



South East Forest Rescue

Stoppin' the Choppin'

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Dear Ms. Corbyn,

Further to our email here is a Map we discovered on your website so we are now demanding action and for you to issue a stop work order for Mumbulla State Forests compartments 2135 and 2133. As you can see these compartments have been declared and recognised as part of a significant Aboriginal area and Forests NSW are wilfully ignoring this fact.

"Aboriginal place" means any place declared to be an Aboriginal place under section 84.

84 Aboriginal places

The Minister may, by order published in the Gazette, declare any place specified or described in the order, being a place that, in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place for the purposes of this Act.

85 Director-General's responsibilities as to Aboriginal objects and Aboriginal places

(1) The Director-General shall be the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales.

(2) In particular, the Director-General shall be responsible:

(a) for the proper care, preservation and protection of any Aboriginal object or Aboriginal place on any land reserved under this Act

90 Destruction etc of Aboriginal objects or Aboriginal places

(1) A person who, without first obtaining the consent of the Director-General, knowingly destroys, defaces or damages, or knowingly causes or permits the destruction or defacement of or damage to, an Aboriginal object or Aboriginal place is guilty of an offence against this Act.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both (or 200 penalty units in the case of a corporation).

Land is of cultural significance to Aboriginal people "if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginals."

Aboriginal cultural heritage means Aboriginal places, Aboriginal objects and Aboriginal human remains.

91AA Director-General may make stop work order

(1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect:

(a) protected fauna or native plants or their environment, or

(b) an Aboriginal object or Aboriginal place, or

(c) any other item of cultural heritage situated on land reserved under this Act, the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment or in the vicinity of those items within a period of 40 days after the date of the order.

Aboriginal cultural heritage is protected under the *Mining Act 1992* (NSW). Land that is within an Aboriginal area or Aboriginal place may not be constituted as an opal prospecting area, or be added to an existing opal prospecting area, except with the consent of the Minister administering the *National Parks and Wildlife Act 1974* (NSW).

Nothing in the *Plantations and Reafforestation Act 1999* (NSW) affects the making of any order or

instrument for the purpose of protecting a relic or Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974* (NSW). Therefore as logging is the complete antithesis of conservationUnder the *National Parks and Wildlife Act 1974* NSW) s91AA we request an URGENT Stop Work Order on Forests NSW operations of Mumbulla State Forest compartment 2135.

91AA Director-General may make stop work order

(1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect:

(a) protected fauna or native plants or their environment, or

(b) an Aboriginal object or Aboriginal place, or

(c) any other item of cultural heritage situated on land reserved under this Act,

the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment or in the vicinity of those items within a period of 40 days after the date of the order.

We also request an interim protection order;

91A Interim protection of areas having significant values

The Director-General may recommend to the Minister the making of an interim protection order in respect of an area of land:

(a) which has, in the Director-General's opinion, natural, scientific or cultural significance, or

(b) on which the Director-General intends to exercise any of the Director-General's powers, authorities, duties or functions under this Act or the Threatened Species Conservation Act 1995 relating to fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities, or

(c) that is critical habitat or the habitat of a threatened species, population or ecological community.

Please note we are legally able to request this and there is no exemption for Forests NSW under the *Forestry and National Park Estate Act 1998* (NSW) s37.

37 Application of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995

(1) Part 6A (Stop work orders and interim protection orders) of the National Parks and Wildlife Act 1974 does not apply to the carrying out of forestry operations during any period that an integrated forestry operations approval applies to those operations.

(2) However, subsection (1) does not prevent the making of an order for the purpose of protecting any Aboriginal relic or place.

Local Government General Regulation 2005:

Part 4 DIV 1

105 Land should be categorised as an area of cultural significance under section 36(4) of the Act if the land is:

* (a) an area of Aboriginal significance, because the land:

(i) has been declared an Aboriginal place under section 84 of the *National Parks and Wildlife Act 1974*.

An Aboriginal place is defined in s 5 to be any place so declared under s 84. That section provides that the Minister may declare any place an Aboriginal place that, in the opinion of the Minister, is or was of

special significance with respect to Aboriginal culture.

Section 90 of the NPW Act provides that any person who, without the consent of the Director-General, knowingly destroys, defaces or damages an Aboriginal object or place, or permits the same is guilty of an offence. However, s 90(1A) is to the effect that where an object is dealt with in accordance with Aboriginal tradition under s 85A, no offence is committed.

Persons who are aware of the location of an Aboriginal object and who do not, within a reasonable time after discovery of the location, notify the Director-General of the location, are guilty of an offence, unless there are reasonable grounds to believe that the Director-General was already aware of the location of the object: s 91.

One of the few cases dealing with these provisions is *Williams v Homestake Aust Ltd* [2002] NSWLEC 5;BC200200362 concerning mining and Aboriginal objects at Lake Cowal, where an interlocutory injunction to desist from mining exploration because of the alleged disturbance of Aboriginal objects was initially refused. At a subsequent hearing, an interim injunction was granted, with the final hearing resulting in orders for inspection of the property to ascertain that all relics (now referred to as Aboriginal objects) on the property were to be inspected by a group of representatives of the mining company and the Wiradjuri Council of Elders: *Williams v Homestake Australia Limited* (2002) 122 LGERA 319; [2002] NSWLEC 155; BC200205540 (11 September 2002).

In 2006–2007 there were 55 Aboriginal places managed under these provisions, of which Biamanga is one: Department of Environment and Climate Change Annual Report 2006–2007
<http://www.environment.nsw.gov.au/resources/whowear/deccar07235ch4pt2.pdf>, p 87.

The *Heritage Act 1977* and the *National Parks and Wildlife Act 1974* (NPW Act) together provide a range of mechanisms appropriate for the conservation of items of the cultural and natural heritage. The NPWS maintains the Aboriginal Heritage Information Management System (AHIMS), alongside its Historic Heritage Information Management System (see [500,375]). The AHIMS comprises a database for all Aboriginal objects, Aboriginal places and other Aboriginal heritage values in New South Wales reported to the NPWS, as well as a database index of archaeological reports and a library of those reports.

National Parks and Wildlife Act 1974:

42 Application of Forestry Act 1916

(1) The Forestry Act 1916 does not apply to or in respect of lands within a national park or historic site.

Yours

L. Stone

T. Whan

S. Daines

Lisa Stone, Tony Whan, Scott Daines
27/04/2010