of environment protection legislation is not of itself sufficient to claim exemption, neither should it be. The Authority's commitment to the exemption of this type of material, and the relative importance of this material, is no greater in this Office's experience than the importance of, and the commitment of many agencies at the external review stage to the exemption of, material they consider sensitive. If every agency sought legislative change every time a decision at external review recommended release of material to the confidentiality of which the agency was deeply committed - the latter being the case in every external review - it would make a mockery of the Act and of the government's commitment to the legislation.

## 6. Findings

- 6.1 I find that the Authority's determinations of Mr Corkill's application were, in terms of section 26(1)(g) of the Ombudsman Act 1974, otherwise wrong in that the requirements of section 28(2)(e) of the Freedom of Information Act were not fulfilled in the notices of those determinations.
- 6.2 I find that the Authority's determination to refuse access to document 2C was, in terms of section 26(1)(e) of the Ombudsman Act, based wholly or partly on a mistake of law or fact.

## 7. Recommendations

- 7.1 I recommend that document 2C be released to Mr Corkill immediately.
- 7.2 In terms of section 52(6)(a) of the Freedom of Information Act I recommend that disclosure of documents 1A, 1B, 2A, 2B, 2D-2H, 3 and the attachment to 4B



would on balance be in the public interest even though access may have been or was duly refused because they were or may have been exempt documents. I therefore recommend that these documents be released to Mr Corkill immediately.

- 7.3 I recommend that the Authority inform this Office of its compliance with recommendations 7.1 and 7.2 within 2 weeks of the date of my final report on this matter.
- 7.4 I recommend that the Authority review its procedures in relation to compiling notices of determination with reference to the *Ombudsman's FOI Policies and Guidelines*, and take steps to ensure future notices meet the detailed requirements imposed by the Act in relation to their contents, particularly the requirements of section 28(2)(e). This recommendation is made in the knowledge the quality of notices issued by the Authority may have improved in the period since this complaint was received.
- 7.5 I recommend that the Authority inform this Office of the steps taken as a result of recommendation 7.4 within 1 month of the date of my final report on this matter.



Chris Wheeler  
Deputy Ombudsman





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Our Reference: CH4578#13272

Your Reference:

Contact: Donna Campbell, Director Legal Services  
(Tel. No. 325-5609)

Director  
General

20 OCT 1995

Dear Mr Corkill

**Re: Release of documents under FOI requests nos. 92/28 & 92/31**

I refer to your letter dated 11 October and confirm that the only documents the EPA is withholding are the documents referred to in paragraph 7.2 of the Ombudsman's Report. The reasons are set out in my response to the Ombudsman in a letter dated 15 September (a copy of which was sent to you on 19 September 1995).

The Ombudsman has not found that the EPA failed to comply with the FOI Act in withholding these documents. As I made plain in my response to the Ombudsman, there are competing public interests involved and it is the EPA's strongly held view that the exemption under the Act should stand.

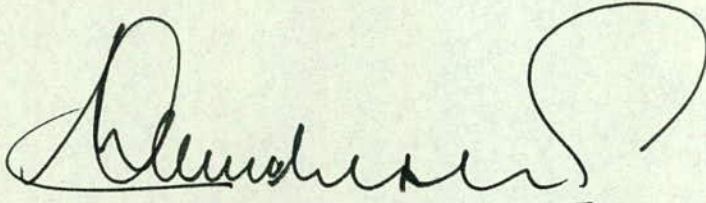
I note your concern that you have not been provided with documents 1A, 1B and document 3. The confusion has arisen because the EPA provided 2 separately numbered bundles of documents to the Ombudsman, one bundle relating to Oakes State Forest, the other to forestry licences. The Ombudsman's report refers only to the Oakes State Forest bundle (although this is not made plain in the Report). The Ombudsman made no comment on the other bundle the subject of the investigation.

My letter to you dated 2 August 1995 enclosing documents (where the exemption was waived) identifies each document by reference to bundle and number.



In conclusion, the EPA has done what, in my view, the law requires it to do in relation to the Ombudsman's report. We do not propose to engage in further debate on this issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Shepherd', with a large, stylized flourish at the end.

**NEIL SHEPHERD**  
**Director-General**





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Our Reference: CH1039; FOI92/28 & 92/31

Your Reference:

Contact: Donna Campbell - 325.5609

Director  
General

2 - AUG 1995

Dear Mr Corkill

#### **Applications under Freedom of Information Act**

Following discussions with the Ombudsman, I agreed that a number of documents which were the subject of initial claims to exemption would be made available for inspection. I am informed by the Office of the Ombudsman that this change in status of the documents was conveyed to you following receipt by him of my letters of 27 April and 11 June 1994.

The Ombudsman's Office (Mr David Watson) advised there had been discussions with you indicating your intention to make an appointment with the EPA to inspect the documents. However, I note you have not yet inspected these documents.

In order to finalise these applications, I enclose for your information a copy of the documents (as per the attached list).

In addition to the documents previously released, I have also decided to release document numbered 2C in the application concerning Oakes State Forest. I have been persuaded that my original decision to claim exemption on the basis of legal professional privilege for this document was mistaken, although that privilege attaches to some of the attachments to that document. A copy of that document is also enclosed.

Yours sincerely

**NEIL SHEPHERD**  
**Director-General**



## FOI APPLICATIONS 92/28 & 92/31 BY JOHN CORKILL

List of documents where exemptions waived and copies forwarded with letter to Mr Corkill dated July 1995

### Oakes State Forest

1. Attachments to document 1A (numbering agreed with Ombudsman) comprising amended Standard Erosion Mitigation Conditions for Logging In NSW - June 1984, and glossary of terms - 10pp and Excerpts from Code of Logging Practices, Crown Timbered Lands, Port Macquarie Region, Forestry Commission, June 1988 - 4pp (Copy offered in notice of determination dated 30 October 1995).
2. Attachments to document 2A comprising draft letter to Woolf Associates (2pp) and draft letter to Forestry Commission (1p).
3. Document 2C comprising a memo dated 12 May 1992 from Manager Litigation to Director General re logging operations in Oakes State Forest.
4. Document 4A comprising submission for meeting 14 July 1992 of EPA Board from Dr Shepherd signed 6 July 1992 (irrelevant pages blanked), 4pp.
5. Document 4B being a submission for meeting on 8 September 1992 of the EPA Board from Dr Shepherd signed 27 August 1992, 2pp.
6. Document 5, fax sheet for 1A above from Grafton Regional Office to Mr P Yates, 1p.

### Forestry Licences

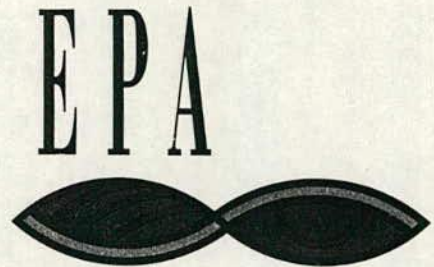
1. Document 1A - Paper for Executive Committee Meeting on 21 May 1992 concerning Forestry Commission Licence Review Pilot Project Proposal signed by Lisa Corbyn and dated 18 May 1992 with note dated 28 May 1992, 3pp.
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5. Document 4C - attachment to 4 comprising letter to Ms S Salmon, Australian Conservation Foundation from Director-General dated 30 June 1992, 2pp. (other attachments are not connected with forestry licensing).



6. Document 5 - Extract from Director-General's Report to the EPA Board Meeting 6/92 on 12.8.92 (irrelevant sections obscured) 1p.
7. Document 6 - Extract from Director-General's Report to EPA Board meeting 8/92 on 14.10.92 (irrelevant sections obscured) dated 29 September 1992, 1p.
8. Document 7 - Submission for meeting of EPA Board 8/92 on 14.10.92, agenda item 6 - Forestry Commission Licenses, signed by Director General and dated 25.9.92, 3pp.
9. Document 8 - Extract from Director General's Report to Board Meeting 9/92 on 10.11.92 concerning forestry licences (irrelevant sections obscured) 1p.
10. Document 9 - EPA Technical Services Divisional Report October 1992 to EPA Board Meeting 9/92 on 10.11.92 (irrelevant sections obscured), 2pp.

An additional document released by the Board is also attached being a submission dated 13 May 1992 by the Director-General to the EPA Board meeting 3/92 on 13 May 1992 (2pp) with an attached licence covering land in the Batemans Bay Region (4pp).





Mr John Corkill  
Big Scrub Environment Centre  
149 Keen Street  
LISMORE NSW 2480

Environment  
Protection  
Authority  
New South Wales

PO Box 1135  
Chatswood  
NSW 2057

Tel .02. 795 5000  
Fax .02. 325 5678

Director  
General

Our Reference: CH1039; FOI92/28 & 92/31

Your Reference:

Contact: Donna Campbell - 325.5609

2 - AUG 1995

Dear Mr Corkill

#### **Applications under Freedom of Information Act**

Following discussions with the Ombudsman, I agreed that a number of documents which were the subject of initial claims to exemption would be made available for inspection. I am informed by the Office of the Ombudsman that this change in status of the documents was conveyed to you following receipt by him of my letters of 27 April and 11 June 1994.

The Ombudsman's Office (Mr David Watson) advised there had been discussions with you indicating your intention to make an appointment with the EPA to inspect the documents. However, I note you have not yet inspected these documents.

In order to finalise these applications, I enclose for your information a copy of the documents (as per the attached list).

In addition to the documents previously released, I have also decided to release document numbered 2C in the application concerning Oakes State Forest. I have been persuaded that my original decision to claim exemption on the basis of legal professional privilege for this document was mistaken, although that privilege attaches to some of the attachments to that document. A copy of that document is also enclosed.

Yours sincerely

**NEIL SHEPHERD**  
Director-General



## FOI APPLICATIONS 92/28 & 92/31 BY JOHN CORKILL

List of documents where exemptions waived and copies forwarded with letter to Mr Corkill dated July 1995

### Oakes State Forest

1. Attachments to document 1A (numbering agreed with Ombudsman) comprising amended Standard Erosion Mitigation Conditions for Logging In NSW - June 1984, and glossary of terms - 10pp and Excerpts from Code of Logging Practices, Crown Timbered Lands, Port Macquarie Region, Forestry Commission, June 1988 - 4pp (Copy offered in notice of determination dated 30 October 1995).
2. Attachments to document 2A comprising draft letter to Woolf Associates (2pp) and draft letter to Forestry Commission (1p).
3. Document 2C comprising a memo dated 12 May 1992 from Manager Litigation to Director General re logging operations in Oakes State Forest.
4. Document 4A comprising submission for meeting 14 July 1992 of EPA Board from Dr Shepherd signed 6 July 1992 (irrelevant pages blanked), 4pp.
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EXECUTIVE COMMITTEE MEETING  
21 MAY 1992

FORESTRY COMMISSION LICENCE REVIEW  
PILOT PROJECT PROPOSAL

BACKGROUND

The EPA issued pollution control licences to the Forestry Commission on 7 May 1992. These licences contain conditions to ensure that pollution of waters is minimised. In addition, it was foreshadowed to the Forestry Commission that future conditions relating to water quality monitoring requirements would be considered.

At the same time, the Wollongong Office of the EPA has had a number of requests by the Wilderness Society to investigate pollution concerns as a result of forestry activities, particularly in the Towamba and Wonboyn River catchment. The Wollongong Regional Office had prepared a request in late April for a proposed environmental audit of forestry activities in a selected south east State Forest catchment. This request dovetails well with the needs for licence condition monitoring requirements.

An excellent opportunity has arisen for a pilot project to be initiated to investigate the effectiveness of the licence conditions that have been applied to the Forestry Commission licences, to assess pragmatically the future imposition of water quality monitoring requirements on the Forestry Commission and to test the future use of remote sensing as one tool in auditing licence conditions and assessing environment quality.

In addition, the proposal provides an opportunity for cooperative action between the Operations Division, the Technical Services Division and the Planning, Education and Legal Division of the EPA.

PROJECT PROPOSAL

Study Area: Towamba River and Wonboyn catchments in the southeast State Forest catchment

Focus: Water Quality, particularly in the context of the recently imposed licence conditions.

Objectives:

To measure by remote sensing techniques, the extent, intensity and general nature of logging operations in the study area and to determine the applicability of using remote sensing as an aid in auditing licence conditions of land management effects on water quality.

To include in the existing Geographic Information Systems (GIS) the database for the catchment to allow analyses of environmental conditions.

EXECUTIVE MEETING 21/5/92

AGENDA ITEM 8.20

pts to make  
David Leece concern  
over the wq. monitoring  
cost - NRBC Ross Higgins  
to review methodology &  
assist.

raise question of priority

• \$ - where from budget  
(I don't have a divisional  
budget) in 2 months re  
JWJ



To collect water quality data as an indicator of environment degradation relating to forestry activities with a view to determining necessary water quality monitoring programs in forestry regions

To report on the impact of land use activities in the study area and the performance of land management with respect to water quality

#### Methodology - Technical

1. Acquire one contemporary and one archive satellite image of the study area for classification of land use , with particular emphasis on forestry operations.
2. Acquire available water quality data with particular emphasis on turbidity. Subject to an evaluation of the data available, carry out supplementary water quality measurements including NFR and nutrients.
3. Acquire, load and register inventory information into the GIS for the study area, including topographic vegetation, fire history, road network, drainage, soils and water quality sampling site layers.
4. Analyse the environmental indicators such as water quality for spatial correlation with land use activities, suitably weighted by qualifiers such as slope angle, aspect soil type, vegetation cover and network facilities of the GIS
5. Study sediment age and composition in downstream receiving water.

This approach has been designed in discussions between the Natural Resources Branch (Resources Monitoring-G. Turner) and the Wollongong Regional Office (M. Mathews) and would require a cooperative approach between the two Branches.

#### Methodology - Consultation

1. Discuss with the Regional Forestry Commission Office to gain their agreement to such a review. Initial discussion at the Regional Offices level have been positive and a specific meeting to discuss the approach further is scheduled for 19-5-92. It will be important to work with the Forestry Commission to inventory and review existing scientific data and to establish sound technical and legal performance criteria for assessing the effectiveness of the management practices required.

There will also be a need for the DG to inform the Commissioner of the Forestry Commission to gain his agreement.

2. Discuss the undertaking of the review with the local Wilderness Society to ensure they understand and have an opportunity to have an input if they wish. Other local input may also be appropriate.



## JUSTIFICATION

The EPA has received significant correspondence expressing public concern about environmental protection in the Towamba River catchment and specifically possible breaches of the Clean Waters Act by the Forestry Commission. Initial investigation by EPA regional staff indicates further detailed study is required. The EPA will also be under scrutiny following the issue of the licences to the Forestry Commission. There is an urgent need to develop effective methods (within our resource limitations) for monitoring the effectiveness of the licence conditions in protecting water quality.

### Alternative Methods:

The difficult access of the study area and lack of extensive aerial photo coverage support the use of satellite imagery for obtaining current land cover and land cover change information for this area. It is not intended to rely on remote sensing alone but to supplement this with on ground investigation for hot spots. The resources required for an on ground survey team without remote sensing to target areas would be impractical (say a 5 person survey team for one year).

### Funds Summary:

Imagery	\$7000
GIS digital data	\$2000
Water Quality Sampling	\$2000
Travel	\$5500
Stores	\$1500
Total	\$17200

### Staff Resources

EPO 8 (Remote Sensing/GIS)	30 days
EPO 6/7 (Remote Sensing/GIS)	50 days
EPO 6/7 (Regional input)	20 days
EPO 6/7 (resource policy)	20 days

These are estimates provided by the Natural Resources Branch, developed in conjunction with the Regional Office. The PEL Division has been involved through the legal review of the licence conditions applied to the Forestry Commission licences. I am submitting a coordinated request to cover all of these Divisions.

Submitted for Discussion and Approval by the Executive Committee.

*Lisa Corbyn*

Lisa Corbyn  
EDPEL  
18 May, 1992

*Cohn Grant to find appropriate scientist to review design. Approved by DG upon scientific review.*

*Notification given to C Grant*

*USA C. 28.592*



(18)

EXECUTIVE COMMITTEE MEETING  
21 MAY 1992

FORESTRY COMMISSION LICENCE REVIEW  
PILOT PROJECT PROPOSAL

BACKGROUND

The EPA issues pollution control licences to the Forestry Commission on 7 May 1992. These licences contain conditions to ensure that pollution of waters is minimised. In addition, it was foreshadowed to the Forestry Commission that future conditions relating to water quality monitoring requirements would be considered.

At the same time, the Wollongong Office of the EPA has had a number of requests by the Wilderness Society to investigate pollution concerns as a result of forestry activities, particularly in the Towamba and Wonboyn River catchment. The Wollongong Regional Office had prepared a request in late April for a proposed environmental audit of forestry activities in a selected south east State Forest catchment.

An excellent opportunity has arisen for a pilot project to be initiated to investigate the effectiveness of the licence conditions that have been applied to the Forestry Commission licences and to assess pragmatically the future imposition of water quality monitoring requirements on the Forestry Commission.

In addition, the proposal provides an opportunity for cooperative action between the Operations Division, the Technical Services Division and the Planning, Education and Legal Division of the EPA.

PROJECT PROPOSAL

Study Area:

Towamba River and Wonboyn catchments in the southeast State Forest catchment

Objectives:

To measure by remote sensing techniques, the extent, intensity and general nature of logging operations in the study area.

To include in the existing Geographic Information Systems (GIS) the database for the catchment to allow analyses of environmental condition

To collect water quality data as an indicator of environment degradation relating to forestry activities with a view to determining necessary water quality monitoring programs in forestry regions

To report on the impact of land use activities in the study area and the performance of land management with respect to water quality



## Methodology Technical

1. Acquire one contemporary and one archive satellite image of the study area for classification of land use , with particular emphasis on forestry operations.
2. Acquire available water quality data with particular emphasis on turbidity. Subject to an evaluation of the data available carry out supplementary water quality measurements including NFR and nutrients.
3. Acquire and load and register inventory information into the GIS for the study area, including topographic vegetation, fire history, road network, drainage, soils and water quality sampling site layers.
4. Analyse the environmental indicators such as water quality for spatial correlation with land use activities, suitably weighted by qualifiers such as slope angle, aspect soil type, vegetation cover and network facilities of the GIS
5. Study sediment age and composition in downstream receiving water.

This approach has been designed in discussions between the Natural Resources Branch (Resources Monitoring-G. Turner) and the Wollongong Regional Office (M. Mathews).

## Methodology - Consultation

1. Discuss with the Regional Forestry Commission Office to gain their agreement to such an audit. Initial discussion at the Regional Offices level have been positive and a specific meeting to discuss the approach further is scheduled for 19-5-92.

There will also be a need for the DG to inform the Commissioner of the Forestry Commission to gain his agreement.

2. Discuss the undertaking of the review with the local Wilderness Society to ensure they understand and have an opportunity to have an input if they wish. Other local input may also be appropriate.



# Environment Protection Authority

REF: 150,957:MF

TO: DR WARWICK FORREST,  
EXECUTIVE DIRECTOR - OPERATIONS

CC: DR COLIN GRANT,  
EXECUTIVE DIRECTOR - TECHNICAL SERVICES

FROM: MR JOE WOODWARD,  
REGIONAL DIRECTOR - SOUTH

DATE: 27 APRIL, 1992

TOPIC: PROPOSED ENVIRONMENTAL AUDIT AND STATE OF  
THE ENVIRONMENT REPORT - FORESTRY ACTIVITIES

*Now M/AD/311  
CH 845*

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## PURPOSE

To seek your support for a planned initiative to conduct an environmental audit of forestry land management practices in a selected south east State Forest catchment. This would be followed, subject to the support of Water & Natural Resources Branch, by a State Of The Environment Report. The project is in response to representations from various community groups and is likely to be politically sensitive, because of the involvement of the Forestry Commission.

## BACKGROUND

The South NSW Region has received an increasing number of complaints in recent years in relation to the environmental impact of logging in State Forests, which are under the control of the Forestry Commission of NSW.

These complaints range from sources as disparate as farmers (concerned over siltation of their water supplies), academics conducting biological field research, and of course, conservation groups.

Recently, The Wilderness Society (TWS) has made representations to the EPA concerning alleged degradation of certain waters in the south east forest catchments. TWS inquiries have evolved over time from being of a general nature, to precise questioning about the impacts of logging in the context of the environmental legislation, as well as in relation to the statutory role of the EPA. TWS has correctly pointed out that, the Forestry Commission and/or their contractors may be operating in breach of the Clean Waters Act.



Subsequently, low-key inspections of forestry activities in the south east by officers of the Wollongong & South Coast office have confirmed that there appears to be a significant gap between the rhetoric used by the Forestry Commission to describe its environmental management practices, and its actual performance in the field. This, of course, is not entirely unexpected and rather than reflecting any policy deficiency, may simply reflect the typical inefficiencies along vertical management structures which have yet to adapt to the new responsibilities imposed by the EOP Act.

Officers of Natural Resources Section were advised, and they raised the possibility of a joint project with us, culminating in a State of the Environment Report.

### CURRENT POSITION

The project is likely to be of a sensitive nature. The Forestry Commission may well be defensive over what it could perceive to be a threat to its present unchallenged control over forestry activities. Any adverse finding, especially if not handled adroitly, has the potential to be sensationalised by the media with unforeseen political ramifications.

On the other hand, failure to take decisive and timely action now could lead to government opponents making capital out of the issue in a drawn-out way, as damaging evidence from mainstream research centres is emerging anyway. This could lead to loss of EPA credibility, at an important time of its development, and heightened criticism of the Forestry Commission, because of its legal vulnerability.

### FUTURE ACTIONS/RECOMMENDATIONS

I propose for the EPA to proceed as follows:

Subject to agreement of ED- Technical Services, and approval of DG-EPA, the Minister be briefed, along the lines of the content of this memo.

The EPA raised the issue with the Commissioner of Forests, Dr Hans Drielsma, in a positive and constructive way. (A draft letter from the Director General to Dr Drielsma is attached). Subsequently, officers of the EPA and Forestry Commission should meet to inventory and review the existing scientific data, and to establish sound technical and legal performance criteria for an assessment for a State of the Environment report.



The South Region and, hopefully, Water and Natural Resources Branch will concurrently (and independently of the Forestry Commission) be carrying out an assessment of the condition of logged catchments by water quality and sediment surveys, and satellite image analysis. This will enable establishment of a geographic information system by W&NR Branch, to facilitate both long term forestry management and EPA auditing.

- From the analyses, and in consultation with the Forestry Commission, the EPA will review the effectiveness of current land management practices, formulate improvements where necessary, and oversight the implementation of those improvements.
- A State of the Environment Report will then be produced by the EPA.

This will incorporate all facets of the studies as well as any environmental gains which have arisen from the EPA's audit role and desirably, the Forestry Commission's co-operation and constructive response.

Should, as alleged, the Forestry Commission be found to be in breach of the Environment Legislation, then licensing (under the Pollution Control Act) conditional on implementation of all practical control measures, would be an appropriate way of both resolving the legal issue, as well as effecting environmental gains. The project has the potential to enhance community confidence in both the EPA, and the governments ability to ensure that the environment is protected with current and future major natural resource development projects in NSW.

#### CONTACT/ORIGINATING OFFICER

Maurie Mathews - (042) 268100

JOE WOODWARD  
Regional Director - South

FOR ACTION OR NOTING BY	
ORIGINATOR	mm 27/4



Extraction  
D's Report  
to Board  
Meeting - 5/92  
14/9/92

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## 2.6 Forestry Licences

A meeting was held with the Nature Conservation Council and affiliated organisations about the forestry licences. There was a frank exchange of views, with both the NCC and EPA representatives gaining an appreciation of the concerns of the other.

A verbal report on progress with licence condition research and the investigation of the alleged breaches of the Clean Waters Act in Oakes State Forest will be given at the Board meeting.



AGENDA ITEM 6 - CORRESPONDENCE FROM THE AUSTRALIAN  
CONSERVATION FOUNDATION

PURPOSE

To provide information on correspondence with Sue Salmon of the Australian Conservation Foundation.

BACKGROUND

As you may recall, in my last Report to the Board I noted that Ms Salmon had given a speech on the EPA to the National Environmental Law Association Conference on 18 June 1992 (see Attachment 1). She stated that the EPA had issued "pollution control approval" for the overtopping proposal for the Castlereagh Liquid Waste Depot. In my response to Ms Salmon of 30 June 1992 (Attachment 2) I indicated that the EPA had not given approval to the proposal. I also addressed issues such as the Forestry licences and phosphates in cleaning substances.

CURRENT POSITION

On 16 July 1992 Ms Salmon replied (Attachment 3) on the overtopping issue. A copy of Ms Salmon's reply was forwarded to the Chairman, with a request that he draw the correspondence to the attention of the Board (Attachment 4). The Chairman has asked that the letter be tabled at the meeting.

Ms Salmon's most recent letter quotes part of a letter from the EPA to WRAPS of 18 March 1992 in support of the view that it was reasonable to assume that the EPA had approved the proposal. Should the EPA decide to provide a consent, Ms Salmon has requested information on the reasons for this decision.

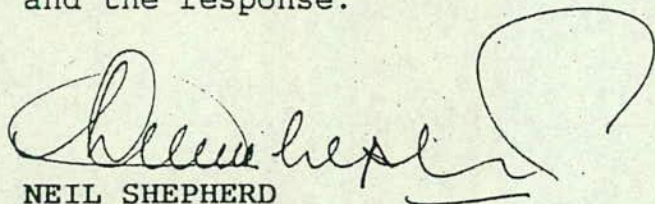
COMMENT

The EPA's letters to WRAPS of 17 and 18 April 1992 (Attachment 5) clearly show that the EPA has not approved the overtopping proposal. In fact, Ms Salmon's own letter of 16 July quotes the EPA as stating that its decision on the proposal is "subject to its findings following assessment of additional information requested". Further, the consultant quoted by Ms Salmon has substantially overstated the position.

I have replied to Ms Salmon in terms of Attachment 6.

RECOMMENDATION

It is recommended that the Board note the letter from Ms Salmon and the response.



NEIL SHEPHERD  
Director-General  
Environment Protection Authority

EPA Board  
Report Meeting  
6/92

12-8-92



EPA

4C



Ms S Salmon  
NSW Campaign Officer  
Australian Conservation Foundation  
888 George Street, Level 1  
SYDNEY NSW 2000

Environment  
Protection  
Authority  
New South Wales

Level 20  
Westfield Tower  
100 William Street  
East Sydney  
NSW 2011

Our Reference: E8739/ns/yl

Your Reference:

Telephone 02 353 2233  
Facsimile 02 353 2355

Director  
General

30 JUN 1992

Dear <sup>Sue</sup> Ms Salmon

I refer to your paper given at the NELA Conference.

I gave an undertaking to get back to you regarding the allegation that the EPA had given pollution control approval to the overtopping proposal for the Castlereagh Liquid Waste Dept. I indicated at the Conference that I did not think that this had occurred. Subsequent examination indicates that no such approval has been given. The EPA has in fact indicated to the Waste Recycling & Processing Service that it will await the results of the EPA-commissioned audit of the facility as well as the answers to specific concerns raised with the Service before deciding whether to issue an approval. I would appreciate it if you would advise your members of this situation.

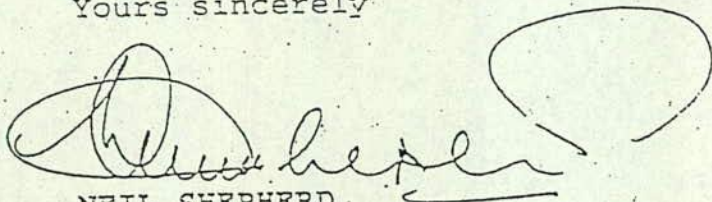
On the matter of the Forestry Commission licences, a meeting was held last week with the Nature Conservation Council to discuss the concerns of the environmental movement about these licences. A full and open debate occurred and both the EPA and NCC representatives are better informed of the other's views and reasons for the positions adopted. I think it is fair to say that there is general agreement about the objectives (preventing water pollution from forestry activities generally), but still some misgivings about the extent of the change that will be achieved by licensing and the timeframe for that change. As the licence conditions for water quality monitoring, review of the SEMC and audit processes are developed these concerns should decrease. This should occur by the end of this year.



On re-reading your paper I noted the item on phosphates in cleaning substances. The Murray Darling Basin Commission is examining the contribution of these substances to total phosphorus loads in the Basin and the EPA has put an initial paper to ANZECC supporting the concept of removal of phosphates from cleaning substances. The key issues are the need to remove rather than simply reduce the percentage phosphate (although this will need to be done over a defined period of time to allow re-formulation etc) and the need to ensure that the substitutes in the formulation are not themselves toxic to the environment. You should note that this issue needs to be pursued at an ANZECC level rather than a NSW level because the cleaning products are nationally distributed.

The EPA Executive resolved recently to institute regular (quarterly) meetings with the Environment movement to provide an opportunity to exchange views and discuss ideas and issues. The idea was discussed at the meeting with the NCC last week and the indication from NCC members was that they believed the dialogue would be useful. The NCC will be approached formally in the next few days and will presumably contact you soon after.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Neil Shepherd', with a large, loopy flourish extending from the end of the signature.

NEIL SHEPHERD  
Director-General



(5)

The comments from both groupings were very positive toward the possibility of good information exchange in the future through these meetings.

### 2.3 FORESTRY LICENCES

A meeting of senior officers will occur this week to ensure that all actions required as follow-up to the issue of licences to the Forestry Commission are on target.

Follow-up of the Oakes State Forest issue indicates that no further action is required from the EPA at this stage. The conservation movement does not appear to be taking action either.

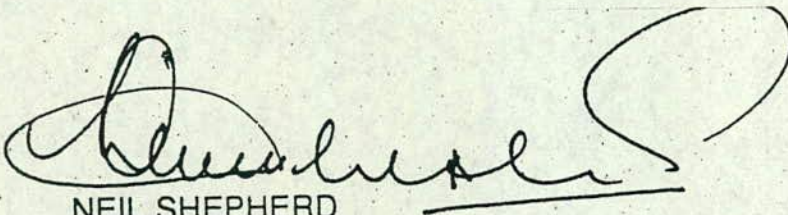
Extract from  
D.G.'s Report to  
Board Meeting  
6/92  
12-8-92

calculation errors (the results are roughly 10x the expected maximum values).



6

3.10 FORESTRY LICENCES - A separate paper is provided on this issue.



NEIL SHEPHERD  
Director-General

29 September 1992

Atts

Extract from  
DG's Report to  
Board Meeting  
8/92  
14-10-92



SUBMISSION FOR MEETING - EPA 8/92 (14.10.92)AGENDA ITEM 6 - FORESTRY COMMISSION LICENCESPURPOSE

To provide the Board with a brief update on the supervision of the pollution control licences issued to the Forestry Commission.

BACKGROUND

As the Board has been advised previously, the EPA issued a series of pollution control licences to the Forestry Commission on 7 May 1992 which permit, subject to conditions, logging operations in forests covered by the licences.

The pollution control strategy adopted in these licences involves the implementation of at-source controls in the form of "best management practices" (BMPs). This contrasts with the more conventional water pollution control strategy of specifying effluent volume and quality standards or limits. We chose the BMP approach because the effluent limits approach is impracticable to both implement and enforce when dealing with an intermittently-generated diffuse source of pollutants which cannot be fully collected and treated prior to discharge to receiving waters.

CURRENT POSITION

Having chosen the BMP approach, the EPA now needs to put in place a program of compliance audits and a review of the efficacy of the licence conditions, especially the BMPs. Agreement in concept has been reached with the Forestry Commission to a program which includes the following elements:

- training of regionally-based EPA inspectors in the operation and auditing of the BMPs specified in the licences (viz the state-wide standard erosion mitigation conditions and the relevant regional codes of logging practice);

- formulation and implementation of a program of inspections by EPA inspectors of forests both during and following logging operations - these would be in the nature of audit inspections and would supplement, not replace, the monitoring of logging contractors undertaken routinely by Forestry Commission staff;

- initial review, and modification where appropriate, of the BMPs specified in the licences in conjunction with the Forestry Commission and agencies/companies sub-contracted by the Forestry Commission for this work;

- water quality monitoring by the Forestry Commission as a new condition of licence in selected catchments in accordance with an agreed program of research to assess the impact of logging operations;

- conduct and publication by EPA scientists of a review of the literature on forestry



BMPs;

- investigation by EPA scientists of the use of remotely-sensed data and river sediment analysis as techniques for monitoring BMPs and associated environmental impacts; and
- amendment of the licence conditions, especially the BMPs, as necessary based on the outcomes of the above research, monitoring and audit activities.

A joint officers committee has been formed to oversee the implementation of this program. It consists of:

#### EPA Members

Dr David Leece, Director, Waters and Catchments (convenor)  
Mr Bill Train, Director, Major Investigations and Licensing  
Dr Ross Higginson, Manager, Catchments and Groundwaters

#### Forestry Commission Members

Mr Tony Howe, Manager, Forest Planning  
Mr Ross Smith, Manager, Management Audit and Review  
Dr John Turner, Director of Research

Training of EPA staff will occur at a workshop at Eden on 13-14 October 1992. The workshop is being organised by EPA Senior Catchment Officers (SCO) under the leadership of Mr Maurie Matthews, SCO South Coast. EPA inspectors will be trained by EPA and Forestry experts and will formulate a program of audit inspections for their regions. They will be shown good and bad forestry practices in a state forest and will undertake and audit inspection.

The Forestry Commission and the Department of Conservation and Land Management (Soil Conservation Section) have almost completed a review of the Standard Erosion Mitigation Conditions (SEMC) following wide-ranging input from field operatives. The revised SEMC will be forwarded to EPA for its consideration shortly.

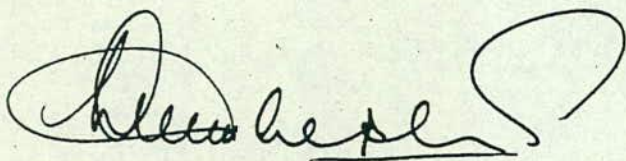
The Forestry Commission for the past twenty years has maintained a series of highly monitored research catchments in six separate forest systems. It also maintains a network of water quality monitoring sites in all its forests. These are sampled routinely once per fortnight and additional samples are collected following storm events. These programs will be reviewed by the EPA and their continuation, modified if necessary to meet EPA needs, will become a condition of licence.

The review of literature on forestry BMPs has commenced. The EPA's initial research proposals involving the use of remote sensing and GIS techniques, however, are being reviewed in the light of similar work already completed by the ANU Centre for Resources and Environmental Studies (Prof Henry Nix). Initiation of this work has been deferred pending the outcome of the review.



RECOMMENDATION

It is recommended that the Board **note** this advice.

A handwritten signature in black ink, appearing to read 'Neil Shepherd', with a large, stylized loop at the end.

NEIL SHEPHERD

Director-General

EPA

25/9/92

[wad1007d.sub]



Extract from  
DA's Report to  
Board Meeting  
9, 92  
10-11-92  
✓

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## 2.11 FORESTRY LICENCES

The Oakes State Forest issue continues to simmer. John Corkhill has sought access to documents under FOI (including Board papers) and the EPA is also attempting to obtain a report prepared for the Forestry Commission on the issue. There is no final decision by the EPA on the action it may take on Oakes State Forest.

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9

EPA TECHNICAL SERVICES DIVISIONAL REPORT - OCTOBER 1992

EPA Tech Services  
Monthly Report  
Exacts -- provided  
to Board Meeting  
9/92  
10-11-92



Catchments & Groundwaters Section

- \* EPA met with NSW Agriculture to discuss problem of on-farm collection and storage of stormwater run-off, and implications of release of such stormwater.
- \* EPA met with Department of Planning to discuss procedures for the handling of Forestry EISs issued under the Timber Industry (Interim Protection) Act 1992.
- \* Discussions were held with Department of CALM regarding modifications to Standard Erosion Mitigation Conditions (SEMCs) in Forest Logging Operations.
- \* Development of State Natural Resources Policy by the National Resources Program Coordinating committee for the State Catchment Management Coordinating Committee.
- \* It is anticipated that the penultimate draft of the National Greenhouse Response Strategy will be circulated for final review in November.



SUBMISSION FOR MEETING - EPA 3/92 (13.05.92)

AGENDA ITEM 15.3 - POLLUTION CONTROL LICENCES ISSUED TO THE FORESTRY COMMISSION

Purpose

To advise the Board about pollution control licences issued to the Forestry Commission on 7 May 1992 in respect of logging activities which may pollute waters.

Background

On 18 March 1992 the Forestry Commission applied for a licence in respect of its logging operations throughout the State.

Section 16 of the Clean Waters Act 1970 provides that it is an offence to pollute waters but not if the person is the holder of a licence and complies with the conditions of the licence.

On 7 May licences were issued for each of the 9 forestry regions in the State. A copy of one of the licences is attached.

In particular, each licence requires the Forestry Commission to comply with the relevant codes of logging practice for each of the forests in the region. The Commission is also required to comply with the "Standard Erosion Mitigation Conditions for Logging in NSW 1990" published jointly by the former Soil Conservation Service of NSW and the Forestry Commission. Any pollution incident which may have been caused by logging operations must be immediately notified to the EPA so that appropriate remedial action may be taken.

The licences are for 1 year and the conditions may be varied at any time. It is proposed, for example, that a further condition will be imposed concerning the monitoring of water quality to test that the conditions of each of the licences are effective and being complied with. The licences only apply to the Forestry Commission. Logging contractors will have to apply for their own licences as, for legal reasons, the EPA is unable to issue a licence to a person who has not applied for it.

Reason for licence application

Although the Clean Waters Act has been in operation since 1970, this is the first time the Forestry Commission has applied for a licence. Recent changes in prosecution practice and in the legislation have undoubtedly prompted the Commission to make the application.



Under guidelines issued in 1959 by the then Premier, Hon. T J Cahill, M.P., government departments could not prosecute other government departments. That prohibition was lifted in April 1991 when new guidelines were published which recognised that there would be instances where the prosecution of government departments would be appropriate.

Since the commencement of the operation of the Protection of the Environment Administration Act on 1 March 1992, members of the public, as well as the EPA, may, in certain circumstances, institute prosecution proceedings and apply for restraining orders to prevent breaches of environmental laws.

These changes together make for increased vigilance in respect of compliance with environmental laws.

#### Issue of licences

In issuing each licence to the Forestry Commission, the EPA has attached conditions designed to minimise any pollution of waters which may be caused by its logging operations. As mentioned above, the EPA has the power to review and vary those conditions and the Forestry Commission is aware that this will happen.

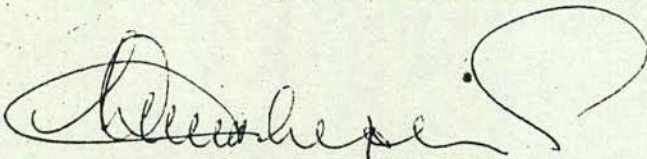
The issuing of the licences has provided an opportunity for the EPA to require the Forestry Commission to develop effective pollution control programs for its existing logging operations. Of course, this may take some time but these licences represent a start to that process.

The licences have also provided an opportunity for the EPA to require the Commission to immediately notify it of any pollution incident. As noted above, this will enable prompt remedial action to be taken under EPA scrutiny.

Finally, it should be noted that, although the licences only apply to the Forestry Commission, each licence requires the Commission to impose pollution prevention conditions on logging contractors who are granted forestry licences under the Forestry Act.

#### Recommendation

It is recommended that the Board note that these licences have been issued and the conditions which apply.



NEIL SHEPHERD  
Director-General 13.5.92  
Environment Protection Authority



# POLLUTION CONTROL LICENCE

## POLLUTION CONTROL ACT 1970

### Licence in respect of section 17A(b)

In pursuance of section 17D of the Pollution Control Act 1970, the Environment Protection Authority grants the Licence set out below.

**Licensee:** The Forestry Commission of New South Wales

**Land covered by Licence:** Land in the Batemans Bay Region, being the land described at the end of this Licence.

**Activity covered by Licence:** Logging operations as defined at the end of this Licence.

**Date of Licence:**

**Duration of Licence:** 1 year from date of Licence.

### CONDITIONS OF LICENCE

1. (1) The Forestry Commission must carry out logging operations covered by this Licence in accordance with the relevant provisions of the Codes of Logging Practices prepared under the Forestry Act 1916 applying, as at the date of this Licence, to the land. The relevant provisions are those which will prevent or minimise the pollution of waters. These Codes include:
  - (a) Code of Logging Practices - Native Forest Areas - Batemans Bay Region



POLLUTION CONTROL LICENCE - BATEMANS BAY REGION

(b) Code of Logging Practices - Conifer Plantations  
- Batemans Bay Region

- (2) If no Code of Logging Practices applies to the land, the Forestry Commission must not carry out logging operations on the land except in a manner generally in accordance with the relevant provisions of a Code of Logging Practices under the Forestry Act 1916 approved by the EPA as appropriate for application to the land. The Forestry Commission must not carry out logging operations on the land until the EPA approves a Code for application to the land.
2. (1) The Forestry Commission must carry out logging operations on the land in accordance with the "Standard Erosion Mitigation Conditions for Logging in NSW July 1990", as amended from time to time, published jointly by the former Soil Conservation Service of NSW and the Forestry Commission.
- (2) The Forestry Commission must notify the EPA about any proposed amendments to that document.
- (3) Those amendments do not have any effect for the purposes of this condition until they are approved by the EPA in writing.
3. The Forestry Commission must comply with any special site specific conditions agreed to by the Forestry Commission and the Director-General of the Department of Conservation and Land Management concerning additional soil conservation works to be undertaken in carrying out logging operations on the land.
4. All matter and substances on the site of logging operations must be handled, moved and stored in a proper and efficient manner for the purpose of preventing the pollution of waters.
5. The transport and storage of fuel and the re-fuelling of equipment must be carried out in a manner to prevent the pollution of waters as a result of spillage.
6. All servicing and repairs of equipment must be carried out in a manner to prevent the pollution of waters.
7. Hazard reduction burning must be carried out in a manner which preserves all filter strips to the greatest extent practicable.
8. Bark removal operations must not be carried out within, or within 10 metres of, any filter strip.



POLLUTION CONTROL LICENCE - BATEMANS BAY REGION

9. Stripped bark must not be placed within, or within 10 metres of any filter strip.
10. (1) The Forestry Commission must notify the closest Regional Office of the EPA if it becomes aware of any pollution of waters which may have been caused by logging operations and the pollution:
  - (a) makes, or may be reasonably expected to make, those waters noxious or poisonous; or
  - (b) makes, or may be reasonably expected to make, those waters harmful or potentially harmful to the health, welfare, safety or property of human beings; or
  - (c) makes, or may be reasonably expected to make, those waters poisonous, harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life; or
  - (d) makes, or may be reasonably expected to make, those waters poisonous, harmful or potentially harmful to plants or other vegetation.
- (2) The Forestry Commission must notify the EPA not later than 24 hours of becoming aware of the pollution, or if this is not practicable, as soon as practicable after that time.
- (3) The Forestry Commission is to be taken to be aware of the pollution of waters if an employee of the Commission at or above the rank of District Forester is aware of the pollution.
11. If the EPA so requests, the Forestry Commission must provide a written report to the EPA about pollution notified to the EPA under Condition No. 10. The written report must be provided not later than 21 days after the request.
12. Any licence issued by the Forestry Commission under the Forestry Act 1916 which authorises the holder to carry out any logging operations covered by this Licence must be issued subject to conditions which require the holder of the licence to comply with Condition Nos. 1-9 of this Licence in the same way as the Forestry Commission must comply with those conditions.
13. The Forestry Commission must monitor compliance with the conditions referred to in Condition No. 12.



POLLUTION CONTROL LICENCE - BATEMANS BAY REGION

14. Copies of the following documents must be made available at all district offices of the Forestry Commission within the Batemans Bay Region for inspection by any person and must be produced on demand to an officer of the EPA:

- this Licence;
- the Codes of Logging Practices referred to in Condition No. 1;
- any approval given by the EPA under Condition No. 1(2);
- the document entitled "Standard Erosion Mitigation Conditions for Logging in NSW July 1990" as amended by amendments to that document approved by the EPA.

Nothing in this Licence permits logging operations in contravention of the Timber Industry (Interim Protection) Act 1992.

Definitions:

"EPA" means the Environment Protection Authority.

"land in the Batemans Bay Region" means the land designated as being within the Batemans Bay Region under the Forestry Regulation 1983 as at 18 March 1992.

"logging operations" means:

- (a) the cutting and removal of timber from land;
- (b) the provision of access roads necessary to enable or assist the cutting and removal of the timber; and
- (c) hazard reduction burning carried out on Crown-timber lands within the meaning of the Forestry Act 1916.

"pollution" has the same meaning as under the Clean Waters Act 1970.

NEIL SHEPHERD  
Director-General  
Environment Protection Authority



34.

Attachment 10 14

CATCHMENT AREAS PROTECTION BOARD  
AND  
FORESTRY COMMISSION, NEW SOUTH WALES

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AMENDED STANDARD EROSION MITIGATION CONDITIONS  
FOR LOGGING IN NEW SOUTH WALES -  
JUNE, 1984

1. GENERAL

- (i) These Conditions for mitigation of erosion shall apply to all logging and forest operations controlled by the Catchment Areas Protection Board and the Forestry Commission of New South Wales. The Catchment Areas Protection Board authorizes these operations under provisions of Section 21 of the Soil Conservation Act, 1938. The Forestry Commission of New South Wales exercises control of these operations on Crown timber lands under provisions of the Forestry Act, 1916.
- (ii) The person authorized by the Catchment Areas Protection Board shall ensure that all activities connected with the logging operations on the authorized area shall be conducted in such a manner that erosion is not aggravated and shall carry out any instructions given by the Catchment Areas Protection Board or its nominee with a view to minimizing or preventing erosion.
- (iii) Notwithstanding the following Conditions, in catchments of major water storages and in areas where the erosion hazard so warrants, restrictions on the method and intensity of all forest operations may be imposed by the Catchment Areas Protection Board or the Forestry Commission of New South Wales within the provisions of their respective authorities.
- (iv) No logging operations shall take place within 100 metres of the top water level of any major water storage.
- (v) No tree shall be destroyed, lopped or topped within 20 metres of a prescribed stream as defined under the Water Act, 1912, without prior authority of the Catchment Areas Protection Board. ~~Middle Creek & Back Creek are prescribed streams.~~
- (vi) Any burning associated with logging operations shall be carried out only in accordance with the provisions of the Bush Fires Act, 1949.
- (vii) Any poisoning associated with the destruction of trees shall be carried out only in accordance with the Pesticides Act, 1978, or any other legislation governing the use of pesticides within the area of operation of this Permit/Authority.



- (viii) These Conditions shall apply to the use and construction of roads and tracks on any land adjacent to, and for the purpose of activity on, land on which the logging or forest operations are controlled by the Catchment Areas Protection Board or the Forestry Commission of New South Wales, subject to the agreement of the holder of that adjacent land.
- (ix) If in the application or interpretation of these Conditions there is any doubt or confusion as to either compliance with the terms of a clause or with the intent of the Conditions as a whole, the following officers shall determine whether the action taken or proposed is in accordance with the intent of these conditions:
  - (a) the appropriate Regional Forester in all instances where the operations are under the jurisdiction of the Forestry Commission.
  - (b) the appropriate Regional Director of Soil Conservation in all instances other than those in (a).

## 2. CONDITIONS FOR LOGGING

### 2.1 Roading

Roads and minor roads shall be located where practicable on ridges. They shall not intrude into filter strips beside streams except where the road crosses the stream.

#### 2.1.1 Roads

- (i) Roads shall be properly formed, and they shall be gravelled if the density of traffic so warrants and this is specified.
- (ii) All batters shall be constructed to a stable slope. Consolidation may be necessary on fills to minimize subsequent slumping and erosion of fill batters. Revegetation of batters may be required on some roads, and this shall be carried out when specified.
- (iii) Adequate pipe drainage shall be provided in roads consistent with sound engineering practice so that erosion of the road surface and table drains is minimized. Pipes should discharge water onto undisturbed vegetation.
- (iv) The use of borrow pits for the provision of extra material during road construction should be kept to an absolute minimum. Where use of a borrow pit is unavoidable, topsoil shall be stockpiled and subsequently replaced to aid revegetation. The bottoms



of pits should be graded and levelled, sides should be battered and shaped to conform to the surrounds and the replaced topsoil fertilized and seeded where necessary to establish a vegetative cover.

- (v) Maximum grades on roads shall be kept below 10 degrees.
- (vi) Bridges and culverts on roads shall be designed to transmit peak discharges consistent with the standard of road. Bridge approaches shall be stabilized and revegetated where necessary following construction. Culvert outlets should be located or designed to minimize scour and erosion.
- (vii) Immediately after operations have ceased on roads which have been damaged and on which use is to be permanently or temporarily discontinued, the damage shall be repaired by re-grading, or if conditions are too wet for this to occur, temporary cross banks shall be constructed. In this latter instance, re-grading shall occur as soon as conditions allow.
- (viii) Maintenance grading shall be carried out only where necessary and disturbance to vegetation should be minimized.

#### 2.1.2 Minor Roads

- (i) Operations shall be planned systematically so that the number of roads open at any one time will be kept to a minimum.
- (ii) Wherever the type of operations permit and as far as practicable, minor roads should be constructed with cross fall drainage.
- (iii) Immediately after the logging operation has ceased in any section (even if it is planned to use the road at any time in the future) the road shall be drained by cross banks unless otherwise specified. The channels of these banks must be constructed with a minimum gradient sufficient to ensure that there is adequate lateral drainage onto the surrounding vegetation. Cross banks must not direct water directly onto other tracks or roads. The exits of these banks must allow water to escape readily from the road. The spacing of these banks will depend on the grade of the road and on the erosion hazard. Unless otherwise specified, bank spacings to be employed are those in the Table under 2.4(ii).

For any operation the height of the cross banks shall be specified.



- (iv) Immediately after operations have ceased on minor roads the surface material shall be replaced as far as practicable, and the roads shall be drained by banks unless otherwise specified. Seeding and/or fertilizing of minor roads shall be specified where necessary.
- (v) The use of borrow pits should be kept to an absolute minimum, and if employed, should be dealt with as under 2.1.1(iv).
- (vi) Minor roads shall not cross streams which are running unless a causeway, bridge or pipe culvert designed to transmit peak flows has been provided. They may cross stream beds which are dry via causeways, temporary culverts or temporary log crossings provided there is minimal disturbance to the surrounds. At the completion of operations, the sites of temporary crossings shall be restored as closely as possible to their original condition.
- (vii) "Blading-off" on minor roads shall be permitted only where damage is minimal and subsequent drainage and repair is possible. Each "blading-off" operation must be specifically approved.
- (viii) The use of minor roads shall be minimized during wet weather. They should carry no traffic at times when there is runoff from the road surface.

## 2.2 Filter Strip

A filter strip shall be retained on a stream or drainage line where its catchment area exceeds (at most) 100 hectares. Both the width of filter strip and the catchment area may be varied if, in the opinion of the Forestry Commission or the Catchment Areas Protection Board, shape, erosion hazard or stream conditions so warrant, in which case width and area shall be specified.

## 2.3 Felling

- (i) No tree shall be deliberately or negligently felled into a stream within a filter strip, except as provided in 2.3(ii).
- (ii) In conifer filter strips, trees may be felled into a stream when approved by the supervising officer, so as to avoid possible later windthrow. Approval will only be given where the tree can be removed with minimal disturbance to the stream.



- (iii) Crowns of conifer trees felled into streams must be removed and such removal must result in minimal disturbance to the bed and banks of the stream.
- (iv) Trees may be felled into or within a filter strip, with the exception of those planted within the filter strip after 25th May, 1983. Extraction machinery shall not enter a filter strip to remove logs, except that in conifer plantations with conifer filter strips, extraction machinery may enter the filter strip to within 5 metres of the bank of the stream with the authorization of the supervising officer. This authorization shall only be given where machinery is not likely to cause damage to the soil surface of the filter strip and the bed and bank of the stream.
- (v) Logging operations shall be carried out so that there is minimal disturbance within any drainage line.
- (vi) In conifer plantations, wherever possible slash shall be retained on extraction tracks and harvesting machinery shall operate over it.

#### 2.4 Snigging and Timber Extraction

- (i) As far as practicable snigging and timber extraction shall be uphill. In any event, downhill movement of timber shall not be practised in areas with high erosion hazard or as specified.
- (ii) The drainage of snig or timber extraction tracks shall be carried out in the same way as for minor roads. The height and spacing of the cross banks shall be specified. The following table shows the maximum bank spacing required for each grade and degree of erosion hazard. These maximum spacings may be varied where difficult or inappropriate drainage disposal areas are encountered. Any variation requires the concurrence of the Regional Director of Soil Conservation, ....., or his/her representative.

GRADE OF SNIG TRACK, EXTRACTION TRACK OR MINOR ROAD		HEIGHT (METRES)	MAXIMUM SPACING (METRES)
<u>Degrees</u>	<u>Percentage</u>		
10	18	0.5	70
10 - 15	27	0.5	50
15 - 20	27 - 37	0.5	30
20 - 25	37 - 47	0.5	15
25 - 30	47 - 57		

Where there is a high erosion hazard, the grades of snig tracks, extraction tracks and minor roads shall be limited and shall be specified according to the erosion hazard, and in any event shall not exceed 25 degrees. Where the erosion hazard is less, the grade shall exceed 25 degrees only where specified.



- (iii) As far as is practicable, slash shall be retained on extraction tracks, timber extraction by walk-over techniques shall be used, and the construction of snig tracks shall be minimized. In any event the use of a blade shall only be permitted for removal of soil from a snig or timber extraction track during initial track construction and during track drainage. "Blading-off" shall be permitted only where track damage is minimal and subsequent drainage and repair is possible. Each "blading-off" operation must be specifically approved.
- (iv) Where there is high erosion hazard, snigging and extraction of timber from areas with slopes over 30 degrees shall not be permitted if track construction is required. Where there is less erosion hazard, snigging and extraction of timber from areas with slopes over 35 degrees shall not be permitted if track construction is required. Where specifically approved by the supervising officer, tracks may be constructed on slopes in excess of these limits where it is necessary to traverse these slopes for short distances to enable timber to be extracted from areas of lesser slope.
- (v) Snig or timber extraction tracks shall not cross the beds of streams without application of the same conditions which apply to minor roads.
- (vi) Snig or timber extraction tracks shall not intrude into filter strips, except as provided for in 2.3(iii), 2.3(iv), and 2.4(v).
- (vii) The use of snig or timber extraction tracks in wet conditions shall be minimized.
- (viii) As far as practicable surface material shall be returned to the track immediately after logging ceases on that track to aid in revegetation, and at the same time crossfall drainage shall be re-established. In circumstances where it is considered necessary the method of revegetation shall be specified.
- (ix) In the case of "outrow" extraction tracks in plantations, drainage shall be carried out when necessary and as specified.

## 2.5 Log Dumps

- (i) Log dumps shall be located as far as practicable in accordance with an uphill extraction pattern. They shall not be located closer than 10 metres from a filter strip or drainage line.
- (ii) When ungravelled dumps are constructed and unless otherwise specified, topsoil is to be stockpiled in a recoverable position, and either -



- (a) upon temporary termination of logging, where further logging is contemplated in the near future, the dumps are to be levelled unless otherwise authorized, drained so that runoff is directed onto surrounding vegetation and ripped where specified, or
  - (b) upon completion of logging the dumps are to be levelled unless otherwise authorized, drained so that runoff is directed onto surrounding vegetation, and the topsoil spread evenly over the dump. The dump shall be revegetated and/or ripped where specified.
- (iii) Gravelled dumps shall be drained during and upon completion of logging so that runoff is directed onto surrounding vegetation.



## STANDARD EROSION MITIGATION CONDITIONS

### GLOSSARY OF TERMS

JUNE, 1984

#### BLADING OFF

The removal of surface soil from a snig track or road in order to expose a drier and/or firmer surface to allow its use by machinery.

#### CROSS BANK

A hump of earth constructed across a snig track, outcrop, log dump or road so that water is effectively diverted from it. Waste material such as bark should not be used.

#### DRAINAGE LINE

A passage along which water concentrates and flows towards a stream, drainage plain or swamp intermittently during or following rain.

#### EROSION

In this document refers to accelerated erosion due to forest operations. These conditions aim at minimizing any acceleration of natural erosion.

#### EROSION HAZARD

The susceptibility of an area of land to the prevailing agents of erosion. It is dependent on a combination of climate, landform, soil erodibility, land use and land management factors. The ranking of low to high erosion hazard depends on the degree of susceptibility to these prevailing agents of erosion. Within protected lands, there is a high degree of consistency within each of the factors of climate, landform, land use and land management. The factor which is the most variable and has the greatest effect on erosion hazard within protected lands is soil erodibility, which is related to parent material.

#### FILTER STRIP

Strip of permanent vegetation at least 20 m wide along each side of a drainage line or banks of a stream to retard the lateral flow of runoff water, causing deposition of transported material and thereby reducing sediment movement.

#### FORWARDING

The carrying of logs fully supported off the ground by vehicles, from the point of felling to the log dumps.



LOG DUMP

Areas where forest products are assembled prior to loading on truck.

MAJOR WATER STORAGE

A dam constructed for public irrigation or town water supply or of a size of that order.

MINOR ROAD

In this document refers to a discontinuously trafficable route that is constructed for a short term specific purpose, e.g. for timber haulage from log dump or for access during clearing, and is used at most intermittently.

OUTROW OR STRIPROW

A corridor of trees felled in plantations in order to allow travel, processing, snigging or forwarding functions.

PERMANENT CLEARING

The destruction of trees for a land use other than commercial timber, banana growing or orchards, such as pasture or agriculture.

PRESCRIBED STREAMS

Rivers, creeks, effluents or lakes which are listed as 'prescribed' within the provisions of Section 26D of the Water Act, 1912.

ROAD

In this document refers to a permanently trafficable route which is maintained on some regular basis so that it is generally available for use.

RUNOFF

That portion of the precipitation on a catchment area that flows from the catchment past a specified point.

SNIGGING

The pulling of logs, either wholly or partly supported on the ground, from the point of felling to the log dump. Wheeled or tracked vehicles are the most common form of traction.

SNIG TRACK

A track along which timber is snigged.



STREAM

A defined route, with clearly identified bed and banks, along which water flows continuously or intermittently towards another (normally larger) stream, river, lake, sea, drainage plain or other outlet.

TEMPORARY CLEARING

The destruction of trees for the planting of commercial timber, banana or orchards.

TIMBER EXTRACTION TRACK

A route used for transport of logs from the point of felling to the log dump where no part of the log is in contact with the ground.

TREE

A perennial plant having a self-supporting woody main stem or trunk which usually develops woody branches. Tree, in Section 26D of the Water Act, 1912, includes sapling, shrub and scrub in this definition.

WINDTHROW

A tree which has fallen as a result of natural forces.



# CODE OF LOGGING PRACTICES

~~~~~  
*Crown Timbered  
Lands*  
~~~~~

PORT MACQUARIE REGION



FORESTRY COMMISSION OF N.S.W. JUNE  
1988



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### APPENDICES

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| 1 | MINIMUM QUOTA LOG SPECIFICATIONS |
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6.12 Trees shall not be felled across roads, tracks, (including road batters, table drains and inverts of drainage structures), or other improvements or structures unless authorised by the Commission. Where such trees are felled under authority, the trees together with associated slash and debris shall be removed as soon as practicable and repairs effected immediately.

#### 7. SNIGGING AND DUMPING

- 7.1 All operations shall be carried out in such a manner as to minimize soil disturbance, water pollution and environmental damage generally. Disturbance to drainage lines not designated as filter strips should be afforded special protection, and on completion of operations crossings of dry streams by minor roads or snig tracks shall have the sites of the crossing restored to its original condition as closely as possible.
- 7.2 Snig track construction is not permitted on slopes over 35°, (30° for High Erosion Hazard) unless specifically authorised.
- 7.3 Grades on snig tracks shall not exceed 25° unless specifically authorised.
- 7.4 Mechanical logging equipment shall not enter filter strips except to provide access for approved crossing points of drainage lines.
- 7.5 Where possible, surface vegetation shall not be removed from snig tracks, and as far as is possible snigging shall be uphill.
- 7.6 "Blading Off" on minor roads and snig tracks is prohibited unless specifically authorised.



7.7 Construction of snig tracks will aim at minimising damage to retained stumps, including regeneration.

7.8 Snigging across or along roads or trails will not be permitted except as authorised by the Commission.

7.9 Harvesting plan areas shall be worked in a systematic manner, as directed by a Forest Officer, to ensure that a minimum number of snig tracks and dumps are worked at any one time.

7.10 Drainage of snig tracks and minor roads, other than permanent fire trails, shall be carried out in conformity with the Standard Erosion Mitigation Conditions. The required frequency of cross drainage banks will be prescribed in the harvesting plan. Drainage shall be carried out progressively on each track upon completion of, or temporary cessation of, operations.

7.11 Drainage of fire trails or non piped other roads shall be by crossfall (cut-fall) drainage or, where run off cannot be controlled, by open cross drains. Works shall be undertaken in conformity with the "Guidelines of Planning, Construction and Maintenance of Trails (1983)", issued jointly by the Commission and the Soil Conservation Service.

7.12 Log dumps shall be located as specified in the harvesting plan and shall not be located closer than 10 metres from filter strip or drainage line. The location of additional or alternative dumps require specific approval.

7.13 Dump size will be minimised subject to efficient operations.

7.14 On completion of operations dumps are to be drained, ripped if directed and unless otherwise authorised shall be levelled and have stockpiled topsoil replaced.

7.15 Unless otherwise authorised by the Commission, bark accumulated at roadside or dump shall be either returned to the forest floor and dispersed or buried in a manner to not create a fire hazard for retained trees.

7.16 Logs requiring inspections at dump shall be left in a set position.

7.17 In integrated operations, product segregation will be as directed by the Commission's supervisor.

7.18 Log stacks will be constructed so that they are stable and pose no risk to those working in the dump area.





# Environment Protection Authority

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Your reference:

Contact:

Telephone: (02) 368 2888  
Fax: (02) 368 2855

Dear Sirs,

## Logging Operations in Oakes State Forest

I refer to your letter dated 24 April, 1992.

Thank you for drawing this matter to the EPA's attention and for providing copies of the consultants' reports.

The situation will be investigated and a decision on the appropriate course of action will be made at the conclusion of that investigation.

I note your advice that your clients will take appropriate action in the Land and Environment Court if the EPA decides against that option. You will, therefore, be advised of any decision as soon as it is made.

As you are aware, however, your clients do not require the consent of the EPA to apply to the Land and Environment Court for a restraining order pursuant to Section 25 Environmental Offences and Penalties Act 1989. Your letter indicates that your clients feel they have sufficient material with which to approach the Court. If this is so and you wish proceedings to be commenced urgently, your clients need not await the EPA investigation before taking action. If you adopt this course of action, could you please forward a copy of the application to the EPA pursuant to Section 25(4) Environmental Offences and Penalties Act 1989.

I note in the letter from the Forestry Commission to yourselves dated 21 April, 1992 an urgent investigation had been arranged and logging operations suspended. I also note the suggestion by the Forestry Commission concerning the advantages of alternative dispute resolution procedures.



Could you please advise your response to this suggestion and whether you feel it may be of assistance if the EPA was involved in any way.

Yours faithfully,

NEIL SHEPHERD  
Director-General

DP/af





# Environment Protection Authority

Dr H. Drielsma  
Forestry Commission of NSW  
Locked Bag 23  
PENNANT HILLS NSW 2120

Level 20, Westfield Tower  
100 William Street  
EAST SYDNEY NSW 2011

Our reference: E01344/2

Your reference:

Contact:

Telephone: (02) 368 2888  
Fax: (02) 368 2855

Dear Sirs,

## Logging Operations in Oakes State Forest

Woolf Associates Solicitors representing John Corkhill and the North East Forest Alliance have written to the EPA alleging breaches of environmental laws by Thora Sawmilling in respect of compartments 168, 169, 170, 172 and 173 of Oakes State Forest. I enclose a copy of that letter for your information and comment.

Included in the material from Woolf Associates was a letter dated 21 April, 1992 from Mr Ireland to that firm indicating an urgent inspection of the area would be undertaken by independent experts from the Soil Conservation Service. Could you please advise: -

- (a) the results of that investigation;
- (b) whether road construction operations in the area are continuing; and
- (c) whether Woolf Associates have agreed to use alternative dispute resolution procedures.

Could you also advise whether compartments 168, 169, 170, 172 and 173 of Oakes State Forest are part of the Macksville Management Area or, if not, what Management Area they fall within.

Your urgent attention to these matters would be appreciated.

Yours faithfully,

NEIL SHEPHERD  
Director-General

DP/af



PA 2 (8)

# Environment Protection Authority

TO DIRECTOR-GENERAL DATE 12/5/92  
VIA DLS  
ED-PEL  
FROM MANAGER LITIGATION FILE E1311  
SUBJECT LOGGING OPERATIONS IN OAKES STATE FOREST

---

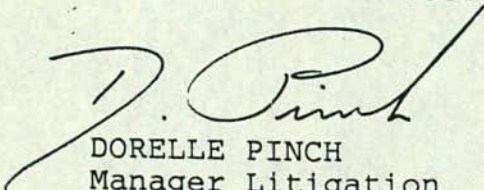
PURPOSE To inform you of the current status of this matter.

- STATUS
1. A report has been received from Mr Greenbank, Grafton Regional office: see Annexure A.
  2. This report has been discussed with Peter Yates, A/EDO, and a copy of my written advice is attached : see Annexure B.
  3. Mr Greenbank is on leave till 13 May 1992 so there is no estimation as to the length of time he will need to prepare the supplementary report.
  4. Woolf and Associates Solicitors have been informed of the most recent developments - see letter attached from your signature.
  5. The Forestry Commission has also been informed of the current position - see letter attached for your signature.

RECOMMENDATION

It is recommended that :

1. You sign the attached letters;
2. Note that no further assessment can be made until the supplementary report from Mr Greenbank is received.

  
DORELLE PINCH  
Manager Litigation

dp/kf

(8)





Doc 4A

SUBMISSION FOR MEETING - EPA 5/92 (14.7.92)

AGENDA ITEM 10 - DIRECTOR-GENERAL'S REPORT, JUNE/JULY 1992



## 2.6 Forestry Licences

A meeting was held with the Nature Conservation Council and affiliated organisations about the forestry licences. There was a frank exchange of views, with both the NCC and EPA representatives gaining an appreciation of the concerns of the other.

A verbal report on progress with licence condition research and the investigation of the alleged breaches of the Clean Waters Act in Oakes State Forest will be given at the Board meeting.



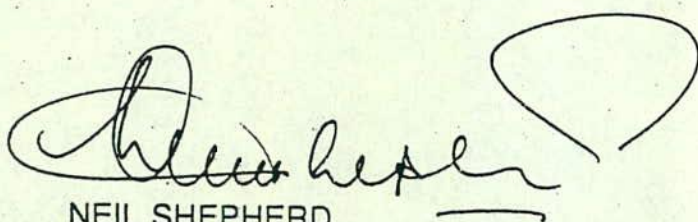
2.8 National Environmental Law Association Conference -  
Paper by Sue Salmon, ACF

I attended the NELA Conference for the first half day. The topic for the first day was essentially the establishment and workings of the Commonwealth and NSW EPA's. Clearly, it is far too early to make any useful or accurate comment on the performance of either of these EPA's. However, that didn't stop anyone commenting - either for or against!

Attached is a copy of the paper given by Sue Salmon of the ACF. Also attached is a copy of a letter to Ms Salmon on a couple of the items raised in her paper. (Annexure 3).

Letter of 30.6.92.  
re Castleknock  
& forests issues  
copy in docs re  
Forestry.



A handwritten signature in black ink, appearing to read 'Neil Shepherd', with a large, stylized loop at the end.

NEIL SHEPHERD  
Director-General

6 July 1992

Atts



ENVIRONMENT PROTECTION AUTHORITY

SUBMISSION FOR MEETING - EPA 7/92 (8-9-92)

AGENDA ITEM <sup>52</sup> ALLEGED POLLUTION OAKES STATE FOREST

PURPOSE

To respond to the Board's request for a report on EPA inspections of forestry operations in Oakes State Forest the reasons for its current position and copies of any relevant Soil Conservation Reports.

REPORT

An officer of the EPA inspected the Oakes State Forest site on 29 April 1992 and again on 4 May 1992. The inspections were in response to allegations received from the North East Forest Alliance (NEFA) that logging operations had caused significant erosion and consequent water pollution. NEFA had blockaded the site and stopped all logging operations and road works.

The inspections revealed that a series of minor roads had been constructed on areas that had been or were being logged. The soils and subsoils of the site were found to be non-dispersive in nature and were not considered to be highly erodable. Whilst not always along the crest of the ridge line, the road works were found to be as high on the slope as was reasonable for the terrain and in all cases well out of the gullies. Most of the logged areas were found to be between 1 and 1.5 km from Scraggy and Sunday Creeks. Nearly all of the gullies in the logging area are perennial in nature.

The inspections revealed very little erosion on the snig tracks, minor roads or log dumps even though the work had been through the wet season in a high rainfall area. Cross banks had been installed on the areas that had been logged and appeared to be working quite well. It was found that the forest harvesting plan had provided for significant filter strips to protect the waters of the area, these were further enhanced by the terrain.

The inspection of Scraggy and Sunday Creeks and Bellinger River in the vicinity of the site revealed very clear waters even though there had been some rain just prior to the inspections.

It was concluded that there was no gross pollution or potential for gross pollution caused by the logging operation in the Oakes State Forest.



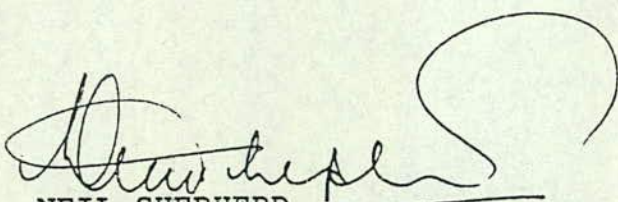
On 7 May 1992 the EPA granted a conditional Pollution Control Licence to the Forestry Commission in relation to forest roading and logging operations the nine forestry regions of the State, including the region which includes Oakes State Forest.

On 19 August 1992 the Department of Conservation and Land Management advised that Soil Conservation officers had been at the site for three (3) weeks and would be there for another week measuring the separations and height of cross banks that had been constructed along logging tracks. These measures are specified in the standard conditions for erosion mitigation, compliance with which has been Forestry Commission policy. Compliance with those conditions and relevant regional codes of practice is now a condition of the pollution control licence, though the licences did not apply at the time of the logging.

CALM is expected to report to the Forestry Commission on its findings, with recommendations on any alterations to the code of logging practices which are considered necessary.

#### FUTURE ACTION

The EPA and Forestry Commission have met with a view to review of the erosion mitigation conditions and codes of practice. Soil Conservation officers of CALM are expected to assist in that review.



NEIL SHEPHERD

Director-General

27/8/92



06/05 '92 13:07 61 2 7907114  
5-MAY-92 TUE 16:31

SPCC EXECUTIVE

Doc 5

002

P.01



Environment  
Protection  
Authority  
New South Wales

Facsimile Transmission

To

Mr P. Yates

Date

5 May 1992

Facsimile No.

02 790 7114

From Name

Ian Greenbergh

Branch

Crafton Regional Office

Phone

066 420 535

Number of Pages (including this page)

20

Subject

Alleged Pollution - Oakes  
State Forest

Original Documents will  
will not follow





Mr John Corkill  
Big Scrub Environment Centre  
149 Keen Street  
LISMORE NSW 2480

Environment  
Protection  
Authority  
New South Wales

PO Box 1135  
Chatswood  
NSW 2057

Tel .02. 795 5000  
Fax .02. 325 5678

Director  
General

Our Reference: CH1039; FOI92/28 & 92/31

Your Reference:

Contact: Donna Campbell - 325.5609

2 - AUG 1995

Dear Mr Corkill

### Applications under Freedom of Information Act

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The Ombudsman's Office (Mr David Watson) advised there had been discussions with you indicating your intention to make an appointment with the EPA to inspect the documents. However, I note you have not yet inspected these documents.

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Yours sincerely

**NEIL SHEPHERD**  
**Director-General**



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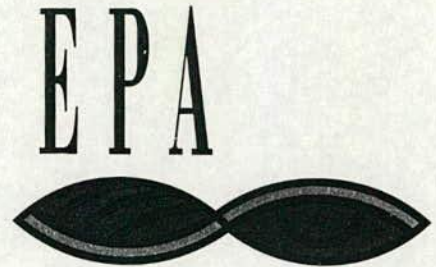
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Big Scrub Environment Centre  
149 Keen Street  
LISMORE NSW 2480

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New South Wales

PO Box 1135  
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Director  
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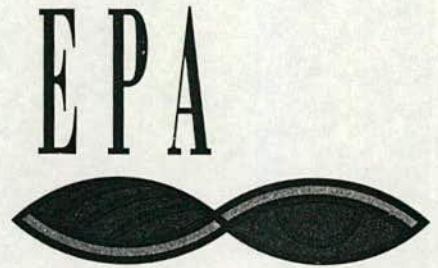
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**REPORT ON FREEDOM OF  
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ENVIRONMENT PROTECTION  
AUTHORITY**

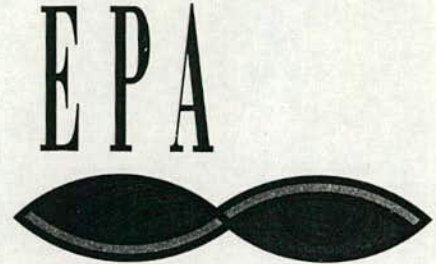
NSW

**OMBUDSMAN**

**FINAL REPORT**

ISSUED 31 AUG 1995





Mr John Corkill  
Big Scrub Environment Centre  
149 Keen Street  
LISMORE NSW 2480

Environment  
Protection  
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