

Rod McKelvey
10 Ellem Close
Arrawarra, NSW 2456
Australia

p: 61 2 6649 2549
m: 0429 457 138
e: rodmcKelvey@gmail.com

Attention: Emma Butcher
Planning Officer, Regional Assessments
NSW Department of Planning & Environment
320 Pitt Street, Sydney
GPO Box 39 Sydney NSW 2001

2018-06-00

Re: Submission against the Residential Subdivision Sandy Beach North MP 05_0083 MOD 7

Thank you for inviting the Community to comment but can I say we've been given an unreasonably short time to compile a worthy submission for a development that's threatened Coffs Harbour for around 16 years, that said I'll give it my best shot.

Summary:

With numerous serious concerns I've raised since January 2018, still unresolved, Notwithstanding recent correspondence to NSW Department of Planning, nothing has been forthcoming to explain the Minister's delegate's failure to adhere, consider or address the "best use of site" condition in the original consent approval in relation to the extension to the lapse date or since.

It's difficult to understand how Modification 7 is considered to be '**substantially the same**' as the concept plan approval when it's gone well beyond that which was approved on environmental grounds back in 2010. Given that the modification application was lodged on the penultimate day for submission of modifications under legislation that is now repealed, consideration of the comments / reports (environmental or otherwise) in support of modification 7 ought to be read with this in mind.

I'm of the opinion that Modification 7, the subject of this submission to NSW Planning & Environment, is not valid and should not be on public exhibition.

I believe Modification No.7 should have been rejected for the following reasons:

In the original Concept Approval 2010, Schedule 2. A2 - specifically discounted development in Stages 6, 2 & parts of Stage 1 east of extension of Ti-Tree road. These are the same areas included in Mod. 7 for development.

In the original Concept Approval 2010, Schedule 2. A6 - states any modification to extend the lapse date has to satisfy Director General that the project remains 'current, appropriate and reflective of the best use of site at the original lapsing date'.

This reason was never addressed when Elite was granted a 2 year extension to the Concept Approval under Modification No.4. When the Concept Approval was written In 2010, the term 'Best use' was specifically used by the decision maker having the knowledge that this project would take considerable time to develop and that NSW Coastal Protection would be a major obstacle to the planning decision makers.

The key outcome of the 2006-31 Mid North Coast Regional Strategy states ***“Future urban development will not be located in areas of high risk from natural hazards including sea level rise, coastal recession, rising water tables and flooding”***. How then can a development such as this be approved when it's located in just such an area?

Quite obviously building houses in a lake, even on fill as the DA requires, clearly puts those homes and families that buy them at high risk from natural hazards including sea level rise, coastal recession, rising water tables and flooding, which brings the LEP 2000/LEP 2013 into play.

Contrary to thousands of pages of research by reputable organisations, Council's adopted Planning Instruments and the wishes of the Community this development lives on. I firmly believe at some time in the future, such is the evidence available regarding the short sighted folly of approving such a development, a Class Action will be mounted against any consenting authority.

Issues:

Flooding, Sea Level Rise, Rainfall/Water Quality:

There are many tools capable of modelling the impact of hydrological disasters, ANUGA being just one. I'm aware there are varying opinions regarding these models; however I believe the 1982 study was too out-dated, for it to be used as the basis for much of the background material available for Hearn's Lake and its 6.8 km² catchment. It was carried out by Antony Tod Partners using one dimensional computer modelling to model.

The proposed development site is located on low-lying (flood plain) foreshore area of the Hearn's Lake System that experiences regular flooding in high rainfall events. Flood levels will increase with time when coupled with sea level rise, coastal recession and increased storm intensity.



Pine Crescent Australia Day 2012

According to the principles of ESD, Consenting Authorities have a duty of care to ensure that this proposed subdivision will not place property and people at risk of inundation. Obviously that must include existing properties located in Pine Crescent, Maple Road and Ti-Tree Road, who at the present time are being treated as sacrificial lambs. They already suffer bad flooding issues, since the completion of the Pacific Highway Upgrade when RMS scoffed at community claims of potential flood problems, and when at least 90-100,000m³ of fill is in place to raise any new houses above what I see to be an unrealistically low building platform, that fill will reduce floodplain capacity and the displaced water will find its way to low lying land, causing additional pain and suffering on the residents of Pine Crescent, Maple Road and Ti-Tree Road.

The experts can theorise about their drainage models. Fact remains water drainage is very dynamic, random and complex as it may involve flash flooding, general stream rises, and tidal influences, in any permutation over any time line. Once major development changes occur anything is possible. The very latest computer modelling software has been proven in the Brisbane floods in thousands of locations to be significantly inaccurate.

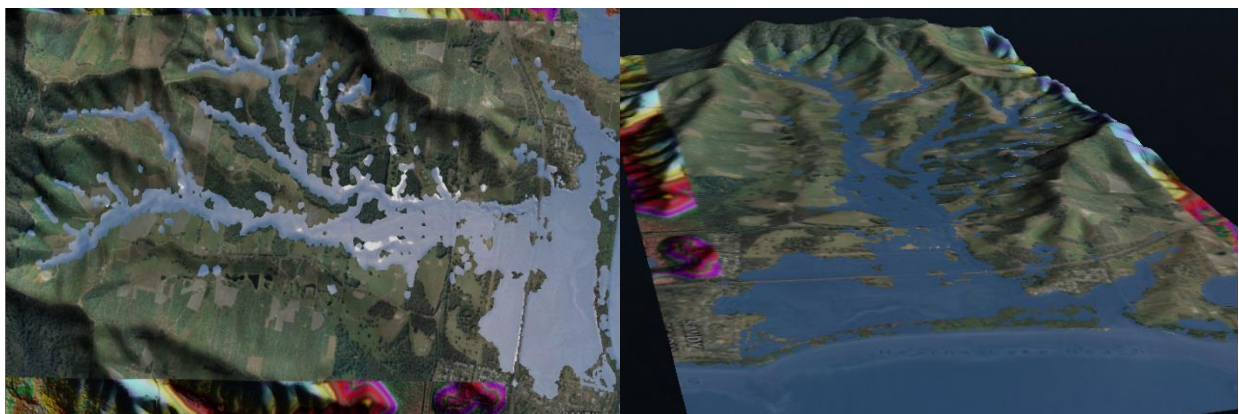
Acquiescence to the development of this site which requires substantial fill potentially puts a consenting authority in direct conflict with current residential property owners sensitive to flooding concerns to their properties from potential stormwater run-off anticipated from this development or flooding generally.

Given the plethora of submissions to governments, including NSW Planning & Environment in relation to this particular development, there is significant concern outlined by residents in the Sandy Beach area about flooding to support a justified class action for compensation for any loss sustained as a result of flooding effects to properties generated from the development.

The 2006 Hearnese Lake Process Study carried out by BMT WBM, to describe the hydrodynamic behaviour of the lake and catchment, relied on Tod's limited one dimensional results which didn't factor in the effects of rainfall in the catchment on lake levels, berm heights nor the new massive box culverts that will deliver a large volume of stormwater runoff from the new developments catchment on the western side of the highway directly into Hearnese Lake. The building platform will be in the way.

The morphological changes at the entrance of Hearnese Lake during flood events can be critical in determining design peak flood levels. The changing entrance shape as the scour develops changes the channel conveyance properties, which can significantly impact peak water levels attained in the system during a flood. The assessment of flooding behaviour for the lake requires the consideration of catchment rainfall-runoff process, in addition to the morphodynamics of the entrance berm and channel configuration and adjacent coastal conditions. These influences during flood events can be critical in determining design peak flood levels attained in the system during a flood.

Ask yourself what would the impact be of the adopted berm height of 4.4m or the historically high 5.7m berm recorded in 1973 on the neighbouring built environment or even the proposed new houses?



ANUGA 2D model of Hearnese Lake Catchment showing flooding extent of a 100yr, 2hr storm event, ocean level of 3.1m, berm of 2m.

The primary mechanism leading to elevated flood levels in the lake are related to the ability of the entrance berm to scour. Berm height is the key variable that defines the threshold water level for berm over topping and initiation of major scour. The peak flood level is often heavily influenced by the specific berm level at any given time, as this sets the time for the erosion process to start. The

time to scour and the scour rate is dependent on the total volume of sand that needs to be removed by the scour process. Current Coastal Hazards Study 2010 mapping of Hearnese Lake raises serious questions in the inundation map, because of flooding to homes in Sandy Beach. The model above shows similar water levels to Council's Coastal Processes Hazard Definitions 2100 Planning Horizon

The primary mechanism leading to elevated flood levels in the lake are related to the ability of the entrance berm to scour. Berm height is the key variable that defines the threshold water level for berm overtopping and initiation of major scour. The peak flood level is often heavily influenced by the specific berm level at any given time, as this sets the time for the erosion process to start. The time to scour and the scour rate is dependent on the total volume of sand that needs to be removed by the scour process. Current Coastal Hazards Study 2010 mapping of Hearnese Lake raises serious questions in the inundation map, because of inundated homes at Sandy Beach. Why adopt a berm height of 4.4m AHD when records show that berm heights of 5.7m AHD were achieved in 1973?

With changes in entrance berm processes when coupled with the impacts of Sea Level Rise, Hearnese Lake can expect an increase to the average height of the entrance berm, (Haines 5.4.2 Hearnese Lake Estuary Management Plan 2006) why would one adopt a berm height a full 1.3m below 1973 levels?

Table 3-2 Summary of Berm Heights from Photogrammetric Measurements

Entrance Berm							
Year	C1	C2	C3	C4	C5	C6	C7
1943	1.795	1.008	0.702	2.623	1.125	1.228	1.208
1964	2.673	3.691	3.982	3.691	1.945	1.521	1.614
1973	4.634	5.745	3.973	4.661	2.402	3.426	4.654
1996	3.354	2.155	1.659	2.507	3.158	3.643	2.576
2000	1.621	1.89	1.745	3.099	1.591	1.406	1.512
2004	2.224	1.966	2.038	3.103	1.142	1.266	1.473
Max per chainage	4.634	5.745	3.982	4.661	3.158	3.643	4.654
Min per chainage	1.621	1.008	0.702	2.507	1.125	1.228	1.208

Source: 2006 Hearnese Lake Estuary Management Plan

In addition, it's dangerously risky indeed to rely on a predicted reduction in rainfall in the catchment (Haines 5.4.2 Hearnese Lake Estuary Management Plan 2006) when in 2007 the NSW Government Dept. of Environment & Climate Change, Floodplain Risk Management Guidelines clearly recommend that councils allow for increased rainfall intensities to the order of 30%. Recent news bulletins would indicate rainfall volume from storm events worldwide, are already at record breaking extreme levels.

Based on the ANUGA samples above, high-level modelling techniques, the application of a dynamic model approach for the assessment of flood behaviour in relation to the proposed development must be undertaken by Council. Council must investigate the flooding behaviour of Hearnese Lake and its catchment, incorporating the key influences relating to berm levels and location, sea level rise, intense rain from storm events, to get a true glimpse into the future.

There should also be a complete rejection of any stormwater infrastructure outside of the Concept Approval into the E2 environmental conservation zone. Any stormwater needs to be treated on site using WSUD principles of the highest level given the need to maintain the highest quality water possible given its potential to influence the health of mangrove and salt marsh communities and the Solitary Islands Marine Park.

I've read nothing about sedimentation control. With the amount of dirt fill arriving on this particular site, sedimentation control will have to be exceptional, by that I mean not just up to industry standards. The sensitive nature of Hearnese Lake, its Salt Marsh, Mangroves and proximity to the Solitary Islands Marine Park will mean sedimentation control will need to be carefully managed and maintained.

With a typical 2mm in diameter drop of rain, falling at 6m/s or 22kph a typical Coffs Coast storm event could create untold volumes of suspended solids that'll cause unacceptable environmental damage when the sedimentation structures fail, as they do.

Vegetation, Endangered Ecological Communities (EEC)

The Hearnese Lake/Sandy Beach area contains a great diversity of Endangered Ecological Communities (as listed on the *NSW Threatened Species Conservation Act (1995)*) – indeed the area contains all the Coastal Endangered Ecological Communities in the NSW North Coast Bioregion listed upon the TSC Act including:

- Saltmarsh
- Littoral Rainforest
- Freshwater Wetlands on Coastal Floodplains
- Swamp Sclerophyll Forest
- Swamp Oak Forest
- Subtropical Floodplain Forest
- River Flat Forest on Coastal Floodplain

The Concept Plan Approval determined the site could only accept limited development within the identified EEC. MOD 7 would result in unacceptable levels of loss of the EEC thereby effecting the role it plays in providing connectivity, habitat for several endangered species, the buffering it provides for the Hearnese Lake ICOLL EECs, the Coffs Coast Regional Park, and its role in providing nursery habitat for the Solitary Islands Marine Park.

To justify lodging Modification 7 Cumberland Ecology seems to have re-written the rules to suit themselves by using Councils 1:100 year flood line to define the extent of the coastal floodplain so as to reduce the impact of the proposed development on EEC. Planning & Environment must discount Cumberland Ecology's commentary in no uncertain terms, and take the advice of your own **NSW Scientific Committee's** final determination for floodplain EECs which states that they also occur on soils and landforms associated with Coastal Floodplains.

Cumberland Ecology's capacity to provide alternative views was dealt a blow by the **NSW Land & Environment Court** in *Motorplex (Australia) Pty Limited v Port Stephens Council* (2007) NSWLEC 74, in another case where Cumberland Ecology's Dr Robinson, used the same argument as used for this Sandy Beach North report which if approved would result in unacceptable loss of a valuable standing EEC. Justice Preston CJ ruled against Dr Robinson, in agreeing with the **NSW Scientific Committee's** findings by determining that EECs also occurred on soils and landforms associated with Coastal Floodplains.

<http://www.environment.nsw.gov.au/determinations/FreshwaterWetlandsEndSpListing.htm>

It must be remembered, Hearnese Lake ecosystems in their entirety holistically value add not only the surrounding landforms and ICOLL themselves but also the adjacent Solitary Islands Marine Park.

Environmental Buffers must be used to achieve sustainable outcomes for biodiversity, estuarine and marine health. **The Hearnese Lake Estuary Management Plan** proposed to exclude development around the lake using a combination of two buffers. Firstly, a vertical buffer of RL 3.5m Australian Height Datum (AHD) has been recommended to allow for natural expansion and contraction of the Lake, to allow for a rise in future sea-levels and to allow existing vegetation communities to migrate upslope without being inhibited by new infrastructure. The vertical buffer is based on an assumed

maximum entrance berm crest level plus an allowance for future sea-level rise. A horizontal buffer will then extend 50 metres landward of this 3.5m contour limiting development to 35 lots (CHCC DCP 2008)

In 2006 the NSW State Government through the Department of Planning commissioned Sainty and Associates to identify high conservation lands at the Hearnese Lake lower catchment. The Sainty Report supports the need for a 50m environmental buffer behind the RL 3.5m AHD contour.

Endangered Ecological Community (EEC) Saltmarsh:

The Hearnese Lake area contains a remarkable diversity of terrestrial and aquatic ecosystems, a Significance recognised by the inclusion of both estuarine and marine waters within the Solitary Islands Marine Park.

The **2009 Estuary Management Plan** recommended that the recognition of the Regional Importance of the Hearnese Lake wetlands area, the mapped estuarine vegetation (as determined through recent DPI mapping as part of the CCA) should be included in SEPP-14 Coastal Wetlands, which would require an amendment to SEPP-14. Of particular importance are the extensive saltmarsh areas around the southern part of the lake, and the mangroves and saltmarsh on the alluvial islands at the confluence of Double Crossing Creek.

- The CHCC climate change policy, accepts sea levels rise will occur. They commit to ensuring our ecosystems are resilient.
- Phil Haines in the ***Hearnese Lake Estuary Processes Study*** states that sea level rise will result in the beach berm becoming higher
- A higher beach berm means the lake water levels will greater before a breakout occurs.
- Much of the Hearnese Lake site is low lying and gently sloping. A rise in lake levels will result in the water body expanding out over this land providing habitat for new salt marsh.
- This will provide an opportunity for the mangroves and salt marsh to migrate landwards with the movement of the water therefore providing the system with some resilience to climate change.
- ***The fill will effectively block the landward migration of the mangroves and salt marsh communities. This is called coastal squeeze and will result in significant loss of salt marsh.***
- You can see from the google earth image taken in Oct 2017 and freely available that the current water level is already very close to the proposed footprint of the development.
- The fill will significantly reduce floodplain capacity hence it will not provide the lake with resilience as is the aim of CHCC climate change policy
- ***The ESD Precautionary Principle*** applies (see the ESD Box p16 NSW Coastal policy 1997 and part B Implementation)

As with all ICOLL's and small estuaries it is an important breeding and nursery area for many fish species (commercial and recreational). It been known for many years as a good habitat for king prawns.

It is listed as a Coastal Lake under SEPP71 which helps to determine sensitive coastal locations and listing as a coastal lake also determines how effluent and stormwater are to be managed within its catchment



Figure 6-4 Possible SEPP-14 Expansion Area at Hearn's Lake

We should learn from mistakes made in places like Southern California where salt marshes are at risk of extinction. Wetlands are able to adapt to sea level rise by moving inland, a process called transgression, but in Southern California they've recently found wetlands will never be restored to their historic extent, in part because of the cost of moving development inland from urbanised areas at the water's edge.

Biodiversity assessments are often required under legislation where a development has impacted on, will impact on or is likely to impact on, a species, a population of a species, or an ecological community.

When the objects of Environmental Planning and Assessment Act 1979 are:

- to conserve biological diversity of fish and marine vegetation and promote ecologically sustainable development and activities
- to prevent the extinction and promote the recovery of threatened species, populations and ecological communities of fish and marine vegetation
- to protect the critical habitat of those threatened species, populations and ecological communities that are endangered
- to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities of fish and marine vegetation
- to ensure that the impact of any action affecting threatened species, populations and ecological communities of fish and marine vegetation is properly assessed

- to encourage the conservation of threatened species, populations and ecological communities of fish and marine vegetation by the adoption of measures involving co-operative management.

It's hard to imagine any approval for anything can be considered without addressing them!

Biodiversity:

The Hearn's Lake/Sandy Beach area is known to contain habitat for a large number of threatened species included on State (*NSW TSC Act, 1995*) and Federal (*EPBC Act, 1999*) lists. The area supports known habitat for a number of aquatic and marine species

A fauna survey of Hearn's Lake conducted by Conacher Travers found five species listed on the Threatened Species Conservation Act 1995; the Wallum Froglet, Black-necked stork, Osprey, Greater Broad-nosed Bat and the Eastern Freetail-bat and the Glossy Black – cockatoo.

The majority of Stages 6 & 5 along with parts of stages 4 and 3 contain and support the Endangered Ecological Community of Swamp Sclerophyll Forest containing Broad-leaved Paperbark, Swamp Mahogany and Swamp Oak. This Swamp Sclerophyll Forest is known to be an important koala and bird habitat and must be allowed to regenerate by protecting from cattle, slashing and development.

The Sandy Beach and Hearn's Lake areas are known to be habitat for a wide range of migratory species protected under Federal legislation (*EPBC Act, 1999*) and international treaties. In addition, areas of coastal flat terrain vegetation are renowned as key over-wintering areas for nectar dependant species.

The marine environment around Sandy Beach and Hearn's Lake contains some of the finest near-shore and estuarine habitats within the Solitary Islands Marine Park, notably the near shore reef at Flat Top. The protection of areas of significant terrestrial native vegetation (particularly coastal floodplain vegetation communities) together with integrated water cycle management will ensure that sensitive marine and estuarine habitats are adequately buffered.

Land Dedication, Condition C13:

Neither the National Parks & Wildlife Service nor the Coffs Coast Regional Park Trust Board have not been involved in any discussions with the proponent regarding the proposed 20.58ha addition to the Regional Park detailed in the proposal. Yet again the proponent has chosen to not engage with the Trust Board in regards conditions C11 and C13 in fact

Condition C13 – ensure that the proponent liaise effectively with the LMPA (or the Coffs Coast Regional Park) to secure agreement to required minimum land dedication and proposals for the establishment and funding of boundary fences and trails, fire, pest weed and management plans.

- a. Under Part C – Further Environmental Assessment Requirements –

C13 ***Prior to any construction, or as otherwise determined by the Director-General, the proponent must provide evidence of an agreement for the dedication by the proponent to LMPA of approximately 6ha of land as an addition to the Coffs Coast Regional Park, as committed to by letter dated 27 October 2010 . . .***

Such an agreement must outline the Proponent's commitment to establish boundary fences and trails satisfactory to the needs of LPMA prior to the land being added to

the Regional Park. The proponent must ensure suitable funding for the amendment of existing reserve-specific fire, pest weed management plans.....”.

- b. There is no mention/suggestion of any agreement with LMPA (or the Regional Park) in satisfaction of C13 currently let alone prior to the issuing of CDC's in March 2017.
- c. There is no explanation or consideration at all from the Minister's delegate about satisfaction or otherwise of this condition prior to granting the approval on 21 April 2017 or at all.
- d. There seems to be no explanation from NSW Dept. of Planning about the issuing of CDC's without satisfaction or consideration of C13 condition.

I note the proponent is now requesting the deletion of both conditions C11 & C13 to secure agreement to required minimum land dedication and proposals for establishment and funding of boundary fences and trails, fire, pest weed and funded management plans.

Traditional Custodians:

The Hearnese Lake area remains of significant importance local in aboriginal lore to certain community members. They recognise Hearnese Lake as a 'creation site'. References abound identifying the Hearnese Lake area as a sacred Men's place (circumcision site). Reference can be found to a men's stone found there in the Australian Museum and in writings by Harman.

The Bora Ground to the west at the headwaters of the catchment area, has recorded the plentiful supplies of crystal and stone, and the ancient marking stone was again referenced in 'Woolgoolga' by Neil Yeates.

It seems that yet again, Aboriginal lore and traditional local knowledge has not been respected or observed in respect to Hearnese Lake and this special men's site faces annihilation should this development go ahead.

The Environmental Assessment Report provided for **Mod 7** talks about the development and implementation of archaeological sub-surface investigation but provides no evidence of a recommended and proposed sub-surface investigation for the staged development. There seems to be little respect and acknowledgement of the long association the Traditional Owners have had with this place for over 40,000 years.

Coastal Hazards:

Mapping prepared by BMT WBM in 2011 for the **Coffs Harbour Coastal Processes and Hazard Definition Study** indicates that Stage 1 and Stage 2 of the proposed development will be significantly affected by coastal inundation and coastal erosion/shoreline recession by 2100. It would be irresponsible at best, given the facts available to approve any development in this zone. Kingscliff Beach, Belongil Point, Wooli, Lake Cathie, Old Bar, Stockton Beach and Collaroy come to mind as living examples of the disregard shown for reality if in even for a moment you consider such a development in such a location.

The proposed Stage 1 (East) & Stage 2 development would have detrimental impacts on the Coffs Coast Regional Park. The Sapphire Beach development (figure 14 in the EIS) which wouldn't be approved in Coffs Harbour today because of the **Coffs Harbour Coastal Processes and Hazard Definition Study**, confirms these impacts where occupants of residences have created private access points through the dunes east of their properties within the Coffs Coast Regional Park to obtain private beach accesses. Modification 7 lacks any detail regarding formalised beach access.

Unfortunately, property owners adjoining National Parks often create their own access, again causing issues for the public land managers, if only to go back time and time again to close the illegal access which had been reopened.

There is no mention in this plan for any provision for designated beach access through the Coffs Coast Regional Park.

The Statement of Environmental Effects (SoEE) goes as far as to say additional beach access is not required, and the existing beach environment will not be impacted by the proposal. As was the case in regards flooding of existing homes in Pine Crescent, Maple Road and Ti-Tree Road, the proponent shows no interest in doing the right thing by Coffs Harbour.

History shows in the Coffs Harbour LGA, in regards beach access, an assessment of public desire lines needs to be undertaken, otherwise we'll have adjoining residents hacking their own way through the dunes, fragmenting the sensitive vegetation and destabilising the dunal system.

Maintaining a healthy vegetation cover on the narrow coastal dune is critical to managing the long term coastal recession of Hearn's Lake Beach. The proposal to clear vegetation to the boundary of the CCRP will create an adverse 'edge effect', which could include invasive noxious weeds, neighbour encroachments and exposure of the native vegetation cover.

Any detrimental effect to this important vegetation barrier in the future could see Hearn's Lake Beach reach the development itself by 2100, due to sea level rise, beach erosion and beach recession. I'll repeat, Kingscliff Beach, Belongil Point, Woolli, Lake Cathie, Old Bar Stockton Beach and Collaroy are living testament to the social upheaval major storms can bring to such communities. We must not knowingly put more people at risk

Having regard to the comments from ***Dixon C in Pridel Investments Pty Ltd v. CHCC (2017) NSWLEC 1042*** – which was consideration of a CHCC rejection of a development application for a 39 lot subdivision at nearby Emerald Beach which abutted an already established residential environment, such development requiring extensive land fill – in upholding the CHCC position, he made reference to the development “...not meeting the principles of ecologically sustainability (ESD) within coastal policy.. ***That the purpose of ESD is to cater for uncertainty....that ESD requires more when there is a risk of serious harm or damage to the environment, life and property....***”

Summary:

The Hearn's Lake area contains a remarkable diversity of terrestrial and aquatic ecosystems, a significance recognized by the inclusion of both estuarine and marine waters within the Solitary Islands Marine Park.

Terrestrial habitats within coastal localities in the Coffs Harbour Local Government Area are amongst the most diverse in NSW and Australia (Coffs Harbour City Council Biodiversity Action Strategy, 2002) being included within the McPherson-Macleay Biogeographic Overlap Zone – an area where northern and southern currents intermingle.

The exceptional value of coastal habitats is widely recognized by Local, State and Federal Authorities.

Furthermore, the retention of naturally vegetated areas in the coastal zone for the purposes of conservation is seen as the single most beneficial management action in maintaining coastal biodiversity (*NSW Government*).

That Hearn's Lake has retained such an important role in the area's natural systems is testament to its resilience. To continue to abuse it by inappropriate human activity would be unjust.

To rehabilitate it as recommended in the **DCP** and **Hearn's Lake Estuary Management Study and Plan** with appropriate environmental zoning would see the area become an even more important feature of our rapidly disappearing natural coastal landscape

Outstanding Issues:

Notwithstanding numerous recent correspondences to NSW Dept. of Planning & Environment, nothing has been forthcoming to explain the Minister's delegate's **failure to adhere, consider or address the numerous serious issues raised including** the **"best use of site"** condition in the original consent approval in relation to the extension to the lapse date or since.

Notwithstanding the developers' failure to address the **"best use of site"** condition, an extension was approved 08-05-15 by a delegate from the Minister's office. (refer to Mod 3 signed determination NSW Planning website).

The decision from the Minister's office to extend the lapse date **did not address, or comment at all** on the **"best use of site"** condition and grounds necessary to be considered in any extension and/or the developer's failure to address this in its application and/or the reasons why the Minister's delegate considered this specific condition could be overlooked.

The decision from the Minister's office went further to actually remove reference to the "best use of site" condition in granting the extension. The replacement A6 condition as per the Minister's delegate states:-

A6 Limits of Approval

The Concept Plan approval shall lapse seven (7) years after the date the approval is endorsed by the Minister, unless the works the subject of any related development consent within the Concept Plan area are physically commenced on or before that lapse date.

There has also not been any explanation or otherwise that might shed some light into the information provided to the person or enquiries made by the person issuing the CDC (Brett Acheson) because of complications relating to the Class 1 or 2 Acid Sulphate Soils present within the site and specifically within the development footprint that render a CDC non-complying, clearly the action was in breach of clause 1:19c;

Clause 1:19c: land identified on an Acid Sulphate Soils Map as being Class 1 or 2, as being non-complying.

Stage 5 and part of Stage 4 of Sandy Beach Nth development, overlay Class 2 Acid Sulphate Soils.

Mod 4 – lodged 13 February 2017 letter from Dentons lawyers –

In supporting this modification application on behalf of the proponent it is suggested that "our client intends to commence development as soon as possible" and then on 23 November 2017 the proponent lodges a DA for a total of 169 residential lots. Modification 7 is for substantially more than this and substantially more than the number approved in the 20-12-2010 concept approval. In its assessment report in approving mod 4, NSW Dept. of Planning states – "the modification involves minor amendment and does not alter the intent of the approval".

Mod 5 – lodged 11 May 2017 - ref Page 3 & Schedule 4 report ADW Johnson

In its report supporting the mod 5 application the proponent acknowledges accepts and accedes to the non-approval of stage 6, stage 2 & part of stage 1 (condition B1) and also the removal of the direct access to pacific highway in north west corner (condition B4) and also acoustic barriers and roadways not to encroach on 20 metre buffer to highway (Condition B2).

Then in the summary of the same report at page 6 (after the dot points) the proponent adds in support of the modification proposal that "...it will not increase the development footprint... the impact on the conservation area is minimised..." and further adds that there will not be any significant environmental impact.

In **Mod 6** -now withdrawn- the proponent sought to amend flood levels and delete the requirements for the transfer of land for the Coffs Coast Regional Park and clarify offset requirements for stage 5 and reinstate development of those stages not approved in the Concept Plan Approval (stage 6, stage 2(entirety) and part of stage 1). Mod 7 seeks to do much of the same.

The timing of the modification seems to support it being a lame attempt to throw a lifeline to the original concept plan submitted prior to 2010 which was not approved in its entirety but only given concept approval in an amended scale.

The Concept Approval was granted under legislation (Part 3A – EP & A Act) which was subsequently repealed. Until recently that legislation could still be relied upon to process Modification requests for land having historical Part3A Concept Plan Approval.

In **November 2017** the EP & A Amendment Act 2017 passed. It **commenced 1 March 2018**. Under the amendment Act the process for Part 3A modification applications will follow under the current legislation rather than being able to rely upon the more flexible former Part 3A. One of the major considerations is that the test for future modifications under Part 4 will apply to the project or concept plan when it transitions (ie currently – from 1 March 2018) and not at the time it was originally approved (ie 20-12-2010).

- **28 February** was the **cut-off** date for lodgement of **any final requests to modify** under the old Part 3A process. **Mod 7 was lodged 27 February 2018.**

Mod 7 seeks to reinstate some stages of development that were specifically declined by the Minister – ie stage 6, a reduced form of stage 2, and part of stage 1.

When the original concept plan was submitted for approval it had 6 stages and 280 housing lots. Approval was only granted for part of this (up to 208 maximum). Schedule 2 A2 (a condition of the 20-12-2010 approval) states

A2 – To avoid any doubt, this Concept Plan approval does not approve any development within the areas described as Stage 6, Stage 2 & that part of Stage 1 east of extension of Ti-Tree road...

Mod 7 seeks to alter substantially the original concept approval in that: -

- That the effect of the modification seeks increase the development footprint is contrary to the view taken by the proponent in other modification requests.
- a significant number of extra residential lots proposed for development (272 residential lots); and
- some of those residential lots proposed for the **immediate Coastal Hazard Zone (ie Stage 2);**

- removal of conditions for domestic animals; and
- removal of conditions required for any development of Stage 5.
- It's difficult to understand how **Mod 7** is considered to be 'substantially the same' as the concept plan approval when it's gone well beyond that which was approved on environmental grounds back in 2010. Given that the modification application was lodged on the penultimate day for submission of modifications under legislation that is now repealed, consideration of the comments / reports (environmental or otherwise) in support of **Mod 7** ought to be read with this in mind.
- In its conclusion (item 7 page 25— statement by ADW Johnson) the developer recommends as reasonable a reconsideration with a view to approval of stages 6, parts of stage 2 and stage 1 on grounds that present ecological constraints are not as significant as previously thought (ie 2010) and impacts of development are mitigated by off-site vegetation offsets.

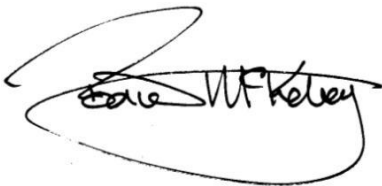
The suggestion with respect to mitigations by off-site vegetation offsets appears to be in ignorance of the conditions in the original concept approval (C11), and finally:

CHCC Deferred Lands LEP amendment No 8 flags a rezoning of much of the proposed development site to E2 - (Environmental Conservation) which reflects the highly constrained and ecologically valuable nature of this location. CHCC identified development constraints for this site to 35 allotments.

- **The Gateway approval time frame for completing the LEP of 31 January 2018 has passed.** CHCC has not been provided with an explanation as to why a decision is outstanding or when it will be forthcoming.
- The developer relies on the current zoning 2E Residential Tourist Zone, 2A Low Density Residential and 7A Environmental Protection and the passing of the Gateway determination date 31 January 2018 for the draft LEP 2015 in support of **Mod 7**.
- It is noteworthy that the 20/12/2010 concept approval rejecting Stages 6, 2 & part of stage 1 and imposing various conditions and restrictions to the approved stages was considered on the basis of the same zoning outlined at the second dot point.

I can't help but feel the Dept. of Planning & Environment approaches this development without due regard to what's happening in the real world. Kingscliff Beach, Belongil Point, Woolli, Lake Cathie, Old Bar, Stockton Beach and Collaroy, real community concerns, Council's adopted planning instrument's, the Dept's. own expert advice, the clarity of conditions set out in the Concept Plan Approval, drafted by the Dept. when the Concept Plan Approval was signed off, are quite simply being ignored, why?

Thank you for the opportunity to comment



Rod W McKelvey

Declaration: Member of the Australian Institute of Company Directors, Chair of ETC Ltd., Chair of the Coffs Coast Regional Park Trust Board, a member of Gondwana Rainforests of Australia CAC, a member of the Australian Coastal Society, a member of the Woolgoolga Surf Club's Rebuilding Committee Working Group. and a founding/active member of Arrawarra Coastcare,
I do not make political donations.