DECISION NO.	CABINET MINUTE BRISBANE, 9 / 3 /1981.	DECISION NO. 34643

CIRCULATION RECORD.

SUBJECT: Currumbin Bird Sanctuary - Control.

(Submission No. 30928)

Copies Made 32 Mr. Hinze

CIRCULATION DETAILS.

1	GOVERNOR		21	Decision File	
2	MR. BJELKE-PETERSEN		22	L Govt	
3	DR. EDWARDS		23	Hennes	Copy of relevant Submission attached
4	MR. SULLIVAN		24	Aud.-Gen	Copy of relevant Submission attached
5	MR. DOUMANY		25	~~A Council~~ Treas	Copy of relevant Submission attached
6	SIR Wm. KNOX		26	~~Trans~~ CS	
7	MR. HINZE		27	~~CA~~ PSA	
8	MR. TOMKINS		28	~~AG~~	
9	MR. BIRD		29		
10	MR. WHARTON		30		
11	MR. GIBBS		31		
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CABINET SUBMISSION No. 30928

30 Copies received at 9 45 a.m. ~~p.m.~~ 6 / 3 / 1981

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CABINET MINUTE Copy No. ____

Brisbane, 9th March, 1981

Decision No. 34643

Submission No. 30928 TITLE: Currumbin Bird Sanctuary - Control.

CABINET decided:-

1. That the Auditor-General be requested to conduct a special audit of the books and accounts of the Currumbin Bird Sanctuary and the National Trust (as they may in any way relate to the Sanctuary) as a matter of urgency.

2. That further consideration be given to the Submission when -

   (i) the Report of the Auditor-General has been completed; and

   (ii) the Honourable the Minister for Local Government, Main Roads and Police reports further to Cabinet on the outcome of discussions he proposes to have with the National Trust.

CIRCULATION: Department of Local Government and copy to Minister.
Premier's Department and copy to Premier.
Auditor-General.
Treasury Department and copy to Treasurer.
All other Ministers for perusal and return.

Certified ~~True Copy~~ Correct

Neil Daly

Secretary to Cabinet.

Submission No. .....

Copy No. 21

FOR CABINET

Currumbin Bird Sanctuary - Control

1. The Currumbin Bird Sanctuary Act 1976 established a statutory base for the operation of the Sacntuary, following the previous owner, Mr. A.M. Griffiths, handing over the property to the National Trust of Queensland on certain terms and conditions. A copy of the Deed of Agreement, which was entered into on the 24th June, 1976, before the Act was passed, is attached as Annexure "A". Further comment on this Agreement will be made later in this Submission. Cabinet will recall the outcry that arose in 1976 when the Government stated that the sanctuary was not an appropriate property for ownership and control by the Trust within the terms of its charter under the National Trust of Queensland Act 1963. The Government finally gave way and put through the Currumbin Bird Sanctuary Act.

2. Since 1976 the operation and control of the Sanctuary has been the source of considerable disagreement between the National Trust and the Sanctuary Board of Advice which it established, subsequently changed to a Board of Management, changed back more recently to a Board of Advice, and has now "dissolved". Disagreements have covered virtually all aspects of management, viz. staffing, finance, budgets, admission charges, objectives and functions. The National Turst and its Executive Committee have now taken over direct control of the Sanctuary. The dissolution of the Board of Advice, on which the Government had two representatives (Dr. H.J. Lavery, Director of the Research and Planning Branch, National Parks and Wildlife Service and Mr. E.R. Duke, Regional Director of Education, Brisbane South) was brought about, in my view, by an approach made directly to me by Sir Sholto Douglas, Chairman of the Board of Management, as then named. This is evidenced by the following notice given to members of the Executive Committee of the National Trust by the President on 3rd December, 1980 -

> "I have today received a copy of the minutes of a meeting of the Board of Advice of the Currumbin Bird Sanctuary held on 6th November, 1980 whereat it was resolved that copies of the response to the Fuller Report, previously circulated individually to members of Council, be sent to the Minister for Local Government and the Premier.
>
> As you are aware, I take a very dim view of independent action by Chairman and of Sub-Committees of the Trust especially serious action of this type at the highest government level. I have therefore requested Sir Sholto to supply to me copies of any covering correspondence which accompanied submission of the response to the Minister and Premier and have instructed the Honorary Secretary to place the matter on the Agenda of our meeting on the Sanctuary next Wednesday, 10th December."

3. The resolution of the National Trust setting up the Board of Advice in the first place gave Mr. Griffiths membership and the right to nominate three other members of the Board. This was consistent with the terms of the agreement (Annexure "A" - Clause 4) which stated that Mr. Griffiths "shall be employed at the Sanctuary by the National Trust in the capacity and with the title of Presiding Director and Chairman of the Board of Advice". No doubt it was also consistent with the appointment of

a Board of Management. Be that as it may, Mr. Griffiths has conveyed to me in writing his full support of the Board of Management and his distress at the interference by the National Trust in "management responsibilities of the Board".

4. Since before the National Trust took over the Sanctuary, I have had reservations about control of such an activity by the Trust, which seemed to me quite outside its charter. Cabinet will be aware that it was found necessary for Section 3 of the Currumbin Bird Sanctuary Act to say that the conduct of the Sanctuary was an object of the National Trust, so as to validate the hand-over to the Trust, as follows:-

> "3. Object of National Trust to conduct sanctuary. It shall be deemed that one of the objects of the National Trust declared by the Act is and always was to control and conduct, subject to and in accordance with this Act, the Currumbin Bird Sanctuary as a commercial undertaking in the form in which it is conducted immediately before the passing of this Act."

5. I have favoured and still favour local control of the Sanctuary. The National Trust has solved the problem of disputation with the local Board of Advice by getting rid of it. The fact that Sir Sholto Douglas referred the problem of conflict between the local Board and the National Trust to me appears to have precipitated the Trust's decision. Also the Manager of the Sanctuary has more recently been dismissed, and I have been informed (on a confidential basis) that another senior employee (who also wrote to me about Sanctuary problems) is about to receive notice of dismissal.

6. Following a written complaint from Mr. Griffiths I gave instructions for his claims to be investigated. His complaints and brief comments thereon are summarised in Annexure "B". In the course of investigations, the Deputy Director of Local Government requested the National Trust (in my name), for a copy of Agreement between the Trust and Mr. Griffiths (as Mr. Griffiths did not have a copy). This request was refused "on advice",for the reason that the Agreement was a private matter between the parties. A copy was finally obtained, but from a different source. It was essential to obtain a copy as there were clear indications that the true terms of the final Agreement were not in accordance with the Agreement as previously understood.

7. In all the circumstances, I feel that it would be preferable for the Currumbin Bird Sanctuary Act to provide for direct local control of the Sanctuary, and for the creation of a Board of Management as a corporate body in its own right for that purpose. The Board could then be subject to direct oversight by the Government with the Government having a greater input into its membership and its functions.

8. Creation of a separate Currumbin Bird Sanctuary "Authority" could carry with it the implication of Government blessing, and possible Government funding. Whether Government funding is or is not likely should be clearly stated at the time the Act is amended and I am of the view that the Authority must stand on its own feet, and accept responsibility for its decisions. The trading operations at the Sanctuary, plus admission charges, currently cover operating and maintenance costs, and the Act requires that any profits be put back into the Sanctuary. Any capital improvements therefore will need to be dependent upon availability of funds from profits, from donations, and from loans (not

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guaranteed by the Government). Under the existing law this is in fact the situation that currently applies now.

It must be considered whether, in the event of failure of the Authority, is it to be taken that the Goverment may underwrite the Authority, or will an Act need to be passed to wind up the Authority? It would still own valuable assets which could be turned into cash, or could be used for other public purposes. However, I feel that there is no real need to make these decisions now.

9. It must also be considered that the Sanctuary is presently the property of the National Trust of Queensland in fee simple, though in trust "in perpetuity, or for so long a period as the circumstances shall allow, for the benefit, welfare and education of Queenslanders and other persons generally". This was the result of the agreement between Mr. Griffiths and the National Trust before the Currumbin Bird Sanctuary Act was passed (see paragraph (d) page 1 of Annexure "A"). An Act of Parliament could divest the property from the National Trust and vest it in some other authority, but there could well be protests and claims of "expropriation" of private property. However, the true nature of the legislation would be, in my view, merely the transfer of a property held in trust for the public benefit from control by one statutory body to control by another statutory body. The National Trust by virtue of the Currumbin Bird Sanctuary Act can not lawfully put any of its own money into the Sanctuary, or take any money out of the Sanctuary. Therefore the National Trust would not be financially disadvantaged by the change.

11. From the investigation made of Mr. Griffiths' complaints, it appears that certain accounting, audit and legal aspects relating to -

- movement of funds between the Sanctuary and the National Trust; and
- the agreement between Mr. Griffiths and the National Trust,

need to be more closely studied. However, neither I nor the Director of Local Government have any legal right to require production of any records, and in the light of the refusal of the copy of Agreement as already referred to, I suggest that the Auditor General be asked to undertake a special audit of the books and accounts of both the Bird Sanctuary, and the National Trust (as they may in any way relate to the Sanctuary).

12. I have invited the various parties concerned, including Mr. Nunn, the President of the National Trust, Mr. Griffiths and Sir Sholto Douglas, to meet me on Wednesday 11th March, to discuss the future of the Currumbin Bird Sanctuary.

If the response received by my Private Secretary so far from the National Trust is any guide, Mr. Nunn does not propose to attend. He was invited to attend a similar meeting on Monday 23rd February at my Electorate Office on the Gold Coast but did not do so. In view of the short time available to prepare and finalise legislation during the current Session, this submission is made to Cabinet prior to the proposed meeting on the 11th March, so that preparation of a Bill by Parliamentary Counsel may proceed. In the event that the National Trust convinces me on the 11th March, that some other course should be followed, I will report back forthwith to Cabinet.

13. <u>RECOMMENDATION:</u>

I recommend that -

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(1) approval be given for the preparation of a Bill to amend the Currumbin Bird Sanctuary Act 1976 (with consequential amendments to the National Trust of Queensland Act 1963-1976) as proposed in this submission and as outlined in Annexure "C", to provide for the constitution of a separate Board of Management as a corporate body to control and conduct the Currumbin Bird Sanctuary; and

(2) the Auditor General be requested to conduct a special audit of the books and accounts of the Currumbin Bird Sanctuary, and the National Trust (as they may in any way relate to the Sanctuary).

R.J. HINZE
Minister for Local Government,
MainRoads and Police.

Department of Local Government,
Brisbane. 6/3/81.

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ANNEXURE A

15.8.76

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STAMP DUTIES OFFICE BRISBANE QLD.

THIS DEED made this Twenty-fourth day of June . . 1976, BETWEEN ALEXANDER MORRIS GRIFFITHS of "The Sanctuary", Tomewin Street, Currumbin Beach in the State of Queensland, of the first part, AND THE NATIONAL TRUST OF QUEENSLAND (hereinafter called "the National Trust") of 157 Ann Street, Brisbane in the said State, a Body Corporate duly constituted by Act of the Legislature of the said State, namely "The National Trust of Queensland Act, 1963-1964", of the second part

WHEREAS:-

(a) The said Alexander Morris Griffiths is a shareholder in and Managing Director of a certain group of companies all of which are duly incorporated and registered in the State of Queensland (hereinafter called "the Sanctuary Group of Companies")

(b) The said Alexander Morris Griffiths in his personal capacity and the Sanctuary Group of Companies have for some years past conducted at Currumbin Beach aforesaid a fauna and flora reserve and sanctuary (hereinafter called "the Sanctuary")

(c) The said Alexander Morris Griffiths has certain funds outstanding on loan with the Sanctuary Group of Companies (hereinafter called "the loan monies")

(d) The said Alexander Morris Griffiths intends and desires that the Sanctuary be preserved and continued in perpetuity, or for so long a period as the circumstances shall allow, for the benefit, welfare and

STAMP DUTIES OFFICE 004727 19 AUG 1976 BRISBANE education of Queenslanders and other persons generally

(e) The said Alexander Morris Griffiths, in order to give effect to his intention and desire as aforesaid, but subject to the National Trust duly executing these presents, has by way of gift, agreed to transfer, convey and assign to the National Trust his entire interest, estate, right and title in the Sanctuary and in the Sanctuary Group of Companies, (excluding and with the exception of the loan monies and the vehicle hereinafter referred to), and in all the lands (both freehold and leasehold), improvements, animals, museums, books, records, documents, goods, chattels and effects of whatsoever nature and description either located therein or in any wise associated therewith (hereinafter collectively called "the assets to be conveyed")

certain parcels of freehold land situated in the County of Ward Parish of Tallebudgera containing an area of approximately 42 acres registered in the name of the said Alexander Morris Griffiths

A.G.

(f) The National Trust has agreed to accept by way of gift, subject to the terms and conditions herein provided, the transfer, conveyance and assignment of the assets to be conveyed as aforesaid and is duly authorized by the said Act and by resolution of its Executive Council duly approved and passed so to do

A.G.

(g) It is the intention of the parties hereto that this Deed and the said transfer, conveyance and assignment shall be and remain effective as from the First day of July, 1976, (hereinafter called "the date of settlement") whereupon the National Trust, except where provision to the contrary is herein expressly made, will exercise effective management and control of and over the Sanctuary and each and every part thereof and the assets to be conveyed.

<u>NOW THIS DEED WITNESSETH</u> pursuant to the premises and in consideration of the said agreements as follows:-

1. Except as otherwise herein expressly provided, the said Alexander Morris Griffiths hereby acknowledges and declares that on the date of settlement, he has duly

transferred, conveyed and assigned unto the National Trust the assets to be conveyed to have and to hold unto the National Trust for its sole use and benefit absolutely, subject to the said Act and any Regulations properly made thereunder, and subject also to any debts, liabilities or encumbrances existing as at the date of settlement, either against the said Alexander Morris Griffiths personally or against the Sanctuary Group of Companies, or any one or more of them, or against the assets to be conveyed.

2. Without in any way limiting the generality of the provisions of Paragraph 1 hereof, it is expressly declared that the debts, liabilities or encumbrances hereinbefore referred to shall include certain obligations due and outstanding by the said Alexander Morris Griffiths or by the Sanctuary Group of Companies (or by any one or more of them) in favour of persons resident within the Dominion of New Zealand and the National Trust hereby agrees that it will fully satisfy and discharge such obligations on or before the First day of July, 1977. It is expressly declared that the maximum liability of the National Trust pursuant to this Clause shall not in any circumstances exceed the sum of <u>THIRTY THOUSAND DOLLARS</u> ($30,000-00).

3. It is expressly declared that in addition to the loan monies the assets to be conveyed shall exclude a certain motor vehicle namely a Valiant Centura registered number OOS-700 which said motor vehicle is and shall remain the personal property of the said Alexander Morris Griffiths absolutely. During the period of employment of the said Alexander Morris Griffiths, as hereinafter defined, the National Trust agrees that it shall fully maintain the said vehicle (or any other vehicle or vehicles acquired from time to time for use by the said Alexander Morris Griffiths in substitution for the said vehicle)

and shall pay all insurances, registration fees and other charges in connection therewith or in connection with any other vehicle or vehicles acquired in substitution therefor.

4. From the date of settlement, for the remainder of his lifetime the said Alexander Morris Griffiths shall be employed at the Sanctuary by the National Trust with the title of ~~XXXXXXX~~ Presiding Director and Chairman of the Sanctuary Board of Advice.

a.g.

5. During the period of his employment as aforesaid, the said Alexander Morris Griffiths shall be entitled, at a nominal rental only, for his sole use and benefit absolutely, to a lease of a residential property situated on land within the Sanctuary, and it is agreed that such lease shall contain such terms and provisions as shall be determined by the said Alexander Morris Griffiths and the National Trust, ~~or by their respective legal advisers~~. It is declared that the said land is described as Subdivision 2 of Allotment 12 of Section 5 on Plan Catalogue No. 1985 situated in the County of Ward, Parish of Tallebudgera, contained in Certificate of Title No. 488103 Volume 2472 Folio 93. The National Trust undertakes that it shall at its expense, within six (6) calendar months from the date hereof, do, perform and execute all such matters, acts, deeds and things as shall be necessary to secure the said lease in favour of the said Alexander Morris Griffiths, including application for and obtaining mortgagee's consent, obtaining plan of survey, and attending to registration of such plan.

a.g.

6. During the period of his employment, the National Trust shall do, perform and execute all such matters, acts, deeds and things as shall be necessary to preserve and continue adequate superannuation as at present and other entitlements for the benefit of the said Alexander Morris Griffiths. On the death of the said

Alexander Morris Griffiths, the National Trust undertakes, to the extent that it is empowered and able so to do, to outlay and expend any monies payable as a consequence of the said superannuation on some specific project or purpose directly benefiting the Sanctuary.

7. If the said Alexander Morris Griffiths shall be survived by his mother, for the period of time extending from the date of death of the said Alexander Morris Griffiths to the date of death of the said mother, the National Trust hereby undertakes to maintain and upkeep the said mother in an adequate state of comfort and welfare as at present.

8. Prior to the date of settlement, the said Alexander Morris Griffiths undertakes that he shall obtain from all shareholders (in addition to himself, but excluding the late Charles Richard a'Barrow Clark) in the Sanctuary Group of Companies (or any one or more of them) duly executed transfers in proper registerable form of his, her or its respective shareholdings in favour of the National Trust, or as the National Trust shall by writing direct.

9. The said Alexander Morris Griffiths hereby agrees that he shall not on any occasion or in any circumstances require the repayment of the loan monies other than by instalments not exceeding at any one time the sum of <u>TEN THOUSAND DOLLARS</u> ($10,000-00) and that such instalments shall not be demanded more frequently than at intervals of six (6) calendar months and then only after three (3) calendar months written notice of intention in that behalf by the said Alexander Morris Griffiths has been delivered to the National Trust.

10. The National Trust hereby agrees and undertakes that it shall apply all annual surpluses (if any) of revenue over expenditure arising from activities at the Sanctuary as follows and in the priorities expressed hereunder:-

(a) In reduction of the Sanctuary's existing liabilities.

(b) In improving and developing Sanctuary operations and facilities.

(c) To advance and promote the general objects and purposes of the Sanctuary, and nature conservation generally.

11. In the event that it shall at any time hereafter be necessary to produce a formal valuation in terms of the letter (dated 1st March, 1976) from the Commissioner of Stamp Duties, Brisbane, to Messrs. Morris, Fletcher & Cross, Solicitors of Brisbane, the National Trust hereby undertakes that it shall, to the absolute and complete exoneration of the said Alexander Morris Griffiths, and at its expense entirely, obtain and produce such formal valuation to the Commissioner of Stamp Duties and further to satisfy the requirements of the Commissioner of Stamp Duties with respect to all matters arising therefrom/in any wise associated therewith.

12. It is declared that the costs of the parties to this Deed shall be borne by the Sanctuary Group of Companies provided always that the National Trust, to the complete exoneration of the said Alexander Morris Griffiths, shall pay and discharge and shall be solely responsible for all stamp, (including stamp duty on the said lease), gift or other duties and income tax (if any) assessed with respect to this Deed or any matter associated therewith or arising therefrom and the National Trust hereby agrees to indemnify, and to hold indemnified on all future occasions hereafter, the said Alexander Morris Griffiths with regard to all liability in connection therewith.

13. The parties hereto respectively covenant and agree that he and it shall, on all future occasions after the date of settlement, do perform and execute all such matters, acts, deeds and things as shall be necessary or

appropriate to give full effect to this Deed or to any of the undertakings and agreements herein provided.

IN WITNESS WHEREOF these presents have been duly executed by the parties hereto on the day first hereinbefore written.

SIGNED SEALED AND DELIVERED by the said ALEXANDER NORRIS GRIFFITHS in the presence of:) A. Griffiths

GIVEN under the Common Seal of THE NATIONAL TRUST OF QUEENSLAND by order of the Council pursuant to a Resolution dated the 21st day of June 1976 in the presence of Eric Stanley Hancock Councillor and Hugh Galloway Councillor and in the presence of Peter Johnston Forrest Secretary in the presence of:

A Justice of the Peace

CURRUMBIN BIRD SANCTUARY

	A. Griffiths Complaints		Department's Comment
1.	Sanctuary should be completely divested from National Trust. His previous decision to hand over the Sanctuary to the Trust was a mistake.	1.	The complaint is in accord with the Government's views at the time the "hand over" to the Trust took place.
2.	National Trust's lack of interest in "Coolamon", the 17½ ha. property in Currumbin Valley.	2.) 3.)	This could well be a matter of funds available to the National Trust. Also the Act prevents the Trust from putting its money into the Sanctuary (of which the Coolamon property is legally a part.
3.	National Trust disinterest in acquiring and protecting properties (rain forest) adjacent to "Coolamon".		
4.	Board of Advice unsatisfactory. Board of Management was subject to interference.	4.	It is obvious that the Board of Advice and Board of Management have not worked in harmony with the National Trust (and vice versa).
5.	National Trust no prepared to discuss matters with him. His role now very unclear.	5.	Mr. Griffith's role is certainly unclear. See later comments on the "agreement" between Mr. Griffiths and the Trust.
6.	He is entitled to withdraw $20,000 p.a. but has not done so.	6.) 7.)	The Trust claims (and shows in its financial statements) that Mr. Griffiths is being paid "loan" entitlements. The agreement states that he shall be employed, with the title of "Presiding Director and Chairman of the Sanctuary Board of Advice". <u>No</u> salary is provided for, though a $10,000 salary with CPI adjustment was in earlier drafts. It is not in the final agreement. However he has been paid $1,000 per month since he handed over the Sanctuary to the Trust. He believes he is entitled to a salary and that he has been receiving it. There could well be a legal assumption that "employment" carries with it a reasonable wage, and that he has been receiving that wage.
7.	Agreement provides for CPI escalation of his $10,000 salary. Other employees have had greater increases.		
8.	$120,000 taken by National Trust. N.T. returned $50,000 Took management fee 27,700 Has not returned 42,300 (says stands as book debt)	8.	This transfer was noted by Audit Inspector Warwick in a special audit report of the National Trust accounts (not the Sanctuary) in 1978. It is not apparent on the record that he was aware of Section 8 of the Currumbin Bird Sanctuary Act preventing diversion of funds to or from the Sanctuary Accounts.

Annexure "B"

	A. Griffiths Complaints		Department's Comments
9.	National Trust sold 11 Sanctuary companies (Shells) - where are proceeds?	9.	Not possible to comment without detailed examination of Trust and Sanctuary financial records.
10.	National Trust has not accounted for $6,000. No.2 A/c	10.	" " "
11.	$120,000 transferred June 1977 - only $115,000 returned	11.	" " "
12.	National Trust borrowed and spent $30,000 on a National Trust Heritage Information Centre (Trust matter) plus $13,000 from Sanctuary funds. Sanctuary bearing cost.	12.	" " "
13.	He has not received his free car and petrol under the agreement.	13.	Not entitled to this under agreement. He is entitled to the car he had in 1976 or any replacement car he buys himself. Trust is required to pay registration, insurance and repairs.
14.	He has spent his own money($51,000) in the Sanctuary and Coolamon.	14.	Would require detailed study of Sanctuary and Mr. Griffith's financial records. If he has spent money without any agreement of the National Trust, this would seem to be his own affair. He does not appear to expect to recover the amount.
15.	His life insurance ($100,000) is payable to the Sanctuary.	15.	True, but amount uncertain, though the term "superannuation" is used in the agreement.