HASTINGS POINT COMMUNITY SUBMISSIONS

DA 15/0201, Lot 156, 40 Creek Street, Hastings Point
Proposed 20 Lot subdivision and associated works

O'Reilly Sever & Co Lawyers
8 Creek Street, Hastings Point, NSW 2489
Tel: 6676 4390
Email: john@oreilly.com.au

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INTRODUCTION

The proposed development application differs essentially from its predecessor of 2013 insofar as there is a new town planner and new engineer attempting to present essentially the same development in a different light but relying on outdated, inaccurate and deficient Flood assessments/modeling, groundwater investigations and flora and fauna surveys.

Most importantly, the Statement of Environmental Effects ("SEE") fails to address the major concerns raised by Tweed Shire Council (TSC) in respect of previous proposals, particularly in its report of 22 November 2013 in respect of DA13/0189 (TSC file ref: DA13/0189 Pt 4.)

The footprint is essentially the same, minimized slightly in the whole scheme of things - reducing the application from 22 lots to 20 lots.

It is submitted that the central filled footprint remains essentially the same and if TSC did not continue to label it a "massive" overdevelopment of the site, then surely it must still be a "major" overdevelopment of the site.

It is certainly not the small number of larger lots which the NSW Department of Planning ("DoP") suggested might be appropriate, if at all, or the single/same density residential allotments along Creek Street up to the current entrance as previously recommended by TSC as appropriate.

It is submitted that the ongoing assessments of the applicant's development proposals only serve to highlight the development constraints on Lot 156 including those relating to major ecological, hydrological, drainage, flood risk and amenity issues which can only be mitigated by reducing the development to that recommended by TSC or DoP and most relevantly the proposed planning amendments of Tweed DCP 2008 – B 23 and Tweed LEP that TSC recently forwarded to DoP for gateway determination – which we understand has been given subject to some minor amendments.

In essence, this development proposal is still inappropriate because of its failure to adequately address the following issues:

- Flooding, stormwater and drainage.
- Environment – marine and wetland ecology.
- Flora and Fauna
- Visual Impact & Amenity
- Social Impact & Amenity
- Roads & Access
- Geotechnical & Engineering
- Contamination & Remediation of Site

Before embarking on the assessment of the development proposed against these categories, it is important to initially address the history of the site and in particular, the illegal damage and infractions to legal rights and amenity caused by past and current owners. An understanding of this will give a proper and real appreciation of:

1. the current impacts experienced by the community and environment as a result of these activities and

2. the additional impacts that the community and environment will face should the proposed development or similar be approved.

1. HISTORY

As Tweed Shire Council ("TSC") states in its Council Report (20 July 2010 – p 126, Tab 15):

> *Tweed Shire Council was first asked to review an application on this site by the Department of Planning (DoP) in September 2006.*
>
> *On 20 October 2006 Council provided the Department of Planning with information to assist in the formation of the Director General Requirements. Part of this submission stated:*
>
> > *"By way of background you should be aware that this property has had a long history of unauthorised work, particularly the western part of Lot 156 with the construction of the existing artificial waterway as well as in more recent times clearing within the 7(a) Environmental Protection (Wetlands and Littoral Rainforest) parts of the property. These activities have generated a considerable number of submissions from the local community both to Council and the NSW Ombudsman. Given this history an important part of processing this application will be extensive consultation with the local community."*

Consistent with this advice, the following sets out the history of degradation to the subject land and estuarine tributaries caused by both the former and current owners which must be considered seriously for the reasons outlined in the introduction.

Prior to the purchase of this property by the current owner, Walter Elliot Holdings ("WE"), in 2001, the land was owned by Neville Wintour.

1.1 Wintour Illegal Activities

1.1.1 Fraudulent Survey

In 1981/82, Wintour commissioned a private surveyor to conduct a survey on Lot 156. This survey incorrectly recorded the mean high water mark (MHWM) – it adjusted the boundary of Lot 156 into land below the real MHWM.

In 1981/82, Wintour lodged this survey with a primary application to the Department of Lands for re-determination of his title boundaries. This application was approved in 1982 on registration of the plan of survey DP 620715. (See Tab 2, p 30)

This adjustment effectively extended Wintour's land rights into the crown estuary contrary to law (no natural recession as claimed had occurred). (See Tab 1, pp 3-20 evidence/assessment of a fraudulent grab of 7.5 hectares of crown land). This fraud is clear today as parts of the boundary – albeit part filled - are well below the current real MHWM (colour aerial photos and site inspections)

The approval of this fraudulent adjustment allowed Wintour to start his development plans on a low lying, highly vegetated and environmentally sensitive floodplain which had little or no development potential. This floodplain had served its naturally created purpose effectively - as the only gateway to drain and filter the flood and storm water from the western and northern catchments of the subject locality – now, less so.

1.1.2 Dredging and Clearing

Around the time of the boundary adjustment approval, Wintour commenced dredging without development consent. This included the illegal clearing of trees, significant mature mangroves

and wetland vegetation from previously owned crown land. He also proceeded to clear the middle portions of the block of mature trees and vegetation.

Wintour dredged the south eastern parts of the estuary to fill behind homes in Creek Street where sea grasses and low lying estuary/wetland vegetation lay closely adjacent to their rear boundaries. (See photo, Tab 2, p 1) This was a serious illegal infraction that adversely affected their property and amenity rights.

This is currently best evidenced behind the properties of 6 and part 8 Creek Street/adjacent to the sewerage pump station where it was only minimally filled and so still comprises part low lying estuarine wetland. Half of this land is owned by Council.

After dredging and clearing the south eastern side of Lot 156, Wintour then proceeded to dredge and clear the western side of the property. (See photos, Tab 2 pp 2, 3)

He dredged the western tributary and rare mangroves/wetland to fill the tributary that ran across Lot 156 immediately in front of the existing dwelling. He then filled to either side of this established tributary - east to Christies Creek and west toward Creek Street. The extent/height of the fill can be currently viewed at various parts of Christies Creek banks east of the current house – where the filled land drops between 1-2 m (See photos, South Central Lot 156, pp 31-41 Tab 2)

In doing so, Wintour effectively filled a large portion of Lot 156 which comprised the flood plain and tributaries which drained the western and northern catchments which surround the northern side of Hastings Point. (See Photos - South Central Lot 156 & North West Lot 156, p 31, Tab 2) Neither the claimed current "lake" nor the tributaries that run north from it – even that which branches across to North Star on the back north western part of lot 156 - are "man-made drains" or "artificial waterways" as labeled by the developers, their consultants and TSC. They are the former established northern tributaries of Christies Creek which are clearly evidenced in the pre-1981 photos. (See Tab 1, pp 10-14)

They were the long established natural tributaries carrying water from the Northern and Western Catchments. They are tidal and contain significant marine life including fish breeding habitat. These areas are mapped as EECs and as Key Fish Habitats (TSC Key Fish Habitat Mapping, 2009 - See Australian Wetlands ("AWC") submissions at p 7, Tab 10).

After this filling, Wintour soon discovered that water draining from the western and northern catchments had nowhere to go. He had filled the floodplain and tributaries that carried the water to Cudgera Creek and the ocean.

Locals claim that the water then would back up across Lot 156 as it still does today. (See photos 2009; Tab 6, pp 1-4) He relieved it somewhat by removing a large portion of land between the "lake" and Christies Creek at the lake's south western end (again illegally)(Mark fluorescent "A", p 31, Tab 2)

Unfortunately, water passing through the lake now converges at the sharp turn in Christies Creek from its higher south western catchment. This causes considerable backup in rain events and while serves some purpose is ineffective in heavy conditions. (See photos as referred in above paragraph)

Therefore, Wintour while filling one tributary created another. In this sense, the "lake" area while marked as Wintour's land is actually a Christies Creek tributary which operates tidally and lies below the mean high water mark. By definition, it is crown land and needs to be reclaimed. If land rights are to be measured on their current status and the Government must ignore the illegal history of this theft, then it must be consistent. That is; if the tributaries that Wintour filled are property of Wintour/now WE, then it follows that the land he extracted to link Christies Creek again to the "Lake" and tributaries must all remain crown land. At the very least, the boundary

needs to be adjusted to reflect the current mean high water mark running through the tributaries from Christies Creek.

Wintour's excavation and clearing damage is best evidenced by the photos which depict the fraudulent survey and land grab, particularly comparing photos pre July1981 with those to 1989 (See tab 1 at pp 10-14). The difference is stark. This confirms the above claims.

Further, the applicant's Heritage Report (Appendix L to the SEE) compiled by Erick Heritage Consultants (see pages 16-19;Tab 1, pp 38-41) - with the aid of historical photographs also confirms the above claims. It states:

1. *The ephemeral creek system in the north west of the property evidenced in the 1962 photograph has been filled and now only consists of a series of small drainage lines.*
2. *A large pond from which sand has been extracted to fill the Subject Lands can be seen on the western edge.*
3. *The 1993 aerial shows that most if not all the development area within the Subject Lands has been impacted by extensive clearing (Figure 13).*
4. *Artificial mounds of sand have been placed between the adjoining residences (Lots 39-45) in Creek Street and the tidal flats of Cudgera Creek and also on the southern boundary of the proposed resort development on the margins of the tidal mud flats.*
5. *Prior to the infilling that has taken place the Subject Lands, or a significant proportion of it, was inundated during high tides and periodic flood events.*
6. *It appears doubtful if any of the land proposed for residential/tourist development is original surface."*

The "before and after" photos produced by Erick Heritage are compelling.

Tweed Shire Council ("TSC") and the Department of Lands have an obligation to address the MHWM issue as a long outstanding issue. TSC confirms this need. (See TSC letter to Department of Planning "DoP" dated 2 July 2010, p 2, Tab 14).

Planit in previous application inaccurately played down these facts by stating:

> *At some period in the 1980's, a portion of the site was cleared of vegetation and dredged for the use of local sand.*

1.1.3 Community Complaints/Impact Damage/Local Hazard & Amenity

The community has continually reported the issues and impacts to government authorities. Yet no action has been taken to address the impacts. (See photos of damage, sample complaints and responses; Tab 2)

An example of a local community complaint in 1983 (Tab 2, p 5):

> *November 30, 1983*
>
> *Dear Sir*
>
> *I wish to complain strongly about the lack of drainage of storm water from my property at 28 Creek Street, Hastings Point.*
>
> *There was never any trouble with the drainage during weather similar to that which are have now, until the developer Mr Wintour was permitted to interfere with the natural drainage of the land.*

He has in certain places dug up the area that were once tributaries of Christies Creek. He is now filling in other areas of his land and the barge has pumped thousands of metres of sand into it.

As I said, this has stopped the natural drainage, storm water from the drain is flowing onto my block of land and my house is sitting in a moat. …… etc

And another example in 1987 (Tab 2, p 28):

Drainage: Heavy rains from the residential areas of Creek St. flowed into the mangroves and Christies Creek prior to the filling of lot 156. Now the water in and around the homes lies for days. The situation would become worse if further filling were allowed."

(More examples and government inaction – See Tab 2 various).

One of the Applicant's former development applications before DoP confirmed the results of the *Tweed Byron Coastal Creeks Study* that the area is now subject of flood inundation up to 1.0 m.

These results and community anecdotal evidence of the changes to drainage/flooding from the filling suggests that the illegal dredging and fill has contributed significantly to the current projections and the conditions experienced in the 2005 flood. (See photos of flood impact - 2005, Tab 5) and regular heavy rain events – 2009, Tab 6.

It is logical and reasonable to conclude that a lower lying floodplain and larger tributary system would drain higher adjoining land and its surrounding catchment better – as it previously did. Conversely, raising that floodplain and reducing that tributary system has, and will have, the opposite effect.

Proceeding with this development whilst admitting the hazard on the premise that it will not be made significantly worse (albeit inaccurate claim – based on flawed modeling) is totally irresponsible. The proponent fails to provide any localised drainage or flood modelling as required.

This approach is completely contrary to the recommendations in the *NSW Flood Prone Land Policy,* the recent DoP *Draft Sea Level Rise Planning Guidelines, NSW Coastal Policy* and climate change policies.

1.1.4 Protracted/Minimal Government Action

Although TSC took action in relation to this illegal dredging, it was significantly protracted. This is likely explained by the fact that no department would act on the MHWM adjustment error. So, rather than prosecute Wintour on the basis of conducting illegal activity on crown land, TSC was restricted to suing Wintour for acting without development consent.

TSC was finally successful in its legal action. Disappointingly, when given the opportunity to provide the Court with submissions to seek restoration of the land to address the many complaints regarding the impact this activity had on amenity, drainage, flooding and safety of residents, TSC did nothing.

The community expects that TSC will continue with the more responsible approach it has shown in recent times in dealing with Hastings Point and this particular precinct. TSC must apply the objectives and strategies of DCP-B23 and its proposed planning amendments to ensure real restoration and protection of this land given the damage TSC allowed to occur in the past due to no fault of existing residents – in fact contrary to their many requests.

This submission puts TSC on notice that there is a clear duty of care owed toward property owners in this locality – particularly given that the current hazard exposure the community faces has stemmed from extensive and repeated illegal activity originating from the approval of a fraudulent boundary adjustment. Continuing government inaction is neither responsible nor a reasonable exercise of due care.

1.2 WE Illegal Activities

1.2.1 WE illegal clearing/earthmoving/unlawful use of site

WE purchased Lot 156 from Wintour in 2001 for slightly in excess of $1million.

It is expected this price for such a large parcel of coastal real estate reflected its unlawful history and environmental and flooding constraints.

Following purchase, WE proceeded to fence the entire property with barbwire, including the waterways, and proceeded to conduct clearing activities. (See Tab 3 – sample complaints, responses, and photos)

In October 2001, WE leashed 30 to 40 goats and 6 horses loose onto Lot 156 – which were prohibited uses for the lots' various zones. These animals ate and roamed in protected vegetation including endangered ecological communities (EECs), waterways, saltmarsh and other wetlands. (See Tab 3, pp 4-6 for photos and following pages for complaints)

Their purpose one could fairly assume was to destroy land with strong conservation value and keep illegally degraded land in a degraded state.

Unfortunately, Council's action to remove the animals was again protracted.

During this time, *large swathes of mangroves were beginning to die in Cudgera/Christies Creek*. (See photos and complaints – Tab 3, p 35)

Locals report that WE proceeded to continue with Wintour's annual slashing/clearing programme at a considerably increased rate. Every week, a new area was targeted in both 2E and 7A zones which consisted of "*ring barking trees, slashing smaller trees and slashing into areas further into the creeks and waterways".*

A tractor was purchased for the caretaker who with hired help assisted in clearing these slashed areas around the waterways (See photos, Tab 3, pp 10, 11). *Mangroves were consistently disappearing around the waterways. Evidence was continually taken away by trailers* (as was done recently – see below). Complaints were continually made and largely ignored until persistence resulted in a rezoning of part of the 2E zoned land (albeit in error in part – evidence available in relation to this issue on request).

However, this was not before WE undertook its largest illegal clearing activity. This occurred on Australia day weekend January 2002, just prior to an environmental assessment for the purpose of considering rezoning Lot 156. WE retained slashers, dozers and mulchers to clear in 3 major areas on Lot 156:

1. the north western portion of the 2E zoned land. Clearing this land required development consent since it was considered by previous environmental studies as ecologically significant EECs. (See photos; Tab 3, pp 7, 7A)
2. the now 7A protected zone behind Creek Street houses, including earth moving activities in this area to extend the width of this area. (See photos, Tab 3, pp 9, 9A) - location of previously proposed emergency access road.

3. the protected 7A wetland vegetation on the western side of the “lake”.

In this total clearing activity, all trees, roots, vegetation and all undergrowth were removed by truck as evidenced by the photos.

Unfortunately, slashing and clearing continues today.

During the exhibition period of the proposal before DoP (including World Conservation Day), WE had a team of approximately 10 workers arrive with whippersnappers and chainsaws. They worked around the property, over boundary fences and in 7A zones. They cut major branches, smaller trees and the understorey of protected 7A zoned land. They sprayed poison on Saltmarsh EEC in the 7A zone.(See photos, Tab 3, pp 43-45).

WE was fined the maximum $3,000.

It is a well known developer practice to clear – particularly before environmental assessment as WE did in 2002 and then in 2011 pending a DoP visit.

1.2.2 Minimal Government Intervention

Complaints to various local and state authorities, particularly TSC, were ignored on all occasions (except the recent one) until the NSW Ombudsman decided to take action in respect of the major clearance in 2002. (See letters, Tab 3, pp 1, 2, 12-42)

Only following this intervention did TSC in 2003 finally take legal action against WE. However, this was restricted to the damage in the 7A zone on the western side of the “lake”. TSC and WE agreed to court filed consent orders in May 2003 without community consultation.

No remediation was sought or required of the environmentally significant vegetation incorporating EECs which were cleared and removed from the North West portion of the 2E zoned land or behind Creek Street homes where the previous emergency access road was proposed.

Unfortunately, the Council & WE agreed on a poor fencing option to protect 7A zoned land and EECs. This has left considerable portions of 7A land subject of continued degradation by WE (See horses roaming in front of fence - Tab 3, pp 4-6; mowers – Tab 3, pp 43-46, whipper snippers etc).

WE continues to mow down 7A land, including EECs so preventing any natural re-growth – as confirmed by TSC in its 2 July 2010 Council Report – p 11, Tab 14).

1.2.3 Unlawful/Inequitable Practices

The proponent, Darryl Andersons Consulting and Birchills Engineering Consultant in its Stormwater and Ecological Desktop Reports have described this continually cleared land as “degraded land” or “the cleared area” – incidentally degraded by WE and Wintour. Birchills states in its desktop ecological review (our additions in brackets):

The site was cleared of some mangrove vegetation in the 1980s and further clearing of existing vegetation occurred in 2001 (illegally by the proponent). Historically, the site has been grazed by horse and goats (illegally by the proponent). The site is slashed regularly to maintain the cleared areas (also in protected areas illegally by the proponent). … Dredge spoil from the large tidal lagoon has been placed on the site (which illegally filled previous tributaries which drained and reduce localised flooding). The tidal lagoon is located on the south-west side of the site and is connected to Christies Creek.

The proponent has previously proposed (as he does to some extent again) to rejuvenate land he degraded as if he is nobly improving the environment when he is just repairing that which he previously destroyed – albeit minimally.
When such remediation is used as an offset, one can see why developers are so keen to ensure that land is illegally cleared and regularly degraded on a proposed development site and around it.

Community members have continually complained to TSC about these activities. They have been addressed to a degree but cannot be properly monitored or addressed because the zoning is yet to be rectified, so little is done to prevent continued slashing of what should be remediated/protected land.

To allow a developer to continue mowing down environmentally sensitive land or protected EECs which were illegally cleared and refused natural regeneration under the guise of maintenance needs addressing. TSC's proposed planning amendments, including amendment of environmentally protected E zones is required and should be recognized in consideration of this proposal. TSC should continue to pursue this E zoning even after this DA is assessed given E Zones are still under consideration by DoP in the Far North Coast.

Developer slashing does not protect the environment consistent with the objectives of DCP-B23.

This proposals show no real rejuvenation of site – cleared grass land is proposed within the buffer to act as an asset protection zone etc. contrary to DCP-B23 and contrary to the purpose of a buffer.

Allowing the developer to not remediate land he illegally cleared also fails in equity because it actually rewards the developer for its illegal activity. This applies to the whole of Lot 156 given Wintour's activities outlined above. Claiming offsets in these circumstances is not providing any real compensation. (See TSC Report dated 20 July 2010 p 147, Tab 15)

It is a concept often referred to by legal practitioners as "going to Court with dirty hands expecting a favour." Equity prevents law breakers from profiting from their breaches.

This continued practice by owners of Lot 156 offends basic legal and ethical principles and should not be accepted.

2. FLOODING/STORMWATER/DRAINAGE

Having established the historical context of the site, it sets the platform for considering the effects of flooding, stormwater and drainage in respect of the current proposal.

There are several very basic points which should be recognized and respected given the history of this site:

1. Hastings Point and its surrounding areas have a significant history of flooding in severe and heavy rain events (see 5.1 of Director General's Environmental Assessment Report - "DGEAR" in response to the Proponent's previous Preferred Project Report - Tab 11).

2. Lot 156 was illegally filled which reduced the capacity of water to drain through and past the Creek Street precinct making flooding and drainage in the area worse. TSC had an opportunity to seek a Court order to have the owner remediate the site and did nothing. It has an obligation through these failures to improve the flooding/drainage conditions in the area and protect the community.

3. Accordingly, it should be a condition of any consent/assessment that drainage/flooding conditions for the community should be improved not worsened as a result of any development on Lot 156. The community is already subject to unacceptable inundation levels of up to 1m.

4. SES is referred in the DGEAR (pp 17, 23, Tab 11) as stating: "*Hastings Point has a history of flooding and is at risk from the catchment flooding as well coastal inundation and storm surge. Elevating the site on fill would not sufficiently alleviate the flood risk in light of the potential and historical consequences of such inundation events."* "*The SES identified Hastings Point as having been isolated for a number of days during previous flooding events and that a risk assessment should consider the full range of flooding events and not solely focus on the 1 in 100 year event. The SES further considers that developments that rely on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms to evacuation. Under the PMF scenario individual lots would be isolated, and roadways flooded*".

5. On the basis of the above, the proposed development would overload emergency services that are already stretched given that most of the existing community has no emergency access above any flood level and is isolated in flood times – including hundreds of elderly residents in North Star. This risk only rises as the population increases during holiday times when the likelihood of flooding is greater.

6. Filling blocks in the Creek Street precinct has already been shown to have adverse impacts on neighbours (4 and 6 Creek Street). Such fill impedes and adversely redirects water flows despite approval by TSC that it would not.

7. Filling Lot 156 with tens of thousands of cubic meters of imported fill will have adverse impacts on adjoining properties (as with 4 and 6 Creek Street) which will likely result is some properties being elevated on fill when improved – but to the significant detriment of a multitude of existing dwellings and land that cannot be elevated. The adverse cumulative impact of filling will only get worse for those that cannot fill and will have an unacceptable cumulative impact on the community, locality and catchment. Filling Lot 156 certainly sets the precedent.

8. The proposal still incorporates extensive filling which DoP discouraged and TSC's proposed planning amendments specifically eliminate because of the flooding, drainage, ecological and amenity constraints of the land.

9. TSC should adopt its proposed planning amendments.

The issues of flooding, stormwater and drainage have been considered independently by MWA Environmental ("MWA") and Australian Wetlands ("AWC").

The community rely on and refer to many of the recommendations/conclusions made by TSC in its previous Report which rejected the proponent's 2013 DA. (See 21 November 2013 TSC Report at Tab 17).

It is submitted that many of the recommendations adopted by Council are still applicable given that the fill is not dissimilar and the proponent has failed to show that it will not adversely impact localised flooding and drainage and that its development will not have an unacceptable cumulative impact on the hydrology and ecology of the area. Some of the recommendations relevant and equally applicable include:

> *The development as proposed does not satisfy Clause 34 of the Tweed Local Environmental Plan 2000 in regards to flooding. Adequate information has not been*

received to ensure that the proposed fill will not have an unreasonable impact on the adjoining properties in the locality.

The development has not clearly articulated the impact of extensive site filling and subsequent modification to overland flow and groundwater conditions on sensitive and/or dependent floodplain communities of significant conservation value.

The development does not satisfy the provisions of DCP Section A5 - Subdivision Manual having regard to environmental constraints, stormwater runoff, drainage, waterways, flooding, buffers, lot layout, landscape character and natural landform.

It is submitted that DGEAR is still applicable given that DoP extensively deals with the flood risks to the development site, adjacent residents and cumulatively to the Hastings Point locality (See DGEAR at pp 20-27, Tab 11). These issues and risks have not changed.

MWA's current and past submissions to the proponent's preferred project report and original part 3A application are at Tab 7.

AWC's current and past submission are at Tab 10.

TSC's past submission and report in respect of the proponent's previous preferred project report are at Tabs 8 and 9 respectively and submissions and report in respect of the proponent's original part 3A application at Tabs 14 and 15 respectively.

TSC's report in respect of the proponents 2013 DA is at Tab 17.

2.1 – MWA Assessment

MWA has significant experience with Lot 156 having inspected and assessed the site and surrounding area and prepared numerous submissions for the community in respect of previous development proposals of the applicant on this site – not dissimilar to the current development application.

Current DA

We refer to MWA's comments at Tab 7 in respect of the subject 2015 DA which are comprehensive and cover the history of assessment of this site.

MWA's comments are summarised as follows:

1. The proposed form of development of Lot 156 in DA 15/0201, while reduced in scale from the 22 lot subdivision submitted with development application DA 13/1089, continues to locate filling, houses and roads across an identified flood flow path, potentially impeding local flood flows from the creek system's northern catchments and increasing peak flood levels in adjacent developed areas.

2. These local flooding and drainage issues associated with development application DA 13/1089 were fully identified in two previous reports by MWA Environmental to O'Reilly Sever & Co and addressed in Council's recommendations on that development application on 21 November 2013 as follows:

    The development as proposed does not satisfy Clause 34 of the Tweed Local Environmental Plan 2000 in regards to flooding. Adequate information has not

been received to ensure that the proposed fill will not have an unacceptable cumulative impact on the adjoining properties in the locality.

3. Council subsequently adopted these recommendations, including in its reasons for rejection …..*the scale and location of the development, together with the proposed flood mitigation measures would result in an unacceptable risk to life, health and property within this flood prone community.*

4. Council officers further advised that an amended application complying with Tweed DCP – B23 should be considered and supported by additional local catchment flood modelling to demonstrate that mitigation of potential impacts have been included in a revised earthworks and drainage design, advising that *….issues of impact need to be addressed by additional investigation of the local flood event using a more-detailed flood model*. Modelling of the local flood event rather than the regional flood event using a more-detailed model has not been included in the *Flood Impact Assessment* dated May 2011 submitted with DA 15/0201.

5. The above earlier Council recommendations and reasons for rejection should continue to be applied by Council to its consideration of this development application and demonstrate that this application should be rejected on similar grounds, including that the assessment should be carried out using a major local flood event as input to a more-detailed model than that included with DA 15/0201.

6. The engineering plans for the proposed development still appear to not make adequate provision for conveying the overland flow of stormwater from urban development to the north of Creek Street past the development and through to Christie Creek, increasing the existing stormwater drainage problems in adjacent developed areas and the plans submitted with DA 15/0201 should be rejected.

7. The proposal should be rejected as the flood impact assessment and the stormwater management plans make no reference to changes to the *Hastings Point Development Control Plan* and to the *Tweed Local Environmental Plan*, (**Reference 7**) which are likely to require future development of Lot 156 to incorporate 75 metre wide buffers to intertidal and wetland areas but which would allow minimal filling of allotments within the development area to be minimised by constructing stilt housing with floor levels above design flood level.

8. The scale of any future development on Lot 156 is likely to be limited by its potential impacts of its engineering design on local flood levels and flow patterns, as well as upon stormwater drainage from the north.

9. Future development applications should still be supported by a detailed local flooding assessment, together with demonstration that stormwater drainage from the north and northwest could be conveyed through the site without detriment to existing development along Creek Street.

Flood Modeling

Given that the Proponent continues to rely on former inappropriate and inaccurate flood modelling conducted by BMT WBM – prepared for previous DAs, we will repeat our comments in respect of same.

The community and hydrologist expert, MWA, do not accept that the flood modeling conducted by BMT WBM ("WBM") for the proponent's previous Part 3A application or for TSC in respect of the Tweed Byron Coastal Creeks Flood Study is accurate or appropriate for an assessment of the potential flooding impacts of the proposed development on the Creek Street Precinct of Hastings Point.

The inaccuracy of the inundation patterns cannot be disputed when comparing the photographic reality of the inundation in the June 2005 flood and other recent storm events to the inundation predicted on WBM's mapping. WBM's consultant admitted the inaccuracies at hearing before the Land & Environment Court Commissioner on site at 4-6 Creek Street in 2012.

With all due respect, one has to question the model if it fails to accurately predict flood behavior in events on which it is being relied to assess.

One also has to question how OPUS (consulting for the applicant in respect of its Part 3A application)(while omitting major components of the catchment) initially reported an adverse flood impact from its modeling while WBM subsequently stated that the post development flood impact would actually improve.

TSC stated that WBM claimed it was "*apparently due to proposed drainage and reshaping works adjacent to the creek and environmental areas, which allow for increased flows around the development compared to pre-development conditions*".

Such claim was completely unsubstantiated. There is no evidence or explanation to support this claim and it is difficult to comprehend or accept how this might occur when the development design (then and now) shows no works that would actually improve the drainage around the post-development site from the natural drainage that currently occurs through a completely unfilled site in its pre-development state.

MWA has reviewed WBM's report in respect of its claim that there will be no flood impact on the locality from the proposed development. (See at Tab 7) While we request MWA's review be assessed carefully, we briefly summarise its criticisms of WBM's report as follows:

1. The Addendum Report by WBM to Planit does not describe either the hydraulic or the hydrological modeling that was used to generate the results it describes.

2. While the scale of the modeling is probably appropriate for the flood impact assessment of the Lot 156 proposal, the calibration of the hydraulic model may not be. It is also likely that the hydraulic model might not be structured to accept the rainfall runoff from some other sub-catchments.

3. It is likely that the hydrological inputs to the hydraulic model are inappropriate for impact assessment in this location, as they do not reflect the real significance of the potential flood flow down Christies Creek in storms of a duration likely to be critical for the Creek Street area.

4. TSC's request to change the downstream boundary condition from a 20 year storm surge to a Mean High Water Springs level did not address these issues. The problem lies in the upstream boundary conditions, particularly those which give rise to maximum flow conditions down Christie's Creek and from the catchments to the

north of the site.

5. The WBM model does not make significant allowance for the northwards diversion of flow which was evident during the June 2005 flood event.

6. The WBM model fails to consider the rainfall distribution and intensities of the June 2005 Flood event which are most relevant when developing the hydrographs which generate flood flows past the site.

7. The hydrology used by WBM in assessing the Lot 156 development proposal should have been based on the rainfall distribution patterns, intensities and durations of a design storm having similar characteristics to those recorded in June 2005 rather than the one selected for testing Cudgera Creek as a whole.

8. The limitations of WBM's model for assessing impacts is evidenced by the fact that the whole of Creek Street and a substantial area of Lot 156 (in fact all) adjacent to Creek Street was inundated during the June 2005 flood event.

9. Photographs of the inundation in 2005 flood (in the caravan park, Creek Street and Lot 156) demonstrate that the hydrological modeling used in the WBM flood impact assessment does not adequately represent the flood flows down Christies Creek.

10. This inaccuracy may relate to the failure of the WBM hydrological modeling to recognize the potentially higher rainfalls in the catchments north and north-west of the caravan park.

11. It is probable that the WBM modeling used to assess the impacts of filling Lot 156 have not had regard to the importance of the "critical storm duration" of the Christies Creek catchment.

12. The June 2005 storm event demonstrates why a 6 hour duration storm should be considered when selecting rainfall intensities to be applied to the hydrology of Christies Creek to develop the appropriate "design storm" for developments along that creek rather than the 36 hr duration design storm selected for the whole of Cudgera Creek catchment as WBM has done.

13. 100yr ARI and June 2005 flood models are inappropriate for modeling the impact of Lot 156. Modeling of 6 hour duration storms with an appropriately structured model in the upstream sub-catchment is required to provide the correct answer.

From the above and the fact that WBM's modeling inaccurately predicts inundation in 2005 and other heavy rain events, WBM's model and conclusions cannot be reliably used or accepted.

They evidence that hydrological modeling based on models developed as part of a much wider scoped *Tweed Byron Coastal Creeks Flood Study* is clearly unacceptable for assessing the impacts of the proposed development on the Creek Street precinct. Just using the study's rather generic 36 hour storm duration hydrology rather than a 6 hour storm duration hydrology means that the more critical examination required to assess the impacts along the lower section of Christies Creek cannot be accurately conducted.

MWA concludes that it is likely that a more appropriate modeling would show greater impacts. These would likely be higher than the initial modeling carried out by OPUS.

MWA recommended that because of the inaccuracies and inappropriateness of the modeling used by WBM, approval of the engineering aspects of a development on this site should not

proceed until the issues it raises are properly addressed by revised modeling which provides an outcome where the development does not cause flooding to increase in Creek Street.

As noted by MWA in details in its current submission, TSC in its 21 November 2013 report (Tab 17) recommended and requested repeatedly that the proponent conduct thorough localised flooding and drainage assessments and modeling. It has failed to do so.

2.2 Tweed Shire Council Assessment

TSC has rejected previous Lot 156 proposals on the basis that the development proposed would alter the flooding and hydrology conditions on and around the site.

In particular, TSC has consistently concluded that the stormwater regime of the proponent has failed to show that it would not have an adverse impact on the surrounding environment. TSC has consistently expressed its concerns regarding the altered hydrology and impacts to groundwater dependent ecological communities on the site and adjacent to Cudgen Nature Reserve. These concerns have also been voiced by DoP (DGEAR)(Tab 11) and AWC (Tab 10).

These concerns were voiced again by TSC in it rejecting the proponent's 2013 DA.

In relation to the issue of flooding and altered hydrology resulting from proposed fill, TSC has stated:

(TSC Report, 21 November 2013, pp 26, 35 Tab 17):

> *Clause 34 Flooding*
>
> *The information submitted in regards to flooding is inadequate.*
>
> *An engineering impact assessment would be required which details the impacts of the proposed filling for a range of design events up to the 100 year ARI storm for the local contributing catchment, to demonstrate no significant adverse impact on local catchment flows from development to the north of the site (North Star Caravan Park and Creek Street residences) to Christies Creek to the south. This should include hydraulic modelling, based on contemporary ground level survey, and calibrated to known floods such as the June 2005 event.*
>
> *In addition the applicant has been asked to provide a response from consultants (BMT WBM) to the MWA Environmental report attached to the public submission by O'Reilly Sever & Co. which opposes the applicants flooding analysis. The criticism specifically relates to the calibration of the modelling used for regional flood impact assessment for the June 2005 flood event, and the selection of design storm intensity and duration used in the assessment.*
>
> *Clause 34 has not adequately been satisfied.*
>
> *e) Hydraulic Impacts of Filling - Local Flood*
>
> *In additional to regional flooding assessment, local flooding impacts must be investigated. The fill has the potential to block local drainage flow paths, to the possible detriment of urban development to the north (the North Star Caravan Park and Creek Street), as sheet flows make their way through the subject allotment to the receiving water body of Christies Creek. This has potential for impact, as has been demonstrated in the Flood Impact Assessment by the regional flood model.*
>
> *The Flood Impact Assessment described above does not consider in detail the local catchment flood, and the model used for the regional flood investigation is generally not suitable to do so without considerable refinement (currently the model has a 15m grid*

which is too coarse to properly identify local drainage features). While the applicant assumes that local drainage and ponding issues can be adequately dealt with by perimeter drainage around the fill footprint and enhanced road drainage in Creek Street, this has not been demonstrated technically, and no details have been provided in the Engineering Assessment (Appendix D).

As detailed above, it is the local catchment flood behaviour that needs to be properly investigated in order to address the considerable concerns raised by objectors to the subject application. It is therefore appropriate that further information be provided in the form of detailed impact modelling results.

(TSC Report 2 July 2010, p 17, Tab 14):

Council's Planning and Infrastructure Engineer supports claims of altered hydrology, noting that filling of the site will have impacts on the local area, with flooding a significant constraint. Danny Rose notes that requirements to fill the site would result in some degree of obstruction and constriction of existing flood flow paths from the west and the north to Christies Creek. Cudgen Nature Reserve adjoins the development site to the west. The EA and Flora and Fauna Assessment fails to consider what impacts altered local hydrology will have on the significant conservation attributes of Cudgen Nature Reserve. In the absence of sound evidence demonstrated there will be negligible impact to the four floodplain EECs occurring on site and conservation attributes of Cudgen Nature Reserve, the precautionary principle should apply and site filling to the extent proposed in the project application should not be approved.

The community cannot accept that the removal of some fill and 2 lots from the development site yet the retention of the core central fill could cause TSC to change its position.

2.3 Australian Wetlands Assessment

AWC also comments on Birchill's Conceptual Stormwater Management Plan and Groundwater Investigation which we ask you to consider carefully (AWC Sub/2015, pp 6-8, Tab 10).

There is some obvious overlap with issues in Section 3, given that poor stormwater/drainage plans and practices together with flooding related hydrology issues have an impact on the environment – marine & wetland ecology.

3. ENVIRONMENT – MARINE & WETLAND ECOLOGY

In summary, AWC have reported on aspects relevant to the wetland ecology, water quality and stormwater management in respect of the subject DA, previous DAs and on 5 August 2014 in respect of proposed planning amendments relating to Lot 156 which have been forwarded to DoP for gateway determination.

AWC is familiar with the site and Tweed coast region having written a number of key documents related to the applicant's proposal:

- *Tweed Coast Estuaries Management Plan 2004-2008: Cudgen, Cudgera and Mooball Creeks*. (Australian Wetlands (2005)
- *Baseline Ecological Assessment Report: Cudgera Creek and Kerosene Inlet, TweedCoast*. (Australian Wetlands (2010)
- *Draft Coastal Zone Management Plan for Cobaki Broadwater and Terranora Broadwater* (Australian Wetlands, 2010)
- *Tweed Shire Urban Stormwater Quality Management Plant* (Australian Wetlands Consulting 2012)

AWC has a good working understanding of the area. So much so that its *Baseline Ecological Assessment Report 2010* followed studies conducted in Cudgera and Christies Creeks. Its assessment was requested by Tweed Shire Council following recommendation from the Tweed Coastal Committee and Hastings Point's community reports of ongoing contamination supported by physical, photographic and scientific evidence. (See TSC letter, SCU test results and photos Tab 12).

AWC's current submission at Tab 10 summarises the deficiencies of the proposed development and the ecological assessment review which include:

- Lack of recent field survey.
- Inadequate discussion, information or mapping in respect of estuarine vegetation, particularly saltmarsh vegetation.
- Lack of recent targeted fauna survey – particularly relevant re koalas and TCCKPoM.
- Inadequate consideration of buffers and size of buffer.
- Inadequate mitigation measures to protect threatened species.
- Inadequate consideration and discussion of rehabilitation of site – methods & rationale.
- Inadequate consideration of SEPP44.
- Inadequate mapping and buffers to SEPP 14 wetland areas.
- No real discussion of Assessment of Significance (7part tests) & potential impacts.
- Inadequate assessment of EPBC Act 1999 and impacts on saltmarsh.
- Deficient landscaping plan.
- Inadequate stormwater plan which fails to demonstrate pollution reduction to achieve water quality objectives stated in TCEMP, capacity to diffuse storm water flows and assimilative capacity of receiving environment.
- Deficient groundwater management plan which fails to assess risks of altering hydrology and impacts on the environment – vegetation and habitat.
- No consideration of the impact of sea level rise

DoP refer in DGEAR to the submissions of relevant authorities in relation to environmental impact issues which are equally applicable to the current proposal as they were for the last proposal:

- Office of Environment and Heritage (OEH)(p 18 of DGEAR, Tab 11) – "*Limiting biting midge breeding areas would in turn limit the value of rehabilitated and existing saltmarsh habitats as midges are vital to the food chain of fauna that reside with these wetland environments.*" OUR COMMENT: Similar comments are also made by the Department of Primary Industries. It is submitted the correct approach in relation to any development proposal on Lot 156 is that the buffers be properly vegetated which will naturally incorporate midges as a vital component of that environment. Any midge free zone required for residential development should be created within the development footprint and not in the buffer.

- Northern Rivers Catchment Management Authority (NRCMA)(p19 of DGEAR, Tab 11) - "*Recommends the provision of adequate buffers to protect threatened species and endangered ecological communities for residential developments. A 50m buffer from native vegetation/habitat or ecosystem/wildlife corridors and a 100 m buffer from estuaries or wetlands is required.*"

- NSW Office of Water (NOW) – *Bores in connection with groundwater and acid sulfate soil testing require a licence under part 5 of the Water Act 1912. Any future bores and monitoring that intercepts the ground water table also require a licence. The erosion and sediment controls are not sufficient to adequately treat runoff and stormwater entering the adjacent wetland. Runoff water quality should be equal to or better than that which exists in the neighbouring wetland and groundwater. The water sensitive design measures are*

not sufficient to adequately treat stormwater entering the adjacent wetland. Stormwater quality should be equal to or better than the water quality found in the neighbouring wetland and groundwater. OUR COMMENT: It is clear that the proponent's stormwater management plan can still not meet the standards required of equal or better.

TSC's previous reports have detailed the ecological sensitivity of the site and noted the unacceptable impacts that previous development proposals would have had from an ecological perspective. These are repeated below because it is submitted they are equally applicable to the current proposal.

Some of the ecological reasons for TSC rejecting the proponent's previous proposal in 2013 (pp 2,3, Tab 17) include:

1. *The development as proposed does not satisfy the various environmental and ecological controls applicable to the subject site. The ecological assessment relies on outdated 2008 vegetation mapping and 2006-2008 fauna survey results. This leads to significant uncertainty as to the extent and level of cumulative impact on threatened species and Endangered Ecological Communities.*
2. *The development as not clearly articulated the impact of extensive site filling and subsequent modification to overland flow and groundwater conditions on sensitive and/or dependent floodplain communities of significant conservation value.*
3. *The size of the development footprint and resultant inadequate buffers to Endangered Ecological Communities (EEC), riparian vegetation and Christies Creek, results in an overdevelopment of such a sensitive and significant site.*
4. *The development does not satisfy the provisions of DCP Section A5 - Subdivision Manual having regard to environmental constraints, stormwater runoff, drainage, waterways, flooding, buffers, lot layout, landscape character and natural landform*
5. *The development does not satisfy the provisions of Tweed Development Control Plan Section B23 Hastings Point having regard to local character, the sites ecological sensitivities and the visual implications of the development*

TSC, in its 20 September 2011 report (pp 16, 17, Tab 9, summarises the reasons for not supporting a previous proposal before DoP with the following comments which we say are still clearly applicable:

6. *The development is likely to result in a significant impact to threatened species through direct damage to and loss of habitat and indirect impacts associated with alteration of hydrological regimes and water quality, greatly increased lighting and noise, increased traffic, hard surfaces and potential trampling through uncontrolled access to the creek.* OUR COMMENT: It is submitted the current proposal will have these same impacts – save from the emergency access road.

7. *The development provides inadequate buffers to sensitive riparian areas and Endangered Ecological Communities.* OUR COMMENT: This is still applicable given the Proposed Planning Amendments of the appropriate buffer of 75m. All development, roads, stormwater facilities and asset protections zones should be within the development footprint and not the 75m buffer.

8. *The development is not in accordance with relevant legislation and policy*

9. *The development does not adequately consider sea level rise impacts.*

TSC has recognised and emphasized the ecological value of the site (TSC Report dated 20 September 2011, p 17. Tab 9) in stating:

"All parts of the site that remain in a largely unaltered state are of very high ecological status and are highly sensitive to impacts arising from development. The site has a total of around 1 km of creek frontage to Cudgera Creek and its' tributary Christies Creek (site is located at their confluence); both of which are "small barrier estuaries highly regarded by the local communities with substantial productivity and biodiversity values" (TCEMP 2005). The mouth of Cudgera Creek, unlike Cudgen Creek to the north and Mooball Creek to the south, does not have training walls to keep the mouth open and closes on occasion (for example in 2005). This means that pollutant have a greater ability to accumulate due to reduced tidal flushing, The water quality in this creek is already under pressure and requiring improvement, in particular from agricultural input upstream in Chrisites Creek catchment and sedimentation arising from subdivision upstream in the Cudgera Creek catchment.

The western boundary of site adjoins Cudgen Nature Reserve and contains sensitive riparian environments, Endangered Ecological Communities (EECs) and threatened species and their habitats, as well as additional important habitat values including hollow-bearing trees, large active raptor nests (three in tree proposed for removal), nectar and fruiting resources including winter flowering Eucalypts and Primary Koala Food trees proposed for removal.

The site is located within the Coastal zone in a sensitive coastal location as defined by SEPP 71, an environmentally sensitive area under the SEPP Exempt and Complying Development Codes 2008, is adjacent mapped SEPP14 wetlands and bounded by two environmentally sensitive area of State Significant under the SEPP (Major Development).

In its 21 November 2013 Report, TSC has the site mapped with the following conservations values and habitats:

The site is mapped as:

- *Key Habitat - Office of Environment and Heritage mapping (most of site).*
- *Regional Fauna corridor: Cudgen Link (focussed on Blossom Bat and Long-eared bat) -Office of Environment and Heritage mapping (all of site).*
- *Key Fish Habitat (one-third of site) as mapped 2007, whilst DPI Policy and guidelines for fish habitat conservation and management 2013 recognises saltmarsh and SEPP 14 Wetland as 'Type 1 Highly sensitive key fish habitat' and seagrass beds adjacent to the site and Mangroves as 'Type 2 Moderately sensitive key fish habitat'.*
- *Primary Koala Habitat - Coastal Forest Red Gum Open Forest to Woodland TVMS Code 304/ Coastal Swamp Mahogany Open Forest to Woodland TVMS Code 305 Swamp Sclerophyll) to the south-west of the site (Tweed Coast Koala Habitat Study 2011).*
- *Secondary A Habitat - Coastal Pink Bloodwood Open Forest to Woodland TVMS Code 301/Coastal Swamp Box TVMS Code 309 Broad-leaved Paperbark Closed Forest to Woodland TVMS Code 401/Broad-leaved Paperbark/Swamp Sheoak Closed Forest to Woodland TVMS Code 402/Broad-leaved Paperbark + Eucalyptus spp. ± Swamp Box Closed Forest to Woodland TVMS Code 403/Swamp She-oak Closed Forest to Woodland TVMS Code 601 Sub tropical Coastal Floodplain Forest) south-western corner and riparian zone (terrestrial) (Tweed Coast Koala Habitat Study 2011).*
- *Mapped meta-population (source populations) – 'Significant Activity' area across the subject site capturing foreshore areas and remnant units to the west onsite and adjoining Cudgen Nature Reserve analogous with vegetation associations described above. (Tweed Coast Koala Habitat Study 2011).*

- *Within 20m of mapped and gazetted SEPP 14 Wetland (eastern edge).*
- *Surrounded by Cudgen Nature Reserve to the south, west and north and Cudgera estuary to the east.*
- *Cudgen Nature Reserve contains sensitive estuarine riparian environments, Endangered Ecological Communities (EEC's) and threatened species and their habitats, as well as additional important habitat values including hollow-bearing trees, large active raptor nests (Brahminy Kite), nectar and fruiting resources including winter-flowering Eucalypts and Primary Koala Food trees.*
- *The site has a total of around 1km of creek frontage to Cudgera Creek and its tributary Christies Creek (site is located at their confluence), both of which are 'small barrier estuaries highly regarded by the local communities with substantial productivity and biodiversity values' (TCEMP 2005).*
- *All mapped vegetation identified under the Tweed Vegetation Management Strategy 2004 (TVMS 2004) is determined to be of 'Very High Ecological Value' and 'High Ecological Sensitivity' as shown on Map 4 of 7 Ecological values TVMS 2004.*
- *Ranked within the top 100 (No. 28 in W1 overall category) of some 500 wetland and riverine ecosystems in the Tweed studied as part of the Comprehensive Coastal Assessment process (DEC 2006).*
- *The site supports four candidate Endangered Ecological Communities offering known and potential habitat (high to moderate likelihood) to 23 state listed species (TSC Act) one of which is Critically Endangered (Beach Stone Curlew). Two species (Koala and Grey-headed Flying Fox) identified occurring onsite are listed as Vulnerable under the commonwealth EPBC Act.*
- *The site is located within the Coastal zone in a sensitive coastal location as defined by SEPP 71, Clause 3 Part (1)(a)(g)(iii-iv)), whilst also regarded as an environmentally sensitive area under the SEPP Exempt and Complying Development Codes 2008 (Clause 1.5(c)(f)), due to proximity to SEPP 14 wetlands and/or land reserved or dedicated under the National Parks and Wildlife Act 1974 (Cudgen Nature Reserve).*

Given the high ecological value and sensitivity of the site and adjoining environment as stressed by TSC – and the fact that flushing is reduced (which has also resulted from illegal filling of the former tributary which previously ran through the site), it is submitted that any buffer from residential development should not only be vegetated but be a minimum of 75 m as now recommended by the Proposed Planning Amendments to Tweed DCP-B23 and Tweed LEP.

We refer you to the submissions of AWC dated 5 August 2014 (Tab 10) which provide well supported reasoning to recommend at a minimum the incorporation of 75 m buffers in planning instruments.

It is worth pointing out that DoP when providing comment on buffering for protection of the environment from any adjacent residential development (DGEAR, p 31, Tab 11), commented specifically on the effectiveness of a 75 m buffer zone between saltmarsh communities and North Star caravan park. It followed the recommendations of the Office of Environment and Heritage in rejecting the proposal that buffers should be reduced to avoid biting midge impacts since the midges played an important role in the food chain of fauna that utilize the buffer.

It is clear that relevant authorities support our consistently submitted view on this issue; that is, that the size of the buffer is more about protecting the environment than protecting the inhabitants of a proposed development (i.e. from midges) OR as TSC puts it (TSC Council Report, 20

September 2011, p 27, Tab 9) – the buffer should reflect a consideration of legislative and policy intent relating to estuarine foreshores to achieve the following outcomes:

- *protection and enhancement of the riparian zone;*
- *maintaining or improving water quality;*
- *consideration of visual amenity, coastal processes, the appropriateness of public access and of the dedication of riparian zones as public land.*

It is submitted then – taking into account the following:

- TSC's description of the high ecological value and sensitivity of the site and surrounding environment including its low flow/flush capacity, existing stressed condition and pressures.
- AWC's submissions relating to buffers, threats on endangered ecological communities and impact of sea level rise
- The importance of retaining the high ecological value for both education and low key recreation for locals and a multitude of visitors/students.
- DoP's adoption of various authorities' recommendations to retain fully vegetated buffers with midges - therefore a midge free zone beyond the buffer zone and not in it.
- Legislative and policy requirements in relation to buffers and the size of buffers
- TSC, DoP and AWC' adoption of ESD principals – particularly the precautionary principle to protect a currently stressed/pressured ecology.
- TSC Proposed Planning Amendments to the Tweed DCP-B23 and Tweed LEP.

the size of any buffer from EEC communities or the estuary should be a minimum of 75 metres.

It makes sense that legislation/policy would provide a range of buffer sizes from a minimum of 50 to 100m to cater for a whole range of different environments and environmental conditions i.e. different communities to be protected, different levels of sensitivity and existing capacities, and different external pressures such as sea level rise, other development and cane farming upstream.

Given TSC's detailed description of the value, sensitivity, low flush capacity and pressures of the subject environment, I think it only logical to expect that a greater buffer than the general minimum would be required if real protection was to be afforded. AWC supports this view having regard to *"sea level rise"* and the "*highly sensitive ecological systems and the need for the consideration of the precautionary principle and long-term cumulative impacts*". (May 2015 Sub, pp 3, 4, 8, Tab 10 and July 2013 Sub, pp 12,18, Tab 10):

4. FLORA AND FAUNA

4.1 - General

The community's resources have been stretched to afford appointment of experts to deal with Flora and Fauna on this further occasion. It relies on AWC's comments and previous reports in respect of past applications – in particular, those conducted by TSC .

As previously stated, the development still incorporates major filling of the site incorporating 20 lots. This is still a significant overdevelopment of the site given its constraints.

To avoid repetition, we refer to TSC's previous submissions in relation to the ecology and protection of same (See TSC Sub pp 11-16; Tab 8; TSC Report pp 16-28,Tab 9) which deal with endangered ecological communities, threatened species, ecological buffers, ecological

restoration, creek access, stormwater pollution, altered hydrology, erosion, sediment control, roads and driveways.

In summary, in addition to TSC's description of the ecological value of the site quoted above, it is submitted that the following reasons that TSC previously provided for refusing a former proposal on ecological grounds are still applicable to the current application which include (See TSC Sub, pp 11-16, Tab 8):

- *Filling of the site to the extent and height proposed will cause negative hydrological impact on sensitive coastal riparian estuarine environments and groundwater dependent EECs, and will reduce the area available for use by threatened species, in particular the Bush Stone Curlew, known to roost, next and breed in immediate proximity.*

- ..sig*nificant ecological concerns still remain including: discharge and treatment of site stormwater into Christies and Cudgera Creeks; potential for extensive filling and altered hydrology to impact on groundwater dependent floodplain communities of significant conservation value; inadequate buffers to EECs and Christies Creek on the southern and eastern extent of the development; and overdevelopment of such a sensitive site.*

- *The revised design still does not allow sufficient setback to sensitive coastal riparian estuaries and EECs, nor does it allow sufficient buffer for climate change and sea level rise to allow for the certain landward migration of saltmarsh and mangroves, so that it is very likely within a 50 year time-frame that the saltmarsh community would be lost adjacent the development.*

- *Considering the species list for trees along the Creek Street road reserve, the vegetation along Creek Street itself is almost certainly Subtropical Coastal Floodplain Forest EEC and some influence of Swamp Sclerophyll Forest EEC, and its very likely that the same communities exist in the eastern "bump" in the 7(a) zoning. These areas have not been recognized as EECs and this is a major flaw in the proposal. …. Trees within this zone are recognized Koala food tree species, winter nectar sources and as containing hollows yet their importance has been greatly underestimated. Next boxes are no substitute for hollow-bearing trees and their maintenance is difficult and costly in perpetuity.*

- *The ecological impacts of raising and widening Creek Street and of a footpath proposed along Creek Street itself have not been considered and are likely to be high.*

- *Adjacent areas in Cudgen Nature Reserve have been mapped as Primary Koala habitat and, considering the result of the Tweed Coast Koala Habitat Study 2011 their continued viability is essential to the maintenance to the Koala population, yet this matter has been only summarily discussed. A proper consideration of the Koala population in the area must be undertaken to consider whether the site or Creek Street trees from part of the larger home ranges. Dogs and cats must be prohibited from the site yet no commitment has been given that this prohibition will be imposed.*

- *Stormwater flow to the estuary must be carefully planned and high water quality parameters set and monitored. Currently proposed measures do not provide assurance that significant detrimental impacts will not occur.*

- *The proposal as presented .. is therefore not supported due to the real and potential negative impacts it will have on significant conservation and recreational value of Cudgera and Christies Creek.*

- *Concerns remain of the level of filling proposed within very close proximity to sensitive estuarine areas, and how soil loss and sedimentation will be managed during any extreme rainfall or flooding events during the construction period.*

4.2 - Buffers

Buffers have been dealt with at length in Section 3 above - Marine and Wetland Ecology because it is the significantly high value and sensitivity of such ecology that justifies the type and size of buffer that is submitted appropriate.

The historical context of damage to the site was provided in this submission to emphasize what little "real" restoration has been proposed by this development proposal.

It is clear that since the major damage outside the currently zoned 2E footprint was caused (including dredging and cutting down mangroves and other communities), much of the vegetation has regrown to a mature state - meaning there will be no need for the proponent to re-vegetate in areas which it proposes to do so.

In fact, the only areas that it proposes to re-vegetate are those which it currently continues to slash and which it proposes to transfer to TSC for environmental management..

Having parks, roads, houses, midge/asset protection zones or stormwater discharge points within a buffer are contrary to its definition (AWC Sub p 10, Tab 10):

> The definition of a 'buffer area' in A5.E.2 Definitions is: '*an area of prescribed width and treatment created between two or more land uses (including environmentally sensitive areas) for the purpose of mitigating the impacts of one or more of those land uses'*. The discharge of stormwater within a buffer is inconsistent with the role of a buffer, as is the placement of fill to create developable and flood free land.
>
> Much of the existing wetland vegetation is mapped as EECs and as Key Fish Habitat (TSC Key Fish Habitat Mapping, 2009). As such, a buffer is required to protect these areas of existing vegetation. While the existing EECs/Wetlands provide some buffer for the water quality of the creeks, the wetlands themselves need a buffer to protect their integrity as specified in DCP A5.4.5. The aim of these buffers should be to protect the EEC wetlands.

This has been recognized by TSC in its Proposed Planning Amendments and should be followed and adopted because they are based on sound environmental policy, regulation and law.

4.3 Threatened Species

TSC Subs (2 July 2010, pp11 and 12, Tab 14) stress the importance of protecting ecological communities which are vital habitat. For example,

> "*Saltmarsh is vital habitat for fish (particularly crab larvae release at king tides which form an important part of the food chain for commercial fish species) and for shorebird roosts. Again, David Rohweder's (Sandpiper Ecological Surveys 2009) research has shown the roost sites are the limiting factor for shorebird recovery in the Tweed….*
>
> *"Nesting and foraging habitat for the Bush-stone Curlew and Beach-stone Curlew occurs on the site and both species are known from the mediate area. The Bush-stone curlew is likely to utilize cleared areas within the development footprint and the Beach-stone Curlew may potentially forage and/or nest in the estuarine fringe."*

AWC Sub 2013 is still applicable. It states in respect of the same issue (p 13, Tab 10):

The combination of inadequate buffers and inappropriate stormwater treatment measures could lead to changes in hydrology and water quality. This suggests that important foraging areas for this threatened bird species may become polluted and/or damaged and is a known threatening impact to the survival of this species.

In assessing the proponent's claims of protecting fauna, AWC (Sub 2013, pp 11, 12, Tab 10) refers to comments received by TSC from NPWS relating to Draft Tweed LEP 2000 Amendment No. 44 for part of this Lot/DP (2003):

> *As an example of the value of a buffer, bird species protected under the Japanese-Australia Migratory Bird Agreement have been recorded from the estuary in close proximity of the subject site. Mangroves and/or saltmarsh provide feeding and roosting habitat for these species as well as other resident shorebirds. However they are shy and are quickly stressed by human disturbance or disturbance by domestic animals. Other rare or threatened species also regard mangroves as important habitat. An appropriate buffer would assist in maintaining the usefulness of this habitat to significant species* (Diacono, 2003, recommendations for Draft Tweed LEP 2000 Amendment 44).
>
> *Without appropriate buffers they cannot claim to be protecting fisheries resources, migratory bird habitat, significant vegetation communities, other recorded and potentially occurring fauna and as a water based fauna linkage between the Cudgen Reserve and Cudgera Creek estuary. Given the sensitivity of the site and in light of historic modification and disturbance at the site, any buffer needs to account for the long term protection of the local ecology and must also consider the precautionary principle. This this in mind the adoption of an increased buffer (i.e. >50 metres) is supported.*

AWC explores in detail how different impacts on the wetlands then impact on wetland systems, EECs marine life and threatened species including the impacts of changed hydrology (Subs 2013, pp 6,7, Tab 10), changed physical and chemical water quality (Sub 2013, pp 7-10), smaller buffer zones (Sub 2013, pp 10-13), impacts on saltmarsh (Sub 2013, pp 15-17) and climate change.

These submissions require careful examination because as TSC notes (TSC Report, p 148, 20 July 2010, Tab 15)(our bold):

> *Threatened fauna species and their habitat have been poorly considered and are very likely to be adversely impacted by the proposed development. The site is adjacent to Cudgen Nature Reserve and adjoins a tidal estuary with records of significant species within and adjacent to the site. No significant assessment has been provided for the critically endangered Beach Stone Curlew (photographs supplied by residents show the species roosting at the estuary on the edge of the development site –* ***video footage available****) or the Bush Stone Curlew (record adjacent the site). Koala records exist all around the site yet key tree species are proposed for removal and road works are proposed through this corridor. All three species are highly impacted by domestic pets which are regarded as key threats as to the species' survival yet no restrictions on dog or cat ownership are considered, habitat is to be adversely impacted and inadequately compensated. Large old growth trees are proposed for removal without a thorough analysis of their ecological role. The use of nest boxes and artificial raptor poles to replace valuable resources is ill-considered and inadequate to avoid immediate impacts.*

Finally, a statement by AWC (Sub 2013 pp 8, 9, Tab 10) is worth repeating here:

> *Protecting the health of aquatic habitat is imperative for the survival of the whole system and preservation of the significant biodiversity and recreational values of the Creek. Given the limitation of even best practice WSUD measures and potentially inadequate ecological buffers to ensure the protection of water quality and hydrologic regimes, the applicant*

cannot claim to be protecting aquatic habitat and no attempt has been made to demonstrate through field investigations that receiving environments could be adequately protected through the measures proposed, since the capacity of these ecosystems to assimilate impacts is not investigated. Therefore the adequacy of buffers proposed cannot be demonstrated.

Without appropriate buffers and/or site specific data the applicant cannot claim to be protecting fisheries resources, migratory bird habitat, significant vegetation communities, other recorded and potentially occurring fauna and as a water based fauna linkage between the Cudgen Reserve and Cudgera Creek estuary.

We refer to TSC's comments on the impacts on EECs and threatened species as noted above.

4.4 Inadequate and Inaccurate Vegetation Mapping/Buffers Zones/MHWM

Onsite ground truthing in respect of vegetation, wetland and estuary needs to be conducted to correct the misrepresentations of Planit consulting which are still relied on by Birchill Engineering in its desktop ecological assessment. Despite recommendation by TSC, the proponent still relies on dated surveys in relation to vegetation and fauna and dated site photography – (going back as far as 2004).

The community has requested for many years that authorities investigate the MHWM and current boundary conditions of Lot 156. Certainly, this investigation would highlight the fraud already committed on the community in turning 7.5 hectares of crown estuary into private land which was then illegally dredged, filled and cleared to create the current development opportunity.

In fact, the current owner contributed to this by further illegally clearing and filling land where it last proposed to build an emergency access road (see History - Section 1.2.1).

The community has asked state and local authorities for the last 25 years to investigate this issue. (See "History" – Section 1.1.3, 1.2.2)

As stated by TSC, an extensive field survey (over a longer period including both spring and neap tides) should be undertaken so that the data can then be used to better establish ownership of land and true environmental buffers. The proponent has failed to conduct this exercise.

4.5 Cumulative Impacts on the Environment

Cumulative impacts of this development on the environment are threefold.

(1) The cumulative impact of further proposed fill on existing fill which already causes residents to flood to 1m. This will set an unacceptable precedent for more fill in the precinct to the detriment of those that cannot fill.

(2) The cumulative impacts of poor/changed hydrology, poor water quality, inadequate buffers and climate change (sea level rise) on the water ecology and its subsequent impact on the local flora and fauna.

(3) The cumulative impact of further impacts on a marine ecology (outlined in Sections 1, 2, 3 and 4 above) suffering existing impacts (AWC Baseline Study 2010) – AWC 2013 Sub p 7; Tab 10)

(4) The cumulative impact of further population growth on this ecologically sensitive area (see McGrath Study (2008), Tab 13)

(5) The cumulative impact of all these factors on the economic and social welfare of the community – see Section 6 – Social Impacts and Amenity

These are all cumulative impacts which are likely to be significant with the proposed development and unacceptable as AWC stresses (Sub 2013, p 8, Tab 10) because "*protecting the health of aquatic habitat is imperative for the survival of the whole system and preservation of the significant biodiversity and recreational values of the Creek."*

The proposed development offends ESD principles as outlined in the Conclusion of AWC' 2013 Subs (Tab 10). The precautionary principle and ESD principles have also been adopted by TSC and the DoP in recommending refusal of former proposals not dissimilar to the size and impact of the current proposal to ensure protection of such a highly valuable and sensitive environment.

Accordingly, it is submitted that the proposed development would offend Clause 8(1)(c) of the TLEP 2000 because of the unacceptable cumulative impact on the community, locality and catchment which comprise:

5. VISUAL IMPACT & AMENITY

Contrary to claims in the SEE, this development will have a significant visual impact.

The development site will be significantly different from the Creek Street streetscape as proposed in Tweed DCP B23 which is the result of extensive consideration, planning and community consultation as part of the drafting of a new locality plan for Hastings Point.

The size, density, fill, height and location of the proposal will adversely impact on the natural attributes of the area and its high environmental amenity.

The proposed raised development will have an adverse visual impact from Coast Road, the headland, bridge and in the Creek Street precinct without the required trees recommended by Tweed DCP B23 and Proposed Planning Amendments.

Section 3.3.2 of Tweed DCP B23 lists the potential adverse impacts that might be considered in respect of filling of land. TSC has addressed these risks by way of the Proposed Planning Amendments. These were the following questions previously posed to TSC when considering the impacts of the proposed development on the community and environment as outlined in 3.3.2:

- Whether it changes the existing quality of the landscape and visual setting to this precinct?
- whether considerable vegetation will be (has been) removed. (i.e. trees along Creek St and along the road reserve in Lot 156)?
- whether the development causes a loss of privacy and amenity to adjoining lots?
- whether there will be unsightly batters at boundaries?
- whether the fill, stormwater and drainage will adversely impact the estuary/ecology?
- whether there will be adverse impacts on ground water conditions – including filtering of water?
- whether this obstructs stormwater and flood flow paths and affects the safety and amenity of affected neighbours and new residents?
- Whether the filling proposed will cause cumulative impacts, not least of which is setting a precedent of further fill in the locality?

As with any fill proposed in this precinct, it is submitted that it would be difficult not to answer yes to each and every proposition.

Certainly, if the environment, including the marine and wetland areas were damaged, this would have a significant impact on the visual amenity of the area. This has already occurred and unfortunately still occurring. Local complaints are increasing in relation to the water quality of the estuary. Serious further investigations need to be conducted. Previous fish kills and contamination have resulted in significant controversy and prompted Council requesting a baseline study for the estuary (granted) – as impacts caused red staining to the banks of the creeks, acid sulfate flocks and significant water contamination occur. (See Contamination photos, scientific testing done by SCU laboratories at Tab 12)

6. SOCIAL IMPACT & AMENITY

The project will not provide any noticeable increase in housing for a growing population. It will have a tiny impact at a shire or regional level compared to the large negative impacts it will cause the locality.

In short, the more immediate adverse social implications for the local community far outweigh any positive social contributions. These include:

1. increased flood hazard resulting in increased insurance costs (Section 2);
2. increase inundation of water on properties resulting from poor stormwater and drainage systems (Sections 2 and 3);
3. reduced amenity resulting from damage to the environment – estuary, flora and fauna (Sections 1, 2, 3, and 4);
4. reduced amenity of the area with the loss of environmentally sensitive lands (Section 3 and 4);
5. adverse impacts on visual amenity of the area (Section 5);
6. adverse impacts on recreational activities in the locality from damage to estuary/water quality;
7. significant loss of amenity/basic privacy for those properties that abut the development site. (Section 5 also);
8. reduction in safe traffic movement (See Section 7 below)
9. increased noise/traffic movement during the construction phase
10. decrease in property values as a result of all the above.
11. a serious injustice to adjoining properties owners whose rights and amenities to create this opportunity were breached through illegal activity and government inaction. This would have a serious compounding effect. (Section 1)

The estuary outlet/rocky foreshore area is also of state protected significance. It and the estuary,mangroves and creeks are very important for educational purposes. Students from schools, colleges and universities throughout NSW and Queensland attend Hastings Point to be educated on the diverse marine environment it houses. Adverse impacts on this environment conflict with these activities. Thousands of students are educated through the Hastings Point Marine & Environmental Education Centre at Northstar each year.

It is submitted that the proposal has such unacceptable negative social impacts of a cumulative nature that the proposal warrants refusal.

7. ROADS & ACCESS

7.1 General

The following issues in summary are of concern as previously raised by TSC (our additional comments in brackets):

1. Loss of pedestrian refuge at Creek Street/Coast Road intersection is an extremely important and serious safety issue. There appears to be no suitable replacement location for this refuge. Appropriate resolution is necessary prior to any consent.

2. Creek Street would require a wider sealed carriageway to address the increased traffic volumes. (This will conflict with the character retention of streets in HPDCP and destroy tree species of significance – see below)

3. Tweed Coast Road would have to be widened to accommodate a turning lane into Creek Street with the removal of the pedestrian refuge. TSC notes the discrepancy in channelization line marking on Tweed Coast Road and those presented by Opus.

4. There is considerable issue with the removal of the trees in Creek Street given such will conflict with the character retention in Tweed DCP - 23. In June 2010, WE illegally removed certain species of trees of significance on this block contrary to its development consent.

5. Construction traffic carrying fill to the construction site down Creek Street will be approximately 50 trucks per day for a period of 7-8 weeks. This is based on 36,000 cubic meters of exported fill material with a truck and trailer capacity of 20m3 and a 20% bulking factor on the material. 100 truck movements (accounting for two way traffic movements, including the empty truck returning to the fill source) will occur every day throughout the estate to fill the site as per the development application. This equates to one truck every 12.5 minutes. This will create amenity and noise issues for the existing residents in Creek Street

TSC notes that in respect of 2 above, if engineering standards were enforced, they could conflict with Tweed DCP 23 in terms of maintaining the character of existing streets like Creek Street.

The community rejects any proposed widening of the road and footpath in Creek Street. Such would displace the green verges and trees which serve to create the natural character and filtration system endorsed for retention under Tweed DCP- 23 as recognized by TSC Strategic Planners (see pp 34, 35 of TSC Report, 20 September 2011, Tab 9). Removal of these verges would be contrary to the plan, diminish the street's character and exacerbate localised flooding in heavy rain events.

A smaller, more appropriately sized development would avoid this problem allowing the Tweed DCP-B23 to do its work.

7.2 Housing Lot Access and Roadwork Proposed - Creek Street

It is not clear as to what portion of trees might be removed along the Road Reserve outside Lot 156.

TSC, importantly, has ecological concerns with the removal of these trees.

Some of the trees may comprise protected EEC's even if their numbers have been reduced by previous disturbance (i.e. clearing of the north western zone by WE in 2002)

TSC notes (TSC Sub 2 July 2010, p 18, Tab 14):

> *Due to the location of numerous trees on the property boundary or with the Creek Street road reserve, it would appear difficult for additional trees to be avoided, or if they are avoided, their root health compromised, for proposed water main construction, subsequent connection of services from allotments to mains, and driveway construction for individual allotments. This cumulative impact should be considered in the flora and fauna*

assessment. The applicant must also demonstrate that the vegetation along the northern property boundary within the Creek Street road reserve is not Swamp Sclerophyll EEC or Coastal Subtropical Floodplain Forest EEC.

TSC concludes (TSC Report p 149; 20 July 2010, Tab 15)(bolded ours)

Creek Street itself contains tree species of significance due to their age and fauna habitat values and their retention must be the starting point from which minor variation may be sought

As concluded it its Report to Council, TSC states (bolded ours; Report p 148; 20 July 2010, Tab 15):

Major ecological concerns are raised in relation to this development. Overall the Major Project as exhibited cannot be supported from an ecological viewpoint because the level of information provided is insufficient to determine impacts both on and off the site in an ecologically sensitive area, and the potential for a significant impact on threatened species, ecological communities and the ecological functioning of the estuarine system is high. Ecological comments originally and subsequently submitted still apply as matters previously raised have generally not been satisfactorily addressed.

From an ecological viewpoint, it is considered the ***site is much better suited to single residential allotments along Creek Street and would be happy to support the same density of development as currently exists on the southern side of creek Street between the unnamed road reserve and the property, i.e. allotments of around 700m2 with a single access off Creek Street prior to the start of Environmental Protection zoning (i.e. the 7L zone****)*

The community agrees with this previous submission of TSC. It is clearly applicable to any development application for this site as it take into account the constraints of the site – in particular, the need to protect an extremely valuable and sensitive environment.

It should also be noted that such recommendation is consistent with appropriate flood mitigation policy in reducing fill and the number of residents on the flood plain as recommended by DoP (DGEAR) so protecting future residents and the existing community that is already subject of 1 m flood inundation - part resulting from illegal filling that TSC failed to address.

8 GEOTECHNICAL & ENGINEERING

Please refer to AWC report in relation to stormwater impact issues and its assessment of Burchills Engineering's Conceptual Stormwater Management Plan.

The proponent otherwise relies on outdated reports which should not be accepted for consideration given they have been found to be flawed in previous application, namely the HMC Groundwater Investigations which were found to be deficient in almost every respect by Parsons Brinkerhoff for DoP previous assessment. (See AWC Sub 2015 at pp 6-8 of Tab 10)

9 REMEDIATION & CONTAMINATION

The proponent has clearly failed to once again address one of TSC's concerns in relation to contamination. TSC in its 21 November 2013 Report (p 2, Tab 17) states:

The development as proposed does not satisfy Clause 39 of the Tweed Local Environmental Plan 2000 in regards to contaminated land. Adequate information has not been received to ensure that the proposed site is free of contaminates. A Preliminary Soil

Contamination Report would be required which specifically considered possible historic sand mining activities.

The Proponents relies once again on an old 2008 Opus report which fails to address the issues of concern to TSC.

TSC in Report (p 149; 20 July 2010, Tab 15) states:

> *Acid Sulfate Soils are insufficiently considered. Council's experience in undertaking pipeline upgrades to the Hastings Point sewerage treatment was that pockets of very high acidity were found along Creek Street. Disturbance of these soils close to the creek is to be avoided. Dewatering is likely to be required to service provision, yet has not been addressed.*

Building of the current house on Lot 156 by WA resulted in dewatering on site with water pumped around the surrounding land. The area where digging took place was simply covered with hydrated lime. – see photos Tab 16.

We refer to the comments made by TSC in its Report to DoP dated 7 June 2011, p 10, Tab 8.

We also refer to DoP's (DGEAR, p33, Tab 11) comments in relation to rehabilitation, construction and groundwater. It recognises previous illegal clearing on the site (as if to question any real offset in relation to rehabilitation). It questions rehabilitation capacity into the future. The proponent has only confirmed DoP's concerns by treating the site as a "cleared site" to justify minimal rehabilitation of the land that it and its predecessor cleared. It is clearly contrary to the objective and intent of the Tweed DCP-B23

DoP questioned the sediment and erosion plan given the frequency and intensity of rainfall events – particularly given previous harmful effects from the SeaBreeze estate. It considers that large amounts of fill in such close proximity to the estuary has a high risk of causing adverse water quality impacts. It questions the effectiveness of the limited groundwater testing.

10 TWEED DCP B 23 HASTINGS POINT (DCP B23) & PROPOSED PLANNING AMENDMENTS

Tweed DPC- B23

As briefly covered earlier, it is clear that this application fails to satisfy important requirements and objectives of Tweed DPC-23; in particular, the need to protect and restore the natural environment along the foreshore area.

As previously stated, the proposal treats the subject site largely as a "cleared" or "altered" without any consideration of how it was cleared or altered i.e. which has had and continues to have an impact on the environment and community in respect of flooding, drainage and the environment, including the foraging and nesting areas for local habitat.

It provides within the buffer, outside its proposed development footprint a no vegetation zone save grass to act as an asset protection zone around the site.

It fails to address the view corridor by providing appropriate vegetation east of the site.

It is clear that the development proposed is too large to maintain the existing character of this precinct when viewed from the street, the bridge or estuary and *"ensure that new lots do not change the view corridor*."

The application does not provide the level of restoration, protection, planning and community consultation required by Tweed DCP-B23. The following are just some of the provisions which reflect the high level of restoration, protection, planning and community consultation required for development in this area:

- *The natural environment along the foreshore of Christies Creek is to be **protected** and **restored** where clearing and changes to the landform have occurred.*
- *Ensure Christies Creek foreshore contributes to **protecting the integrity of the estuary ecology.***
- ***Retain and improve** the natural setting along the creek.*
- ***Enhance and rejuvenate** planted areas along the creek.*
- *Implement a continuous creek buffer and public access to the foreshore.*
- ***Retain and recreate** the natural setting along the creek.*
- *Ensure appropriate designs for flood affected land. Ensure flooding is addressed.*
- *The Creek foreshore is an important environmental area. The key concern for riparian areas is to provide habitat and natural bank stabilisation and to **protect the integrity of the aquatic and estuarine environment**.*
- *The key strategies for the Christies Creek foreshore are to:*
- *a. **Establish riparian buffers**.*
- *b. **Re-establish** native indigenous species.*
- *c. **Re-establish** the natural shoreline.*
- *d. **Protect** environmental systems.*
- *e. Provide **public access** to Christies Creek.*
- *A riparian buffer along Christies Creek is to be achieved **in accordance with the Tweed Coast Estuary Management Plan 2004-2008** and subject to merit-based assessment on a case by case basis.*
- *Native vegetation is to be **retained and restored** to **protect** the creek edge and ecology in accordance with the **Tweed Coast Estuary Management Plan 2004-2008.***
- *A **management plan** is to be prepared by Council for the creek foreshore in **consultation with the community** and stakeholders using this strategy as a guide.*
- *Detailed landscape **plans and management** are to be undertaken in **consultation with the community** and stakeholders using this strategy as a guide.*
- *The estuary and associated foreshore land is to be **protected in accordance with the Tweed Coast Estuary Management Plan 2004-2008,** Cudgera, Cudgen and Mooball Creeks.*
- *Native vegetation is to be **retained and restored to protect the estuary and foreshore areas** in accordance with the Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks.*
- *Buildings respond to the natural environment, environmental conditions and provide quality places to live and visit.*
- *The creek and other natural systems are **protected**.*
- *Residential land is efficiently used **within the constraints** of the land.*
- ***Views and vistas are retained**.*

As already noted, the history of the site has significant relevance to the assessment of this application.

This is borne out by Tweed DCP-B23 which has the recurring objective of restoration/rehabilitation and protection of the foreshore area - "*foreshore of Christies Creek is to be protected and restored where clearing and changes to the landform have occurred*"

This objective of restoring, rehabilitating and protecting this area is repeated throughout the Creek Street Precinct part of the code. It no doubt reflects the aim of the plan to protect and

rejuvenate the integrity of the estuary ecology and its riparian zones, particularly given the past damage and pressures that currently exist on this sensitive ecosystem.

Since restore means to return to its original state, an understanding of the "History" of the foreshore area of Lot 156 and its natural state – Section 1 – is highly relevant. This section provides irrefutable evidence of the illegal clearing, dredging and filling of areas of Lot 156 by the current and former owners and the impact this has had on these and surrounding areas - areas which the Tweed DPC-B23 now requires be restored and protected as opposed to further damage and exposure.

There is equally as strong an argument to restore the foreshore area in front of the current house on Lot 156 back to estuary to improve the flow of water from the north western catchments given the unlawful dredging and filling and continued clearing and mowing of this area. The filling has adversely impacted the flow of water – with buildup affecting the estuary's health and contributing to flood hazard in heavy rain events. Certainly, restoration would provide better flow to improve the health of the estuary and alleviate the impacts of flooding. (These benefits have been recognised by TSC since it stresses the restricted flushing capacity of the Christies/Cudgera Creek catchments (p 17, TSC Report, Tab 15) and that reopening flow paths within the site should be explored to benefit local flooding behavior (TSC Report, 20 September 2011, p 29, Tab 9 and TSC letter to DoP, Section 4, Tab 14).

Proposed Planning Amendments

The proposal also fails to meet the desired future character requirements of the precinct as clearly set out in the Proposed Planning Amendments which TSC recently forwarded to DoP for gateway determination.

The development offends the proposed amendments as follows:

- 75 m buffer to the developable footprint.
- All housing lots are required to be 700m2 minimum
- The filling of land to achieve building pads above flood levels is not an acceptable outcome for the site. The promotion of flood resilient housing types which utilize suspended structural systems to achieve free board above the design flood level, increase site area for infiltration and allow for free flow of flood waters beneath the elevated dwelling is the desired outcome for Lot 156.
- Roads are to form the interface edge to environmental buffer areas rather than back fences to enable ease of buffer and environmental area maintenance, for part of a bushfire buffer and provide a public rather than private interface.
- Asset protection zone is required to be in the developable footprint and not the buffer.
- Land outside the developable footprint is to be rehabilitated and restored to re-establish habitat reflective of pre-clearing communities – (not cleared grass as proposed which proponent inappropriately attempts to use as an asset protection zone).
- Local native vegetation is to be reinstated along a portion of the eastern boundary of Lot 156 where previous clearing has occurred to provide a visual buffer of future development as viewed from bridge looking west.

11. COASTAL DESIGN GUIDELINES FOR NSW (2003)

For small villages or hamlets in NSW, the Coastal Design Guidelines ("CDG") discourage large developments on the fringes of these localities – particular in the vicinity of this development – abutting Cudgen Nature Reserve, SEPP 14 Wetlands and protected waterways.

As quoted by AWC and TSC:

> *Coastal Design Guidelines for NSW* (Coastal Council of NSW, 2003) '*Setbacks should where possible be increased to 100m or more where they are adjacent to ecologically sensitive areas…."*

The proposed development with its inadequate buffers fails to comply with the CDG.

The CDG and the draft Sea Level Rise Policy both discourage new development in low lying flood plains and in particular, the filling of these areas when they will have significant adverse impacts on the existing natural and built environment.

12. THE NSW COASTAL POLICY 1997/CONCLUSION

The Coastal Policy lists key actions it will implement to meet its 9 goals to ultimately achieve its overriding vision of ecological sustainability for the NSW Coast.

It is submitted that the development proposed severely breaches ESD principles and the many legislative provisions referred above to such a degree that it is inconsistent with the overriding vision and goals set forth in the NSW Coastal Policy.

Given the ecological and typographical sensitivity of the site and its surrounds, the approval of this development would conflict with the objectives of the Policy because of the likely adverse impacts on qualities which the "key actions" of the Policy seek to protect (See pp 18-22 of NSW Coastal Policy). These include:

- Damage to water quality.
- Damage to life and property.
- Damage to important fishery habitats and protected sea grasses and mangroves
- Damage to SEPP 14 Coastal Wetlands and adjoining SEPP 26 Littoral Rainforest.
- Damage to endangered and threatened species.
- Damage to EECs with inadequate compensation
- Damage to foreshore areas - including acid sulfate contamination.
- Damage to aesthetic qualities of both the natural and built environments.
- Damage to the natural coastal process with increasing stormwater and flood hazard for the local community and environment.
- Damage arising from failure to account for climate change and sea level rise.

The Policy discourages development on the coast that might cause such impacts.

The Policy also talks of the acquisition of land for both conservation purposes and addressing the impacts of coastal process and hazards that might occur. It requires Local Councils to redraft new local environmental plans consistent with Coastal Policy and to adopt planning and development controls specified in the policy where appropriate.

This is exactly what TSC has done in respect of its new Proposed Planning Amendments as a result of working with community over many years.

Coastal Policy stresses the role of the Coastal Council to ensure *all parties responsible for the implementation of the policy perform this role effectively. In particular, the Council will have a review role in ensuring the major rezonings and major new developments in the coastal zone are consistent with ESD principles on which the policy is based.*

The community requests that TSC continue pushing DoP and other relevant authorities for the implementation of the correct E-Zones on the property as proposed to give stronger legislative effect to the 75 m buffer and protection and rehabilitation of environmental areas.

In conclusion, it is submitted that rather than approve this development, TSC should adhere strongly to its Proposed Planning Amendments as they correctly provide for the appropriate level of remediation and protection of the natural and built environment consistent with all relevant policy and law.

Submission re COASTAL MANAGEMENT REFORMS

HASTINGS POINT PROGRESS ASSOCIATION
4/71-73 Tweed Coast Rd,
Hastings Point, NSW 2489

PART A: KEY ISSUES

Hastings Point is a small coastal hamlet beside a coastal estuary on the Tweed Coast in northern New South Wales.

The Hastings Point Progress Association provides this submission as a Case Study of how the proposed changes will impact this estuary and its surrounds.

Overarching comment

1. We generally welcome the Government's efforts to develop new coastal protection laws for **strategic planning and management of the coast** in accordance with the **principles of ecologically sustainability and for the long-term public interest.**

Coastal zone/coastal management areas

2. The proposed new Coastal Management Areas must be further refined to provide **clear and consistent protection for coastal environmental and public interest values**, including within the Coastal Use Area. This refinement must include clear proposed local mapping in order that residents of locally impacted areas can make full and informed comment.

3. **Existing protections for coastal wetlands and littoral rainforests should be retained and enhanced in the new SEPP,** including important **concurrence and assessment requirements.**

4. **Vulnerable Coastal Estuaries must be identified as coastal wetlands and afforded the same levels of protection.**

5. **Protections for other land and water bodies** identified as being ecologically sensitive to impacts from coastal development activity (coastal environment area) should be consistent with the protections for coastal wetlands and littoral rainforests, and **the management objectives for these areas should be accorded higher priority** than Coastal Vulnerability and Coastal Use Areas.

6. Objectives for **protecting and enhancing the environment should be included in the Coastal Use Area.** The existing coastal zone boundary (generally 1km inland) should be used to retain current protection measures, and be fixed (unable to be increased or decreased).

CONCERNS REGARDING THE PROPOSED CHANGES TO THIS LEGISLATION

a. Coastal estuaries must be identified as coastal wetlands and afforded the same levels of protection to mitigate the threats of development, climate change, sea-level rise and flooding.

b. Estuaries which have been deliberately degraded must be rehabilitated to reflect their original flow patterns to mitigate localised flooding and sea-level rise. Tidal Estuaries are particularly vulnerable to regular convergences of high/king tide and storm water flooding.

c. **Draft LEP and DCP amendments for Hastings Point which have been through exhibition stage and forwarded to the Department of Planning for gazettal which include any coastal zone mapping. Therefore any mapping for the proposed bill should be exhibited in draft text for comment prior to the bill being finalised.**

d. **The legislation needs to include strict compliance provisions.**

e. **Detailed Mapping needs to be provided in order that interested parties can provide a localised and informed response.**

f. **Where there are areas of contention such as Hastings Point where inappropriate and unsustainable development applications have been fought by local residents and Council for 30 years, there must independent community consultation before drafting of text and finalisation so far as its localised area is concerned.**

g. **Provision needs to be made for situations such as that which Hastings Point is experiencing. This appears to be quite unique insofar as draft LEP and DCP amendments have been through exhibition stage and forwarded to Department of Planning for gazettal – which are currently on hold – which propose potential new zones to address the inappropriate zoning in and around Hastings Point – particularly LOT 156, Creek Street – to address many issues, including but not limited to, flooding, environmental and amenity.**

Tweed Council has engaged in extensive assessment and public consultation over a period of years to address the inappropriate zoning. Mapping and controls have been adjusted accordingly. The provision for remediation of degraded areas, protection of sensitive environmental areas and protection from flooding has been addressed carefully by the amendments to the LEP and DCP – these draft amendments should be recognised.

These amendments are currently in draft form and being held pending this legislation. Therefore, any coastal zone mapping should be exhibited in draft text for comment prior to the bill being finalised.

Coastal Management Programs

7. **Requirements for councils developing coastal management programs** set out in the proposed new Manual **must be mandatory and enforceable** to ensure that councils are using the best science, engaging local communities and adequately assessing and responding to threats to the coastal environment.

   The 30 year period of contention over Lot 156 Creek Street has included numerous unlawful and inequitable practices which have been challenged both by Tweed Shire Council and the local community in Land and Environment Court hearings (see Attachment 2: Hastings Point Community Submissions pp 5-10). However remediation and compliance has not been effectively enforced to date. The LEP and DCP Amendments go some way in addressing past illegal infractions so protecting the environment, the community and its amenity.

NSW Coastal Council

8. **A newly established Coastal Council is generally welcomed,** however its functions and membership should be expanded to provide advice on an integrated approach to coastal management, including policy, strategic functions in relation to the new Act, and community engagement.

Climate change impacts

9. The coastal reform package must provide **clearer requirements and guidance for climate change adaptation and mitigation**, including in relation to flora and fauna species migration, more extreme weather events, increased flooding and inundation and sea level rise. These are all special issues to coastal, estuarial and floodplain issues relevant to Hastings Point.

Compliance and enforcement

10. Key elements of the coastal management package, including crucial requirements under the Coastal Manual, **must be mandatary and enforceable.**

Reform process

11. The Government must publicly exhibit key elements of the coastal reform package, including the **coastal zone mapping and the draft text of the proposed new State Environmental Planning Policy prior to the Bill being finalised.** Mapping must be based on robust techniques at a meaningful scale and be local.

PART B: CASE STUDY: Hastings Point

Response to proposed changes

1. **Coastal Wetlands and Littoral Rainforest.**

   Lot 156, Creek Street, Hastings Point is a large parcel of land which has been contentious for more than 30 years. Originally a pristine estuary, it has been degraded, dredged, bulldozed and mown over in an attempt to provide opportunities for development. Arguments around this issue, including a full chronology are included in Attachment 1- Hastings Point Community Submissions

   The Coastal Wetlands and Littoral Rainforest OBJECTIVES would require this area to be rehabilitated and restored to mitigate the documented instances of sea-level rise, flooding, climate change and species migration (including endangered species such as Jabiru and Beach and Bush Stone Curlews which nest in the area and EEC communities such as Salt Marsh which is threatened by sea level rise)

   Inclusion of coastal estuaries as Coastal Wetlands would bring immediate protection to highly vulnerable areas such as Hastings Point.

   ***We refer the reader to Attachment 1- Hastings Point Community Submissions Pages 10-27 for an in-depth assessment of the impacts of flooding and on flora and fauna of this degradation.**

2. **Coastal Vulnerability Area.**

   The objectives proposed under this category would, in the first instance, require full restoration of the 7 hectares of land illegally dredged from the estuary, followed by illegal clearing of littoral rainforest which is currently being mown in an attempt to claim this is development ready land. It would also require the reopening of a section of the estuary which was illegally dammed, and which has created ongoing flooding impacts on neighbouring properties.

   ***See Attachment 1- Page 4 for a history of these activities and legal action to date.**

3. **Coastal Environment Area**

   Estuaries, particularly those within a kilometre of the immediate coastline, must be considered wetlands if they are to be adequately protected in future. Maintaining estuarine health and ground water quality has been the primary objective of ongoing submissions to Tweed Shire Council and the NSW Department of Planning by the Hastings Point community over a period of 30 years.

   ***Attachment 1: Hastings Point Community Submission pp 17-22 contains a commissioned independent expert's report by Australian Wetlands which outlines threats to, and impact on, the Marine and Wetlands Ecology of this area.**

4. **Coastal Use Area**

   The Tweed Shire Council has engaged in significant assessment and long term public consultation to address the inappropriate zoning and mapping has been adjusted accordingly. The provision for remediation of degraded areas, protection of sensitive environmental areas and protection from flooding has been addressed carefully by the amendments to the LEP and DCP – these draft amendments should be recognised.

PART B: ADDITIONAL TALKING POINTS

Coastal Management Bill 2016

- The draft Bill itself does not establish any legislative protections for sensitive coastal environments. It does not set any limits on development or include mandated requirements for decision makers. In order to achieve effective and meaningful protection for the coast, key controls and decision making requirements must be established in legislation.

Objects

- We support the overarching objective to manage the coastal environment of New South Wales in accordance with the principles of ecologically sustainable development, as defined in section 6 (2) of the *Protection of the Environment Administration Act* 1991.

- We generally support the specific objectives of the draft Bill, particularly protecting and enhancing environmental values, special acknowledgement of Aboriginal cultural heritage and use, ecologically sustainable coastal development and land use planning, mitigating future as well as current risks from coastal hazards, taking account of climate change, local and regional scale of coastal processes and implications of dynamic nature of the coast and managing use and development accordingly.

Coastal Manual

- Greater emphasis should be given to climate change and sea level rise impacts in Part A and Part B, Stage 1 of the Coastal Manual.

- It is of concern that councils could move directly from Stage 1 (scoping study) to Stage 4 (exhibition and adoption of a Coastal Management Program) without addressing Stage 2 (detailed studies of vulnerabilities and opportunities) and Stage 3 (response identification and evaluation), particularly given that the consideration of important issues, such as social and cultural values, vegetation, biodiversity and ecological integrity, hydrology, and water quality is required at Stage 2.

- Part B, Stage 5 should provide further guidance on how feedback provided during public exhibition will be responded to or incorporated into the final Coastal Management Program.

- The Coastal Manual provides too much discretion for local councils. Key components of the Manual must be obligatory for councils and enforceable via the legislation. However where local councils mapping is stronger and more localised than state mapping and protects the environmental sustainability of the local area, this needs to be given precedence

- The Coastal Manual must ensure coastal management programs are strategic, adopt an integrated approach, consistent with ESD principles, are consistent with a hierarchy of objectives which accords priority to assessment of and planning for Coastal Wetlands, Littoral Rainforests and Coastal Environment Areas ahead of and as the foundation for Coastal Vulnerability and Coastal Use Areas.

- The Coastal Manual should also ensure that Councils are relying on recognised expert, peer-reviewed evidence and advice and appropriate assessment in responding to existing and predicted threats to the coastal environment, whilst providing for community engagement throughout the process.

Quality Control

- Mechanisms should be established under the new framework to ensure that coastal management planning and impact assessment is carried out by qualified experts and subject to rigorous external review.

Cumulative Impacts

- The new framework must include mechanisms for ensuring that the cumulative impact of development on sensitive environments is taken into account in coastal management planning and development assessment.

Floodplain management issues

- The reform package provides limited integration between coastal management and floodplain management. This is a significant gap, given the overlap between increased coastal flooding and inundation, with threats of sea level rise and increased storminess and more intense catchment runoff arising from climate change. This is a vital issue for places like Hastings Point.

Land acquisition provisions

Given the significant environmental values and the vulnerability of the coastal zone, existing coastal land acquisition provisions need to be retained.

SEPP 50

The existing provisions of SEPP 50 – Canal Estate Development, which prohibits any new canal estate development throughout NSW, must be transparently retained in the coastal reform package.

Coastal Management State Environmental Planning Policy

The following points have been prepared to assist you in responding to the nine question outlined in the '*Coastal Management State Environmental Planning Policy - Statement of Intended Effect'*

- **Question 1. Should councils be able to propose changes to the maps for all or some of the coastal management areas?**

  Given that substantial research and analysis will be undertaken to prepare the initial maps, there should be limited need for councils to change maps. Any changes outside of regular map review should be strictly limited and supported by clear scientific evidence. Proposed changes must also go through a process of public consultation.

- **Question 2. Should the development controls be included in the proposed Coastal Management SEPP or as a mandatory clause in Council LEPs?**

  The Development Controls should be included in the SEPP to ensure the application of controls across Councils is consistent with the Objects of the Act and SEPP.

- **Question 3. Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?**

  The existing controls for mapped coastal wetlands and littoral rainforests should be maintained, including concurrence provisions.

- **Question 4. Do you support the inclusion of a new 100m perimeter area around the mapped wetlands, including the application of additional development controls.**

  Yes. Further, the 100m buffer area of a coastal wetland should apply to land zoned for residential use, including immediately around tidal estuaries.

- **Question 5. Are the proposed development controls for mapped coastal vulnerability areas appropriate for the land?**

  The proposed controls are appropriate but can be strengthened by specifically requiring that development consent is required for any damage or removal of removal of coastal dunes, foreshores, vegetation and wetlands (including tidal estuaries). This consent then needs to be subject to strict and enforceable compliance measures.

- **Question 6. Are the proposed development controls for coastal environment areas appropriate for that land?**

  The proposed development controls are appropriate, but can be strengthened by requiring that the consent authority establish that the proposal meets the criteria, and requiring the consent authority to consider cumulative impacts, on environment, and local amenity and safety. However Tidal Estuaries must be included as Wetlands in order to protect them and their associated fish nurseries.

- **Question 7 - Is the inclusion of the catchments of the 15 sensitive coastal lakes (listed in Schedule 1) within coastal environment area appropriate?**

  Yes, it is very important that the conservation value and sensitivity of these lakes and lagoons are recognised by constraining development that would adversely impact on these values. However it is concerning that the coastal zone applicable to other coastal lake catchments could be reduced from 1 kilometre to 500m.

- **Question 8. Which is the best option for mapping the Coastal use Area?**

  The existing coastal zone boundary would be the most appropriate in most areas, given that no case for change has been made. Therefore the current boundary should be used to retain current protection measures, and be fixed. For Hastings Point we note the mapping associated with the DCP and LEP amendments needs to be heeded with further community consultation to determine final mapping.

- **Question 9. Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics and conditions?**

  If Councils wish to expand the development footprint in parts of their Region, this should be done consistent with Regional Planning Processes and review of LEPS as has occurred through the community consultation development of appropriate and necessary amendments to DCP and LEP at Hastings Point. Councils also need to be able to impose deterrent level penalties for non-compliance.