

**Submission  
No 37**

## **INQUIRY INTO PACIFIC HIGHWAY UPGRADES: COFFS HARBOUR**

**Organisation:**

**Name:** Mr Tony Brindley

**Telephone:**

**Date Received:** 9/11/2005

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**Subject:**

**Summary**

Following RTA geotechnical activities in 1997/98 groundwater quality changed at Brindley's Bonville Nursery and salt damage was observed on plants grown.

The RTA completed a groundwater investigation report in January 1999. This report withheld information that the RTA drilling procedures can cause groundwater contamination, that the RTA failed to obtain maps showing saline groundwaters were in the area as mapped by DLWC, the RTA failed to obtain licences for its monitoring boreholes and so on.

The report misrepresented and withheld available information. Representation was made to Mr Andrew Fraser MP, seeking a meeting with the RTA and Minister.

In 2003 it was agreed to by the RTA and the Parliamentary Secretary of Roads that an independent impartial Desktop Review would be undertaken of the documented issues and concerns.

The Desktop Review Report was completed in June 2004 but again withheld information and misrepresented available information.

The report was to be presented to the Parliamentary Secretary of Roads for sign off and used in determining a request for compensation.

Despite several requests neither the RTA or the parliamentary Secretary could confirm what was going on.

The RTA secretly commenced another report September 2004 in which it acknowledges for the first time it failed to obtain licences for its monitoring boreholes. This information was withheld from Mr Brindley until a few weeks ago.

Requests to the Minister and the RTA to fix broken piezometers in the Bonville area which can continue to allow groundwater contamination have not been fixed.

Stonewalling by the RTA and the Minister resulted in representation to the the NSW Ombudsman in January 2005. He obtained a commitment for yet a third investigation.

Currently this has stalled as the RTA refuse to consider an Environmental Compliance Audit as part of this third investigation into its geotechnical activities in the Bonville area.

Representations have recently been made to the new Minister of Roads Mr Tripodi for investigation of these and other documented issues.

This groundwater issue and the RTA's responses are in the public interest. Information has knowingly been withheld from Mr Brindley, the Ministers, the Government and the people of NSW.

The RTA is accountable for its actions. Details of several compliance issues are attached.

**Pacific Highway Upgrade – Bonville**  
**Legislative, Procedural and Policy breaches by the RTA**

**Impacts on Agricultural land and the environment**

In 1997 to 1998 the RTA undertook geotechnical activities in the Bonville Upgrade area as part of the Bonville EIS. Fifty boreholes were completed over around 9km of which ten were converted to piezometers (monitoring boreholes) and the remainder backfilled with drill cuttings.

In August 1998 groundwater quality began to change at Brindley's Bonville Nursery around 600m to the west of RTA geotechnical activities and at an aquaculture farm around 250m to the west.

The RTA, Department of Land and Water Conservation (DLWC) and Coffs Harbour City Council (CHCC) were contacted looking for any explanations.

It was suggested by Mr Brindley that RTA boreholes may have been inadequately sealed which could result in groundwater contamination in the area.

An investigation was undertaken by the RTA some 8 weeks after groundwater ceased being used for irrigation to see if they were responsible for any groundwater contamination.

Salt damage was observed to plants and pots grown at the nursery. A report was completed by the RTA, Groundwater Investigation at Brindley's Nursery, Bonville, RTA 1999.

At the presentation of the report in February 1999 by the RTA the question was again raised that RTA boreholes may have been inadequately sealed and allowed the contamination of aquifers. The RTA in the presence of DLWC denied that there was anything wrong with RTA procedures and the suggestion that they should have been sealed with something like concrete was cost prohibitive and unnecessary. The RTA advised the case was closed, however, compensation would be available if the it could be proven that the RTA caused groundwater contamination.

In the Bonville EIS, Volume 2, Appendices, Section C; a letter from DLWC to the RTA states *In the event that bores to monitor or extract groundwater are required, they will need to be licensed by the Department.*

This is a requirement under the Water Act 1912. Despite this requirement, the RTA failed to obtain licenses for the 10 monitoring boreholes from 1997/98. They still remain unlicensed.

During the second RTA investigation [2003/04] into groundwater issues at the nursery, through a Desktop Review, the question had been asked several times if the monitoring

boreholes were licensed. This information was not provided by the RTA when the second report was finalised in June 2004. After questioning the validity of the report the RTA completed another report, September 2004 which contained the admission that a search of DIPNR bore licence database failed to locate any RTA licenses for these 10 monitoring bores. This information was withheld by the RTA from Mr Brindley. The report appears to have been withheld from the Parliamentary Secretary of Roads, Mr Tony Stewart, and the Minister of Roads, Mr Carl Scully for signoff.

The existence of the document came about 12 months later when other information was requested from the RTA. The RTA had withheld this information from Mr Brindley and appears to have withheld this information from the Government representatives.

The RTA has breached the Water Act 1912. When it was discovered the information was withheld, and the RTA failed to obtain licenses at the time. The fine is a one off penalty plus a penalty per day each borehole remains unlicensed.

The Directors of the RTA have failed to report this incident and it does not appear to be acknowledged in any RTA Annual Report or Environmental Report.

As part of NSW Groundwater Framework Document, August 1997, *Potential effects of proposed developments on sub-surface water are matters which are required to be taken into account under EP&A Act when undertaking environmental assessment.*

The Bonville EIS, July 1998 fails to take into account impacts to groundwater, groundwater users in Bonville and mitigation measures to prevent groundwater contamination. The RTA has failed to keep up with changes in Government Policy and guidelines.

During the EIS the RTA failed to obtain a booklet from DLWC or CHCC, *Coffs Harbour Local Government Area Groundwater Status and Map Notes, DLWC September 1997.* This booklet available from the same government office block in Grafton identifies groundwater availability and vulnerability areas for the Coffs Harbour area, including Bonville.

Groundwaters of varying qualities are shown throughout the Bonville area including areas of saline groundwater in the vicinity of RTA geotechnical activities. The vulnerability ratings to groundwater contamination are shown to be moderately high to high for Bonville. Among other things the physical barriers to prevent pollution need to be demonstrated to be effective, on going monitoring is required and effective clean up plans are to be in place.

It was suggested during the investigation several times that RTA boreholes could have been sealed inadequately, and allow the contamination of good groundwater with inferior groundwater. This was never answered in the first report and was denied on presentation of the report.

Around 2002 it was observed that new RTA boreholes in the Pine Creek area had been sealed with something like concrete despite being assured by the RTA in 1999 that it was cost prohibitive and unnecessary.

Overseas research reveals that most states in the USA had abandoned drill cuttings as a means of borehole backfilling as it can cause groundwater contamination of aquifers. This was evident from the early 1990's and NSW Department of Minerals also had similar requirements for borehole sealing going back to the mid 1980's.

These issues and others were presented to Mr Andrew Fraser in October 2002, who requested a meeting with Mr Scully and eventually obtained a meeting with the Parliamentary Secretary of Roads, Mr Tony Stewart and Mr David Stuart-Watt Director, RTA.

Due to the contentious issues documented it was agreed that the RTA would conduct an independent impartial review of the issues and concerns raised.

The Desktop Review Report, June 2004, page 5, acknowledges for the first time that *The RTA has changed procedures with respect to backfill of boreholes as the result of issues identified in the Bonville investigation [1999]. DLWC advice was that cross contamination can occur within a borehole, and that procedures such as grouting [cement and bentonite mixes] was good practice. In response to this advice, the RTA progressively introduced requirements for the backfilling of boreholes into briefs and REF determinations for geotechnical work.*

At the time of the first investigation DLWC advised the RTA that its borehole backfilling procedures can cause groundwater contamination. This was known to the RTA but was withheld from the report despite the question being asked that it has been suggested that these procedures could cause groundwater contamination.

When the question was again asked in February 1999 at the report presentation the RTA again denied that it could cause contamination in the presence of DLWC who provided the advice but remained non committal. This information was withheld from the first report.

The RTA also withheld from the first report the fact that they failed to obtain the missing DLWC booklet, with the availability and vulnerability maps, showing that the RTA drilled in the vicinity of documented saline groundwater, using backfilling procedures it new could cause contamination.

It also withheld from the report the fact that the adjoining aquaculture farm within 250m of RTA boreholes had similar groundwater quality problems, refused to take a water sample, declined the offer of a water sample bottle but eventually was persuaded to take a conductivity reading. This showed to the RTA consultant there and then that it had just recorded the highest Total Dissolved Salts (TDS) of the first investigation but chose to ignore these results because it was very close to several RTA boreholes one of which

recorded the second highest TDS reading of the original Bonville EIS. Historical records available at the time but failed to be obtained by the RTA reveal that this property had its TDS levels increase by threefold following RTA geotechnical activities. In the absence of any other data to the contrary this proves that RTA boreholes have caused groundwater contamination in the Bonville area.

It is an offence under the Clean Waters Act 1970 to pollute groundwater. Causing irrigation groundwater to not be suitable for use is a pollution offence. The inadequate backfilling of boreholes can allow groundwater contamination making the groundwaters unsuitable for their existing use to licensed groundwater users.

The first report concluded *On the basis of the available information it can only be concluded that this damage results from very high evaporation rates using low salinity groundwater, applied with spray irrigation/misting techniques.*

This conclusion is a fabrication as the Bureau of Meteorology confirmed that evaporation rates were below average and not very high as the RTA stated. No supporting information was available in the report to substantiate a claim of very high rates.

This is in contrast to the statement that based ***on the available information it can only be concluded.***

It appeared the RTA had gone to enormous lengths to cover-up its alleged wrong doing, failing to licence its monitoring boreholes, failing to obtain vulnerability and availability maps showing various quality groundwaters including saline groundwaters in the vicinity where it drilled in high groundwater vulnerability areas to pollution using outdated procedures it knew could cause groundwater contamination.

The RTA has failed to exercise due diligence and duty of care in its work practices. The RTA Environmental Policy requires among other things to demonstrate due diligence in the provision of its services; integrate duty of care into its activities; at a minimum conduct all RTA operations whether conducted by or on behalf of the RTA in accordance with relevant legislation and government policy and agreements; minimising pollution and environmental impacts and monitoring and reporting publicly on the environmental performance of the organisation.

It is without doubt that the RTA totally fails its own policies in regard to groundwater contamination issues at Bonville.

The RTA failed to bring to the attention of the Director-General, DUAP other relevant matters pertaining to the environmental impacts of the proposal known before approval, such as the existence of saline groundwaters in the drilling vicinity, inadequate backfilling procedures that can cause contamination and that incidents have been reported. As a result the RTA is changing its procedures across the state.

The impact from this was that Brindley's Bonville Nursery, was eventually forced to close. The groundwater was no longer suitable at the time for use in irrigation of container grown nursery plants.

A number of monitoring boreholes originally installed as part of the geotechnical investigation in 1997/98 have failed to be maintained as required by the RTA. This was reported during the Desktop Review. They still remain unrepaired and one in particular RTA BH 39 is broken off at ground level allowing animal faeces and small rodents to be washed into this borehole potentially allowing further groundwater contamination.

Despite Ministerial representation the RTA has seen no need to fix these monitoring boreholes despite investigating them in November 2004.

Compliance with government legislation, policies and guidelines as well as its own policies and procedures is best summed up by the following.



Broken piezometer



Ineffective locked piezometer

Just to show that the RTA has learnt nothing from its ways it started additional soil testing last week using a backhoe which dug up the local telephone lines along Archville

Station Road at Bonville. It never thought to contact any utility before it commenced digging just like it started drilling illegally in 1997/98 without exercising due diligence.

I request that at this stage this information is confidential for the following reasons.

The first Groundwater Report had numerous flaws in it and upon representation to Mr Andrew Fraser, he obtained on Mr Brindley's behalf a meeting with the Parliamentary Secretary of Roads and a Director of the RTA.

The issues and concerns documented were serious enough for the RTA to agree to a second independent impartial investigation. It was neither independent nor impartial and the RTA continued to ignore its own legislative, policy and procedural breaches.

The Desktop Review completed in June 2004 was a misrepresentation of the facts and the RTA again failed to acknowledge or criticise its failures. In particular the failure to license its monitoring boreholes. The June 2004 report was to be sent to the then Parliamentary Secretary of Roads for signoff and for a determination for compensation. It appears the report was never sent and another report September 2004 was completed acknowledging the RTA licensing breach. This report and information was withheld from Mr Brindley for over 12 months. Following representations to the then Parliamentary Secretary of Roads last month they have not been able to confirm having received the report either. It appears the RTA has withheld the second September 2004 report.

Failure by the RTA to progress the matter and confirm status of the report, requests were also made to the Parliamentary Secretary who passed the right of reply to the Minister and the RTA. Neither replied!

Following frustration with bureaucratic stonewalling representation was made to the NSW Ombudsman in January 2005 and the RTA agreed to yet another independent investigation with Mr Brindley having input into the brief and the selection of a consultant.

At the date of this submission the brief is stalled on the RTA refusing to agree to include an Environmental Compliance Audit of its activities in the Bonville area. The RTA wants to engage the consultant and finalise the brief with the vague possibility somewhere undefined in the future that it may consider these outstanding issues.

The matters have been brought to the attention of the new Minister of Roads, Mr Tripodi over the last few weeks for his investigation.

This information is provided because the RTA is accountable and will be held accountable for its actions. The recent resignation of the former CEO of the RTA is testimony to this change in attitude.



The model code of conduct 8.1.1 put out by the NSW Government states *The people of NSW have a right to expect the business of the State to be conducted with efficiency, fairness, impartiality and integrity.*

The RTA highway upgrade activities have impacted on agricultural land in the Bonville area and groundwater users.