catchment area protection plan

Philip Simpson, executive officer and policy advisor of the Catchment Areas Protection Board, outlines recent changes to the relevant legislation.

SIGNIFICANT amendments were made to Division 2 of Part IV of the Soil Conservation Act 1938 last year with the passing of the Soil Conservation (Further Amendment) Act 1986 and the Water (Soil Conservation) Act 1986 in December. They came into effect on 1 July 1987. The provisions of the legislation in question are administered by the Catchment Areas Protection Board, whose functions are the control of tree destruction on "protected land" (ie land within notified catchment areas mapped by the board having a slope generally in excess of 18 degrees), and in or within 20 metres of a prescribed river or lake.

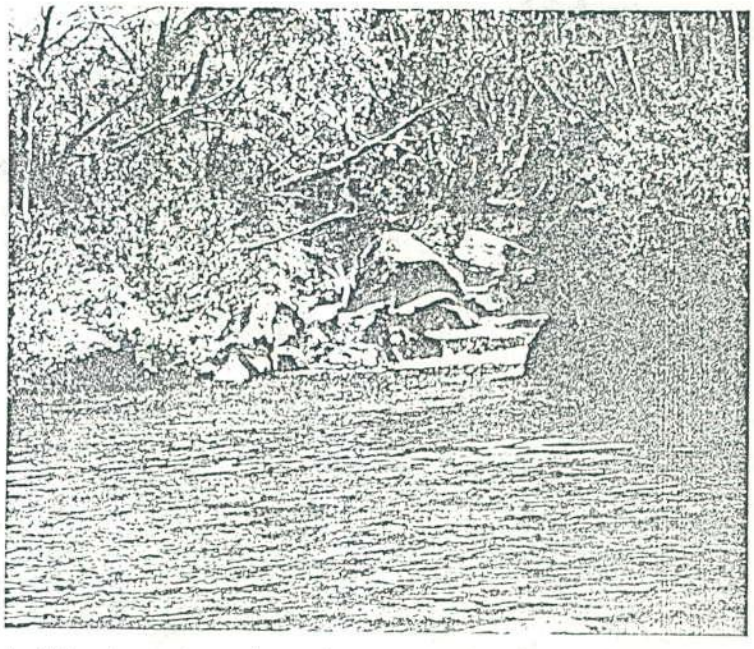
The principal amendment was the redefinition and expansion of the meaning of "protected land" to include the land previously covered by section 26D of the Water Act 1912 (ie land in or within 20m of a prescribed river or lake), and also any land which the board considers to be environmentally sensitive or affected by or liable to be affected by soil erosion, siltation or land degradation. This includes land in arid, semi-arid, landslip or saline areas, land containing rare or endangered fauna or flora, and containing sites of archeaological or historical interest, land containing bird breeding grounds, wetlands and areas of scenic beauty.

Another very substantial amendment is that the board is now empowered to attach to an authority it issues allowing the damage or destruction of trees, conditions requiring anything to be done or not to be done to eliminate or mitigate any adverse effects of the authorised action on the environment. Previously the board was only legally able to impose conditions to eliminate or mitigate soil erosion, degradation of the land or siltation of, or obstruction to, the flow of any river or lake. But the board can now act to control adverse effects on the aesthetic, recreational, scientific or other environmental quality or value of the land concerned or its locality; adverse effects on a locality, place or building which has aesthetic, anthropological, architectural, cultural, historical, scientific or social significance; adverse effects on rare or endangered species of fauna and flora; adverse effects on the beneficial use of the environment; adverse effects on the demand for

resources; and cumulative adverse effects on the environment, etc.

The other provisions of the new legislation are as follows:

- Sections 26D and 26DA of the Water Act have been repealed as their provisions have been integrated into the Soil Conservation Act.
- Definitions of "bed", "lake", "river", and "bank" have been inserted into the Soil Conservation Act and the definition of "tree" already in the Act has been expanded to include a shrub or scrub to accord with the definition hitherto in the Water Act. Furthermore, it has now been put beyond all doubt that the salinity of rivers and lakes does not exclude them from being prescribed or mapped.
- The "power of entry" provisions of the Soil Conservation Act (section 15) have been expanded to include the work of the board and officers of the service undertaking board business. Board members have now also been given powers of entry and investigation themselves.
- A new provision, based on section 26A of the Water Act, has been inserted in the Soil Conservation Act which states that no other Act shall permit anything to be done contrary to the board's decision, or without the board's authority, where this is required.
- Although the mapping of protected land has hitherto been prohibited in State Forests and National Parks, this did not apply to rivers and lakes prescribed pursuant to section 26D of the Water Act. However, not only will this exclusion continue but it will now also apply to prescribed rivers and lakes and the new category of environmentally sensitive land or land affected by or liable to soil erosion, siltation or land degradation. This will obviate potential duplication of control over the destruction of the same trees by two separate State Government organisations.
- While since 1946 rivers and lakes prescribed pursuant to section 26D were required to be prescribed by regulation, they may now be prescribed either by simply listing them in the Government Gazette or by showing them on protected land maps.
- New section 21B(2) requires that all maps identifying protected land of any type in future be certified as complying with the Act by an officer of the Service.
- New section 21B(4) simplifies the current situation regarding the updating and replacement of protected land maps.



Legislative changes give teeth to catchment area protection.

- Although several exemptions have applied in respect of tree destruction on protected land over 18 degrees, no exemptions have applied to prescribed rivers and lakes. While this will continue, provision is now made to extend by regulation, any of these exemptions to the other two categories of protected land if and when the need arises.
- The penalties provided for unauthorised damage to or destruction of trees, breach of a condition in any authority, or non-compliance with a notice issued by the board have been increased from $2000 to $10,000 for each offence.
- The notice power in section 21CA(1) has been expanded to take account of the two new categories of protected land and make provision for the mitigation of a wider range of adverse affects of illegal tree destruction.
- Section 21CA(2) has been omitted so that notices served in future under sub-section (1) will take effect from the date of issue and not from 30 days thereafter, as at present.
- All the appeal provisions have been substantially amended so that the minister and local land boards are no longer involved in appeals against a notice, such appeals now going direct to the Land and Enviroment Court.
- Proceedings for the more serious offences under section 21C(4) and 21CA(12) will, at the determination of the board, now be able to be instituted in the Land and Environmental Court instead of a local court constituted by a magistrate.
- The membership of the board has been increased by two to include the Director of Environment and Planning and the Director of the State Pollution Control Commission.

All inquiries should be directed to the Executive Officer and Policy Adviser, Catchment Areas Protection Board, 22 Pitt Street, Sydney 2000 (telephone 27 7235 ext 353).

News Flash: I have just learned that the two M.O. cases that were appealed against Tweed Shire Council to the Land & Environment Court have been won. The condition appealed against was the imposition of a s.94 levy to upgrade the roads in the area/shire generally. The Court found against the Council in that the levy was too remote from the subject development. In other words the levy might have been valid had Council agreed to spend the levy on the actual road leading up to the community.

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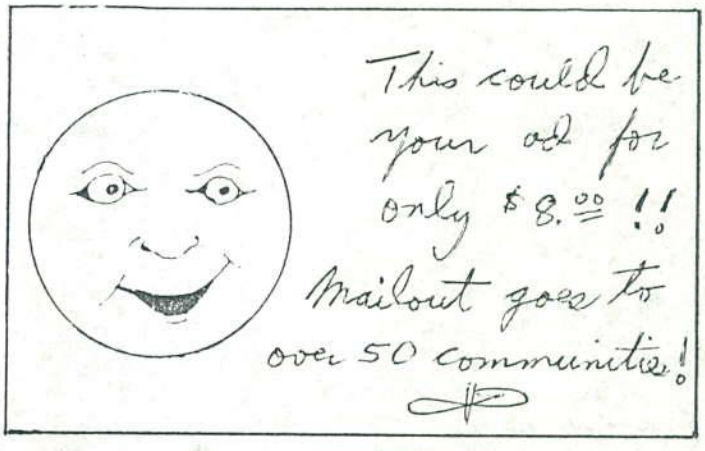

Water Management Audit

Office Address
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99 Elizabeth Street
Sydney. N.S.W. 2000.
Tel.(02) 233 5873/5939

All Correspondence to:-
Box 5110 G.P.O.
Sydney. 2001.

Fiona,
Could you please show
this to Mr Falkat Turtable
who may be concerned. Call
Turtable Give consideration to
the application of Part 10 in so far
as it effects Coastland
N.S.W. WATER MANAGEMENT AUDIT

TERMS OF REFERENCE:

(1) present a systematic outline of current management of water in N.S.W. and the public authorities involved;

(2) define the present state of development and use of water resources in N.S.W.;

(3) examine the functions and activities of the public authorities responsible for water management in N.S.W., and the interaction between those authorities;

(4) identify ways to integrate or co-ordinate programmes to render more efficient and effective the use of natural, human and fiscal resources;

(5) identify specific anomalies in existing activities where remedial measures are warranted;

(6) recommend major strategic directions for water management in N.S.W.;

(7) investigate and report on any other matter to which the Task Force is directed by the Minister.

New South Wales

MEDIA STATEMENT BY THE MINISTER FOR WATER RESOURCES AND FORESTS

PAUL WHELAN, SUNDAY, 13 NOVEMBER 1983

TASK FORCE TO LOOK INTO ADMINISTRATION OF THE STATE'S WATER RESOURCES

The Minister for Water Resources and Forests, Paul Whelan, today announced the establishment of a task force to look into the administration of the State's water resources.

The Task Force will be headed by the President of the Hunter District Water Board, Dr John Paterson, and will make recommendations on how to effectively bring under one administration all of the State's water resources, their development, storage and supply.

Within six months Dr Paterson will present the Minister with a strategy aimed at streamlining the State's water management.

"We currently have many Government Departments and authorities each with responsibility for certain sections of water management," Mr Whelan said.

The Task Force will come up with recommendations aimed at abolishing the traditional barriers between these departments, in some cases barriers that have existed for many years.

"The bureaucratic bungling, infighting and nonco-operation that if rife within and between these departments must go.

"The Task Force is the first step to recognising and documenting these problems. It is the first step to erasing this unworkable situation," Mr Whelan said.

"We must have a rational and workable approach to water management for the State. Water is the world's most valuable resource. It must be managed correctly."

Dr Paterson will meet with the Minister on Wednesday to discuss the Task Force's terms of reference. Also on the Task Force is the Chief Commissioner of the Water Resources Commission, John Cunneen. They will be assisted by a small team of professional officers.

"The establishment of the Task Force has been under consideration for some time," Mr Whelan said.

"It will become part of the overall plan to help professionalise and modernise statutory authorities and comes close on the heels of the reconstitution of the Sydney Water Board and the Hunter District Water Board."

"We are moving into the 21st Century, unfortunately many of the constraints on rational water management are a direct result of 1900 style thinking, but that will change," Mr Whelan said.

Bodhi Farm
Wallace Road
The Channon. 2480

16th March, 1984

Chairman,
N.S.W. Water Management Audit,
G.P.O. Box 5110,
SYDNEY. N.S.W. 2001

Dear Sir,

We submit herewith our "Recommendations for Improved Water Management in N.S.W." Included in the appended material is a copy of transcript of our hearing before the Land Board. We have cited extracts from this in our submission, but do not consider that this adequately conveys the essence of our objective, or the manner of conduct at the Land Board Hearing and hence wish to draw your attention to pages 8 - 17 in particular, as giving an overview to our experience.

We would appreciate a copy or advice of the availability of any material when published by the Audit.

Yours faithfully,

Peter Hamilton

Peter Hamilton
(For the Bodhi Farm Community)

BODHI FARM SUBMISSION TO THE N.S.W. WATER MANAGEMENT AUDIT - MARCH 1984
RECOMMENDATIONS FOR IMPROVED WATER MANAGEMENT IN N.S.W.

1.1 Recreation use of water under the Water Act.

The Creek forming one of our boundaries contains a swimming hole. The existence of this swimming hole was a not unimportant factor in our deciding to purchase this particular parcel of land.

The Water Act, it seems, S. 7(1) does not recognise, let alone protect, our right to use the water for recreational purposes as a valid use when considering an application to extract water for agricultural use.

"Now the interests that you tell us that are going to be affected are not terribly great, are they because you don't draw water from the Creek?" (Chairman: Land Board hearing - transcript p9, copy attached).

We object in the strongest terms that recreational use of water is not recognised at law as a valid use of water.

In this regard we hold that the right to claim recreational use ought not just reside to riparian users, but to any members of the public who customarily use stream water in this way.

1.2 RECOMMENDATION. That the Act be changed to provide that recreational use of water is a valid use in considering applications for water extraction for agriculture & that this usage be not confined just to stream side landowners.

2.0 "Wilderness" or "natural" rights of a stream.

The mentality that a stream may be infinitely exploited for human gain, is we submit an anthropocentric view. We seek to redress this imbalance. We submit that a stream has a "natural" or "Wilderness" right to exist in its own terms. In legal terms that a stream should have "standing" at law. (The stream's interest could be represented by others as, for example, is the case for minors, prisoners, the mentally handicapped and corporate institutions. For further information, see Should Trees Have Standing: Towards Legal Rights for Natural Objects, Professor Christopher Stone, William Kaufmann Inc., Cal. U.S.A. 1974).

The recognition of "environmental amenity" in the Environmental Planning and Assessment Act, goes some way to addressing this issue, but it is

still anthropocentric in that this "amenity" is amenity from the point of view of human beings.

This issue is for us, not just a philosophical notion but is a heart felt concern of a spiritual nature.

We oject in the strongest terms to the anthropocentric tenor of the present legislation and seek to have this imbalance corrected.

2.1 RECOMMENDATION That the Water Act be changed to recognize that a stream has a right to exist in its own terms and that such a claim shall be considered as valid in considering conflicting interests and use of water.

3.0 Field Officer ... Investigating Procedure

The W.R.C.'s Field Officer investigating our objection to an application, simply sought our objections. No information was tendered in support of the Commission's likely conditions for approval of the application. Nor was there any indication of the extent and nature of complaints by other objectors.

No indication was made of the subsequently disclosed proposed minimum flow rate, nor were any estimates produced at this time of the prevailing flow rates of the Creek or likely affect that the minimum flow rate may have on the ecology of the Creek.

Our general objection rested on the fact that we could not make a detailed objection until the above information was supplied. We asserted that the onus lay on the Commission to provide this information as it was the "determining authority".

3.1 RECOMMENDATION. That W.R.C. Field Officers when investigating objections to the granting of a license, inform such objectors of the basis on which they have come to the conclusion that the proposal is, or is not, likely to significantly affect the environment. If it is held that the proposal is not likely to significantly affect the environment, that a detailed report be tendered providing evidence that at least all of the relevant items as required in the E.P. & A. Act and Regulations, have been considered.

4.0 W.R.C. Environmental Review Committee

At the Land Board hearing, in which we were involved (transcript attached), the Commission tendered a one sentence statement over the stamp of the Environmental Committee "that the proposal will not significantly

affect the environment" (transcript p10). No evidence was produced to support this conclusion and no member of the Committee was present for cross examination. We subsequently discovered that no member of the Committee had visited the Creek in question.

On the question of "providing evidence" we draw attention to correspondence from the Minister for Planning and Environment of 17.8.83 (copy attached) in which he states:-

> "Where such an inquiry is held and the W.R.C. appears to give reasons for its support of the licence application, I would expect that the Commission should, inter alia, provide evidence (our emphasis) of its examination of likely environmental effects as required by Part V of the E.P. & A. Act, as such examination is a necessary element of its consideration."

We later learned that the same one sentence statement was made in the Severn Shire Council v. W.R.C. case. The environmental affect in the Severn Shire Council case seems to us to be "massive" by comparison with the likely affect in our case.

We note thatJustice Cripps in the above case stated that had it, in the circumstances been relevant, he would have been prepared to declare that the activity was likely to significantly affect the environment. In the light of the above we suggest that there is something drastically amiss in the deliberations of the Environmental Committee.

We have been informed that the Committee consists of three employees of the Commission. We fail to see how justice can appear to be done when the Committee sits in judgement of its own proposal as at present. (R. v. Sussex Justices 1924 IK.B. 256). We suggest that if the Committee was broadly based and containing representative(s) from the Community, that this may go some way to creating the situation that justice was not only being done, but that it would also hopefully, appear to be done.

4.1 RECOMMENDATION. That the W.R.C. Environmental Committee be disbanded in its present form and replaced with a broad based Committee modeled on the Environmental Committee in Schedule 4 of the E.P. & A. Act.

4.2 RECOMMENDATION. That the Commission automatically tender evidence at Land Board hearings to support any Environmental Committee report that the proposal is not likely to significantly affect the environment. That a member of the Committee be present for cross examination.

5.0 Criteria used by the W.R.C. Environmental Review Committee in determining "significance of affect".

We asked the Minister for Water Resources for the criteria used by his Environmental Committee in determining likely significance of affect. The Minister's reply of 27.6.83 (copy attached) does not give this criteria so we have no alternative, but to presume that it does not exist. (See Note 1)

5.1 RECOMMENDATION. That the Commission make public, standard criteria used by the Environmental Committee (or its substitute if replaced) in determining the significance of the affect that granting an application may have on the environment.

5.2 RECOMMENDATION. That the Commission make public the terms of reference of its Environmental Review Committee.

6.0 Onus of Proof

(This section overlaps with section 4.0 above, but the issue at stake is quite different to that in Section 4).

The obligation of the Commission on receipt of an application under S.11(1) of the Water Act is simply to advertise the details of the application.

Under S.11(2) an objector is required to specify the grounds of objection. Following this, the Commission decides, as required by S.11(3) (a), whether the application should be granted or refused. If the application is approved the applicant is advised accordingly along with any conditions of approval under S.11(3) (b). In the case where the application is rejected the applicant under S.11(4) is simply notified accordingly.

In neither the case for acceptance, under S.11(3) (b), nor rejection under S.11(4), is the Commission required to specify the grounds for approval or rejection.

We object to this procedure in the strongest terms on the grounds that it is unreasonable, discriminatory and unjust.

Any argument that grounds for approval or rejection is adequately covered by Part V of the E.P. & A. Act does not, we claim, satisfy the condition under the Water Act, that justice is seen to be done (op. cit.)

In our case, re Tuntable Creek, before the Land Board, the onus lay with us to prove that the environment may be adversely affected. We did our best in the circumstances, but failed. The same situation existed in preparing

our case for the Land and Environment Court hearing. On Counsel's advice we would have had to prepare what in effect would have been a full E.I.S. This was beyond our means and hence, we were forced to withdraw the Appeal.

It is our contention that the onus of proof lies with the Commission. In our circumstances it will be seen how the onus of proof was transferred from the "determining authority" to us as the objection.

6.1 RECOMMENDATION. That the Water Act be amended so that the onus of proof clearly lies with the Commission in determining the likely significance of affect on the environment, that an application may have. This onus to hold good even in those situations where the Commission holds that the application "is not likely to significantly affect the environment".

7.0 Two Stage Process in Approving Application

If Recommendation 4.2 is accepted it would be desirable in our view, that all objectors and the applicant be notified of the criteria and the proposed decision, conditions and reasons, before a final decision is made.

Put in other words, we recommend that a two stage process operate viz. in Stage 1 the Commission advertises and seeks objections before making a decision, as presently carried out, and, in Stage 2 the Commission prepares an interim decision and notifies all the objectors and the applicant of the interim decision, conditions and reasons for arriving at the interim decision and after an appropriate lapse of time to allow comment by objectors and the applicant, a final decision be made.

How can an objector object if the Commission does not disclose its proposal?

7.1 RECOMMENDATION. That the Water Act be amended to require the Commission to supply all objectors and the applicant with a proposed decision, conditions and reasons before a final decision is made.

(This Recommendation is not to be seen in any way as taking the place of the appeal process to the Land Board or its equivalent).

8.0 The Land Board as the Instrument of Appeal.

In our experience the structure and expertise of those sitting on the Board leaves a great deal to be desired. That the Magistrate be joined by two local farmers is, we submit, discriminatory. We received no impression that we were being judged by our peers. If this structure is to prevail then there ought at least be representation by those other than agricultural-

ists. Perhaps consideration could be given to their being a panel of people with the applicant and the objector(s) having some say in the selection for each particular hearing as is the case in a Tribunal.

The Chairman in our case appeared to have little knowledge of the E.P. & A. Act and even less sympathy for the process of evaluating possible environmental affect, for example :-

Chairman: "But whether anything has adverse environmental effects is just one man's opinion. You could say it has and I could say it hadn't."

Seed for Bodhi Farm: "But there is a science of environmental studies which .....

Chairman: (interrupting) "A very inexact science if I may say so?" (transcript p 17)

8.1 RECOMMENDATION. That appeals to the Land Board against decisions of the Commission be discontinued and in lieu heard before an Assessor of the Land and Environment Court with of course, right of appeal to a full hearing.

8.2 RECOMMENDATION. In the event that Recommendation 8.1 is not acceptable then it is recommended a) that the composition of the members of the Board be reviewed and for example, a conservationist, be included in lieu of a person who is just representing commercial agricultural interests , and

b) that the Chairman be well versed in environmental law, as for example, an Assessor of the Land and Environment Court.

9.0 Noise Pollution

The Minister for Water Resources, in his letter of 27.6.83 (copy attached) has acknowledged that noise pollution is taken into account in reaching a decision on an application but as there exists separate legislation on noise control not administered by the Commission, the Commission cannot purport to exercise any legislative control over noise pollution.

We find this situation to be unacceptable on grounds that in a rural area the threshold of noise pollution will normally be below that established as a standard for urban areas.

This is particularly evident in hilly country where even the slight hum of an electric motor can, depending on the location, be heard as an irritating whine from a distance of several kilometers. No absolute sound level is a useful gauge of pollution in such a circumstance.

(In practice it may be necessary to require the applicant to generate the proposed noise so that neighbours could then determine the nature of their objection, if any.)

We also find this situation to be objectionable on the grounds that having more than one authority administering noise control must lead to a mystification of the law.

If the Land Board is to be the instrument of appeal, then we suggest, it must be given a clear mandate to include all relevant issues. Noise pollution we see to be such an issue.

9.1 RECOMMENDATION. That the Commission a) be responsible (in association with other authorities, if necessary) for ensuring that noise (in quality and quantity) does not reach objectional levels, with each application being considered on its merits and b) that the instrument of appeal (eg. the Land Board) has the jurisdiction to deal with this matter in the context of the Water Act.

10.0 Prescribed Stream Land

The Water Act under S.26D (2) provides for the protection of trees etc. within 20m of the banks of prescribed streams. As this provision was enacted in 1946 we would expect by now to see, at least, mature regrowth along all previously cleared prescribed streams in our area, viz the catchment area of the Richmond River. Much of this area encompasses what was once the "big scrub" rainforest. (During the time of first settlement most of this rainforest was clear felled to the stream edge.)

Both the W.R.C. and the Soil Conservation Service (who undertake a service for the Commission in relation to S. 26D) advise that they do not have a figure for the total length of prescribed streams and hence are unable to supply us with the area of prescribed land in this catchment area!

Our calculations reveal that there are some 1,800 km. of prescribed streams along the Richmond River and its tributories and that only 33% (594 km) of this now contains native or mature regrowth forest. The total area in question is hence 7,200 ha (72 km^2) (viz 1,800 x .04 km.) and of this 67% (1,206 km. of total length) or an area of 4,824 ha (48 km^2) is, we submit, in a degraded state. We further submit that this is not a trivial amount and that the absence of an active programme to up grade this area reflects poorly on the management of this section of the Water Act.

The Soil Conservation Service advise that their overiding consideration is soil conservation and to this end the preservation of trees in the 20m strip is sought. While they acknowledge that these strips are probably important corridors for birds and other wild life, they advise that this is more properly the concern of the National Parks and Wildlife Service. (NPWS). (We note in this regard that N.P.W.S. is also a member of the Catchment Areas Protection Board!) N.P.W.S. advise that these areas are often degraded, but that their funds and energies are better spent on land which is not in small units and dispersed. Not withstanding this they canvas prescribed stream land as being important wildlife corridors and recommend to Councils when preparing Local Environmental Plans that consideration be given to providing appropriate environmental protection! (Protection as an Environmental Protection Zone 7(1) (Flora and Fauna Habitat) is one option open to Councils in this regard.)

A recent meeting of the Lismore City Council directed the Town Planner to consider having the prescribed strips gazetted as "designated" areas under S. 29 of the E.P. & A. Act. In our view, the need to "doubly protect" the environment in this way is indicative of desperate concern that the Commission is not fulfilling its obligation under S. 26D of the Water Act.

10.1 RECOMMENDATION. That jurisdiction for the administration of the 20m strip to prescribed streams be removed from the Water Act and placed under the control of the Minister responsible for the N.P.W.S.

10.2 RECOMMENDATION. That the Commission (or responsible authority) make an annual public report on the States total area of land prescribed under S. 26D of the Water Act and the measures taken to upgrade this area.

11.0 Prescribed Stream Land to be a "Prescribed Activity" under the E.P. & A. Act.

Because of the neglect and inactivity to regenerate prescribed stream land under S. 26D of the Water Act and the need to treat the ecology as a whole in the prescribed stream land area and to ensure that environmental impact statements are prepared for any development or activity in such land, it is suggested that this land be scheduled under clause 70 of the Regulations to the E.P. & A. Act.

Scheduling under clause 70 as "designated development" would have the effect of making any development or use of such land a "prescribed activity"

under S. 112 of the E.P. & A. Act and hence automatically require an E.I.S. to be carried out.

Scheduling in this way would provide a uniform and state-wide policy covering such land.

11.1 RECOMMENDATION. That development within prescribed stream land under S. 26D of the Water Act be listed in Schedule 3 of the Regulations to the E.P. & A. Act.

12.0 Fencing of prescribed stream land

Where an agricultural pursuit involves live stock it would seem necessary that the 20m strip be fenced. We see no difference in requiring an owner to comply with this in the same way that an owner is required to keep stock from straying onto neighbouring land or onto a public road.

12.1 RECOMMENDATION. That where livestock are kept adjacent to a prescribed stream that the 20m protection strip be fenced.

13.0 Rate Rebate Incentive.

It is submitted that a "crash" programme is required to regenerate prescribed stream land. Re-forestation programmes calling on, for example, Community Employment Programme (C.E.P.) funds and a rate rebate system for land owners, could be considered to this end.

(It is noted, for example, that the Department of Agriculture, N.P.W.S. and Councils have received C.E.P. Grants for projects no less relevant than this proposal.)

13.1 RECOMMENDATION. a) That a "crash" programme be implimented to rehabilitate prescribed stream land and b) As a basis for incentive that land owners receive a rate rebate on a pro rata basis for prescribed stream land where there is supported evidence of regeneration (e.g. contracted re-forestation) or protection (e.g. fencing) of such land.

While Recommendations 12.1 and 13.1 may appear to be somewhat removed from water management, we submit strongly that this is not so. These particular recommendations are offered to indicate that there are practical ways of implimenting the aim of this section of the Water Act (which it seems on performance the Commission and its predecessor, have been unable to resolve in the past 38 years!)

14.0 Water Quality

Aerial spraying of 245T is still practiced in this area. The "Namoi Environmental Study" SPCC 1983 indicates the ways in which water is an important pathway in the transmission of pesticides. It is locally claimed that 245T, transmitted by air and water, bears a correlation to the high incidence of birth defects and fatalities. (Copy of report attached.)

14.1 RECOMMENDATION. That the water quality monitoring programmes of the W.R.C. be reviewed to provide better assessment in accordance with its statutory responsibility. In particular that "base lines" be produced, a) for pristine sources and b) typical for particular conditions and regions as a base for determining likely environmental impact generally and water quality in particular.

The above recommendation is based on the conclusion drawn in "Effects of Water Quality Caused by Logging on Steep Slopes in Mountain Forests" SPCC. 1982 p 31. We endorse these conclusions.

We also endorse the recommendation made in Section 7.2 and 7.3 in the "Namoi Environmental Study." We have tried to ascertain if these recommendations have been carried out, but on present information it appears that this has not been done!

15.0 Availability of the Water Act.

Throughout the whole of the time we were engaged in our appeal to the Land Board and the Land and Environment Court, we were unable to procure a copy of the Water Act, due to it being out of print. The best we were able to obtain were photocopies of certain pages. These were kindly supplied by the Commission. The inability of our being able to obtain a copy of this Act has caused no small inconvenience.

We consider it to be totally inexcusable that the Water Act ever get to the status of being out of print.

15.1 RECOMMENDATION. That the necessary steps be taken to ensure that the Water Act is never out of print and that if necessary the Minister be given discretionary power to print facsimile copies of the Act to achieve this objective.

16.0 Demystification of the Law.

The Minister for Planning and Environment in his letter of 17.8.83 (copy attached) states that the Water Resources Commission is a "determining authority" under Part V of the E.P. and A. Act.

The Minister for Water Resources advises in his letter of 27.5.83 (copy attached) likewise acknowledges that the Commission operates under the provisions of Part V of the E.P. & A. Act.

Justice Cripps, in his judgement in the Severn Shire Council v. W.R.C. and Others, case however states that the applicant sought in part, an order restraining the W.R.C. from making any decision that a licence ... be granted, pursuant to the Water Act until an environmental impact statement had been prepared and dealt with in accordance with Part V of the E.P. & A. Act. (Judgement p 2).

He goes on to note:-

"It is contended on behalf of ... the Commission that, whether or not any final decision has been taken... to approve the undertaking of an activity likely to significantly affect the environment (which is disputed ...) the "activity" is one which requires council consent under Part IV of the E.P. & A. Act. Accordingly it is submitted that it is not an activity under Part V. If this submission is correct, no environmental impact statement is required before a final decision is made". (Judgement p 6) and concludes by saying :-

"The Water Act makes it quite clear that the final decision (where objections have been lodged) ... is the decision of the local land board, - magistrate on the Land and Environment Court. The local land board, ... magistrate on the Land and Environment Court are not" determining authorities" within the meaning of Part V of the E.P. & A. Act.

Accordingly, I decline to make the declarations or orders as originally asked. "(Judgement p 17).

In our case the local "consent" authority is the Lismore City Council so that in the normal course of events the provisions of Part IV of the E.P. & A. Act would apply. As extraction of water, in our situation, was for "agriculture" this form of development may be carried out without the consent of Council (IDO 40 - Lismore,Column 11). This proviso appears to nullify the normal

requirements under S. 90 of the E.P. & A. Act and hence it seems no authority takes responsibility for determining environmental impact!

We have drawn Justice Cripps judgement, the effect of which in our case, being that we have no right of appeal to the Land and Environment Court under Part V of the E.P. & A. Act, to both the above Ministers. In their respective replies as cited above, attention is drawn to the fact neither of the Ministers has chosen to comment on the implication of the Courts finding to their own policy!

> Justice Cripps also states that "I am not concerned with whether a decision of the Commission, in the absence of objections (our emphasis) could be regarded as a "final decision" to undertake or approve the undertaking of an activity within the meaning of S. 112".

By inference it hence, appears that the Commission may be bound under Part V of the E.P. and A. Act provided no one objects! This would leave us in the anomalous situation of refraining from appealing (and canvassing others to do likewise) to the Land Board on the merits of the case and then appealing to the Land and Environment Court under Part V of the Act! (That there would be an avenue for appeal in this case is of itself questionable!)

16.1 RECOMMENDATION. That the anomalies in the above situation be rectified and that a clear, demystified legislation exist which is comprehendable by a layperson.

17.0 State Water Authority.

All the above recommendations are seen, but as band-aids to patch up loop holes and administration indecision between various Departments and Acts. We strongly support any move that would bring together all the States water resources, development and management under one Authority. In this regard, we urge that regional districts be based on water catchment areas. We endorse the present policy of those authorities and services who discharge their responsibilities on the bases of water catchment areas. We strongly support any move that attempts to relate to the ecology as a whole, and see this as the basis for the development of bio-regions in which humankind become more "custodians" for the maintenance and preservation of the environment. We see water

management through a State Water Authority to be a basic building block in this process.

17.1 RECOMMENDATION. That a State Water Authority be established to take over water management from the present assorted Departments and authorities.

Note 1.

Criteria used by the Environmental Committee need to be made public to assist the Commission and the public in determining what constitutes a prima facia case. In our case, re Tuntable Creek, we submitted that the minimum flow rate proposed by the Commission viz 0.9 ML/day (see attached tables and charts of Estimated Flow) could result in the Creek being reduced regularly, to a condition which has occurred only once in the past eighteen years. (The flow rates which revealed this situation were based on data kindly supplied by the Commission). We submitted to the Land Board that this issue alone constituted a prima facia case that the environment may be significantly affected by granting the proposed minimum flow rate, and that given this there was clear onus on the Commission to carry out an E.I.S. or at least more thoroughly investigate the likely impact of its proposal. Neither the Commission nor the Land Board agreed to our submission.

If this claim, as an example, does not constitute a prima facia case that the environment may be adversely affected, then what conditions would have to exist for the Commission and the Land Board to hold that there was a prima facia case?

It is for this reason we submit, that it is imperative that Recommendation 5.1 be adopted for the benefit of all concerned.

Appended

1. Bodhi Farm correspondence to Attorner General 20.4.83
2. Correspondence from Attorney General 6.6.83
3. Correspondence from Minister for Water Resources 27.6.83
4. Correspondence from Minister for Planning and Environment 17.8.83
5. Correspondence to Minister for Water Resources 12.2.84
6. Transcript of Land Board Hearing 27.7.82
7. Tuntable Creek, Tables and Charts of Estimated Flow
8. News report Northern Star 28.1.84

Bodhi Farm,
The Channon. N.S.W. 2480

12th February, 1984

Minister for Water Resources,
139 Macquarie Street,
SYDNEY. N.S.W. 2000

Dear Minister,

Re: Criteria used by the W.R.C.'s Environmental Review Committee in determining significance of affect on the environment and review of the structure of this committee.

Thank you for your letter of 27th June last. We are delighted to note acknowledgement that your Environmental Committee in considering a proposal for the issue of a license does so in terms of the requirements of Part V of the Environmental Planning and Assessment Act and, if the proposal is considered likely to significantly affect the environment, then the applicant will be requested to submit an "environmental impact statement".

In this regard we would be obliged if you would advise, for say, the last financial year, a) how many applications for a license to extract water were made, b) how many of these were approved and c) how many of these were requested to submit an E.I.S. in accordance with the provisions of the E.P. & A. Act?

We note the description of the reports etc. that the Committee has available to it, in coming to a decision on an application. No criteria however, has been listed as the basis on which the Committee may have to weigh up conflicting interest. It appears from your letter that no criteria list exists. If this should not be the case, I would appreciate it if you would provide me with a copy of the criteria list or failing this, the terms of reference of the Committee.

When your field officer visited us no statement was made by him on the possible affects on the environment that the proposed minimum flow rate would have. Our prime objection then, as now, is that the onus lies with the Commission to either obtain this information by its own efforts or require it to be supplied by the applicant. As was stated in our last letter, no evidence was submitted by the Commission in support of its recommendation at the Land Board hearing and no member of the Committee was present for cross examination.

The summation of this is, that in our experience the Committee did not adequately determine the likely significant affect on the environment. It seems that the Land and Environment Court has also had cause to consider that your Committee has erred in this respect. We refer you

to the statement by Justice Cripps in Severn Shire Council v. W.R.C. (1982), that he would have been prepared to declare that the application in question was likely to have a significant affect on the environment, despite the Commission's view to the contrary.

I refer you also to the statement by Justice Cripp's "How can a decision be made whether to require an environmental impact statement until it is known how significant the impact of the activity will be?" (Kivi v. Forestry Commission of N.S.W.

We enclose a copy of correspondence of 17th August last, from your colleague, the Minister for Planning & Environment, Mr. E. Bedford. (We also enclose a copy of our letter prompting this reply). (In Mr. Bedford's letter, please note that he suggests that the issues raised be brought to your attention). In particular, we draw attention to the statement that:-

"I would expect that the Commission should, inter alia, provide evidence (our emphasis) of its examination of likely environmental effects as required by Part V of the E.P. & A. Act, as such examination is a necessary element of its consideration".

In view of the above, changing public environmental consciousness and the introduction of the E.P. & A. Act, since we understand the Environmental Committee was formed, we suggest with respect, that the structure and function of this Committee be reviewed.

We suggest for your consideration that the Committee be disbanded in its present form and replaced with a broad based Committee, modelled on the Environmental Committee in Schedule 4 of the E.P. & A. Act. Having a representative(s) from the community may we suggest, contribute to the feeling that not only is justice being done, but it would also appear to be done. Where all the members of the Committee are employees of the Commission and sit in judgement of their own proposal as at present, it is likely to appear at least from time to time, that justice is not being done. (R.v. Sussex Justices, (1924) I.K.B. 256 at 259).

We trust that you will give the above serious consideration and look forward to your advise that the structure and functioning of the Committee is to be reviewed.

We await your reply.

Yours faithfully,

PeterHamilton
(For the Bodhi Farm Community).

NEW SOUTH WALES

Minister for Natural Resources

Mr. P. Hamilton,
Bodhi Farm,
THE CHANNON. N.S.W. 2480

-8 MAY 1984

Dear Mr. Hamilton,

I refer to your recent letter concerning the Water Resources Commission's Environmental Review Committee.

The Commission has provided the following statistics relevant to the Committee's work since December 1981.

Total applications considered and approved	- 1797
Number which were deferred for clarification before approval	- 387
Number where additional detailed information or investigation was required before approval	- 76

During this period no individual applicant has been required to submit an Environmental Impact Statement. However, it may be of interest to you that the Commission has deferred dealing with some 60 outstanding license applications on the lower Darling River until an Environmental Impact Statement confirms or rejects the acceptability of further irrigation in this sensitive region.

In considering each application, the Committee has available specific information on each application, as well as a large body of data relating to water quality, vegetation, soil and geomorphic characteristics, etc. on a broader regional basis. As mentioned in my predecessor's letter of 27th June 1983, the Committee has access to advice from other Commission officers and relevant government authorities.

The Committee consists of three highly qualified, experienced officers. The Chairman is an environmental scientist and the other two members are qualified in the fields of engineering/water management and law. All members have had many years of experience in their respective fields.

The Committee does not apply a set of uniform criteria to judge an application. Each is considered on its merits in relation to the particular environment in the area. For example, the environment in your area, of high summer rainfall and small streams of good flow characteristics, is quite different from the environment of the southern tablelands or along the regulated major rivers on the western plains. However, in general, the factors detailed in Regulation 56 of the Environmental Planning and Assessment Act are assessed in respect of each application.

Through the Committee's consideration of these factors, each proposal is assessed comprehensively to ensure that it does not significantly affect the environment. The fact that Environmental Impact Statements have not so far been required of individual applicants indicates that in those cases considered doubtful, further investigation, leading either to the modification of the proposal in general or to the adoption of specific restrictive conditions that control diversions from the stream, has resolved the matter satisfactorily.

Both the Commission and I agree with my colleague, the Hon. E.L. Bedford, M.P., former Minister for Environment and Planning, that environmental evidence should be provided at Local Land Board hearings if the particular proposal so warrants. However, relatively few of the license applications referred to Land Boards relate to environmental objections and, in the past, fewer still have concerned environmental matters of a significance which warranted the attendance of one of the Commission's environmental officers.

I understand that the Commission intended to present environmental evidence at a Land Board hearing at Lismore on 19th March 1984 in respect of a license application on Tuntable Creek to which the Bodhi Farm Community was an objector. However, due to a recent change in property ownership the hearing date for this application has been deferred.

I do not see any conflict of interest, as you suggest exists, in all members of the Committee being employees of the Commission. The license applications considered are not Commission projects but proposals by individuals or companies processed strictly in accordance with the provisions of the Water Act. It is the responsibility of the Commission to assess the position of the applicants and any objectors objectively and to make a decision that also reflects its obligations under Part V of the Environmental Planning and Assessment Act.

I am confident that the environmental expertise available to the Commission, both from within the organisation and from other authorities, is more than adequate to ensure that the protection of the environment is properly considered during the licensing procedures followed by the Commission. Therefore, I do not see any need to restructure the Commission's Environmental Review Committee.

Yours sincerely,

(Janice Crosio)
Minister for Natural Resources.

Despite other "bush ofts" I see this as a break through making the whole of this campaign worthwhile

P

Catchment areas protection plan

Philip Simpson, executive officer and policy advisor of the Catchment Areas Protection Board, outlines recent changes to the relevant legislation.

SIGNIFICANT amendments were made to Division 2 of Part IV of the Soil Conservation Act 1938 last year with the passing of the Soil Conservation (Further Amendment) Act 1986 and the Water (Soil Conservation) Act 1986 in December. They came into effect on 1 July 1987. The provisions of the legislation in question are administered by the Catchment Areas Protection Board, whose functions are, the control of tree destruction on "protected land" (ie land within notified catchment areas mapped by the board having a slope generally in excess of 18 degrees), and in or within 20 metres of a prescribed river or lake.

The principal amendment was the redefinition and expansion of the meaning of "protected land" to include the land previously covered by section 26D of the Water Act 1912 (ie land in or within 20m of a prescribed river or lake), and also any land which the board considers to be environmentally sensitive or affected by or liable to be affected by soil erosion, siltation or land degradation. This includes land in arid, semi-arid, landslip or saline areas, land containing rare or endangered fauna or flora, and containing sites of archeaological or historical interest, land containing bird breeding grounds, wetlands and areas of scenic beauty.

Another very substantial amendment is that the board is now empowered to attach to an authority it issues allowing the damage or destruction of trees, conditions requiring anything to be done or not to be done to eliminate or mitigate any adverse effects of the authorised action on the environment. Previously the board was only legally able to impose conditions to eliminate or mitigate soil erosion, degradation of the land or siltation of, or obstruction to, the flow of any river or lake. But the board can now act to control adverse effects on the aesthetic, recreational, scientific or other environmental quality or value of the land concerned or its locality; adverse effects on a locality, place or building which has aesthetic, anthropological, architectural, cultural, historical, scientific or social significance; adverse effects on rare or endangered species of fauna and flora; adverse effects on the beneficial use of the environment; adverse effects on the demand for

resources; and cumulative adverse effects on the environment, etc.

The other provisions of the new legislation are as follows:

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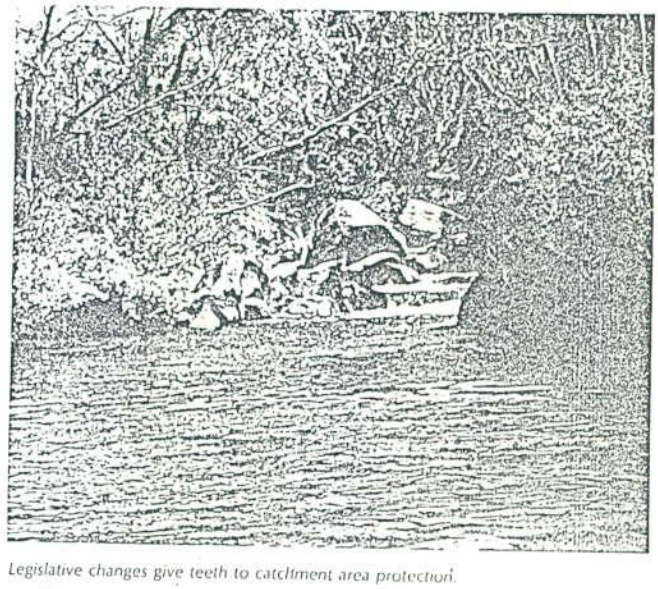

Legislative changes give teeth to catchment area protection.

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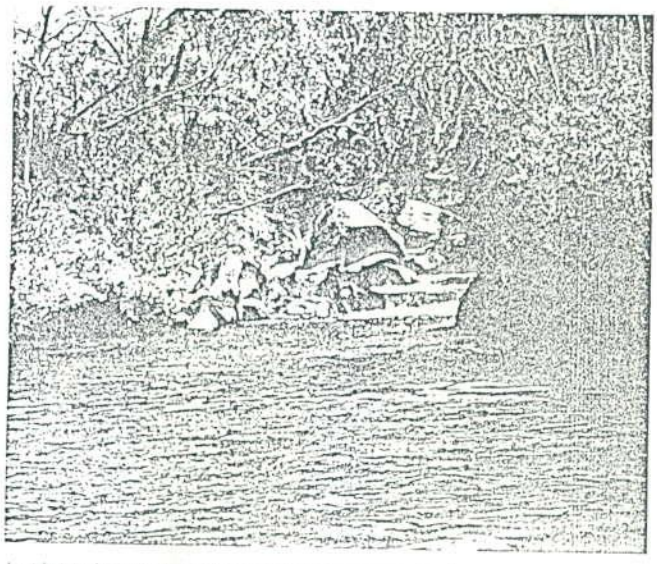

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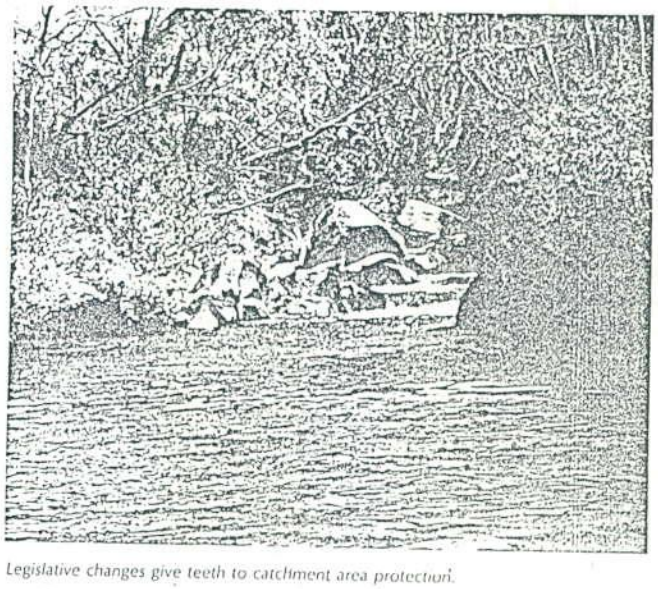

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