

Submission  
No 33

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS  
OF CLIMATE CHANGE ON THE ENVIRONMENT AND  
COMMUNITIES**

**Organisation:** Sandy Beach Action Group

**Date Received:** 30 October 2023

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Attention: Ms Sue Higginson, Member NSW Legislative Council  
From: Sandy Beach Action Group, Inc (SANDBAG)

### **Submission to the Enquiry into the Planning System and the Impacts of Climate Change on the Environment and Communities**

The Sandy Beach Action Group Inc (SANDBAG) welcomes input to the Portfolio Committee 7's enquiry into the Planning System. Sandy Beach is a small coastal community 23 kilometres north of Coffs Harbour in NSW. This submission is based on SANDBAG'S experience in opposing an on-going Development Application (DA) for north Sandy Beach on the shores of Hearn's Lake.

SANDBAG submits that the State government has failed to address mistakes of the past, to the point where the waterway is now reported to be in its death throes. This is a direct result of the cumulative impacts of planning process over the last two decades (*See attached – History: The how and why Hearn's Lake is dying*)

Several DAs have been submitted to Coffs Harbour City Council (CHCC) over the last 20 years, and they are typically in direct conflict with the local council's plan for the site, general planning for the area and the best scientific advice on how to protect this important site.

Development of this land as a housing estate would compromise an established residential community through increased potential for flooding, sea level rise and coastal recession. The developer shows little consideration for the historical environmental issues or current planning requirements for coastal and environmentally sensitive land.

SANDBAG considers that the following would facilitate a better outcome, for both this development, and all future development applications in NSW:

- (i) The determination or approval of any development in regional areas should be by Local Councils based on local development control plans, local impact studies, submissions from local residents with historical knowledge, and local management plans, including detailed estuary management plans. These tools are invaluable in ensuring that future developments align with the requirements of the local people and the environment and should not be easily overridden by State Governments.
- (i) Prior to any State Government determination that a development in a regional area is of State significance; the authority must outline in detail the reasoning for its decision and invite submissions and representation from regional residents and regional local authorities. For example, the requirement for increasing the residential dwelling capacity in a region might be set by the State Government, but the execution and development approvals to satisfy this requirement should be by Local Council.
- (ii) A mediation process should be held with all interested parties before an application is made to the Land and Environmental Court to assess the merits of the proposal.
- (iii) Due to the potentially significant risk of serious harm or damage to the environment, life and property, private certification of larger developments, e.g. over 20 houses, should be discontinued. Private certifications should remain for minor developments only.
- (iv) It should be mandatory to revise Development Applications (including those relating to State Significant Projects) after 5 years if work has not been completed. This take

account of current environmental conditions and flood mapping, changes in demographics, infrastructure needs and cumulative impacts.

- (v) The State Government should review existing Development Applications more than 5 years old, not yet completed, to redress past mistakes made under repealed Part 3A legislation.
- (vi) Australia faces a home insurance crisis due to the heightened risks of climate change. Flood categorisation needs to be identified for all Flood Prone Lands, which is all land inundated to the Probable Maximum Flood (PMF). The PMF needs to be very carefully considered.
- (vii) The NSW Coastal Lands Protection Scheme, that brings significant coastal lands into public ownership, has many positives and is severely limited by its annual budget of \$3 million. This scheme needs a major boost in funding to be truly effective.

SANDBAG recognises the urgent need for greater housing availability but support other low-risk options such as caps on short-term accommodation, and urban intensification, rather than approving development on land which is unsuitable.

SANDBAG supports ecological sustainability for any proposed development in the Region.

Yours Sincerely,

Peter Quiddington

30/10/2003

## **History: The how and why Hearnese Lake is dying**

A bad odour lingers around Hearnese Lake, on NSW mid-north coast. The cause has less to do with the physical state of the lake – which is said to be dying – and more to do with the poor planning decisions that are causing the lake's steady decline.

Hearnese is located between Sandy Beach and Woolgoolga, north of Coffs Harbour, and is a prime example of the numerous 'zombie' projects, on the NSW coast.

It is a most valuable ecological site, supporting two endangered ecological communities and six Threatened Species, and it is a designated Habitat Protection Zone within the Solitary Islands Marine Park. The area is subject to flooding and as an Intermittently Open and Closed Lake/Lagoon (ICOLL) it is also quite vulnerable to the impacts of sea-level change. (see *Hearnese Lake – Environmental Assets below*)

However, it is not the ravages of nature that pose the greatest threat to the lake, as much as being part of a planning system that fails to address mistakes of the past.

In 2010, the then Minister for Planning, Tony Kelly, gave concept approval for the development of a 200-house estate, 'Sandy Shores', on the Hearnese Lake site, under Major Projects Part 3A of the EPA.

That provision of the Act has since been repealed, because of the wide scope for 'discretion' it gave Ministers. Tony Kelly, who reportedly approved a raft of developments, valued at around \$10 billion, in the lead-up to the 2011 State election, has since been named as corrupt by the Independent Commission Against Corruption. Yet, the concept approval lives on, seeming in perpetuity.

Before Kelly intervened, the local council in 2005 had deemed no more than 35 houses be built on the site, because of the complex and fragile nature of the environment. Over the years ownership of the land changed hands and new modifications were made, under the 2010 approval. At almost every turn there would be protests by local residents, and twice the project plans led to action in the Land and Environment Court (see *Chronology of key events* for detail).

The concept approval lives on by virtue of the technicality that the requirement to 'commence' development occurred when the owners demolished two old cottages on one of the parcels of land. No other actual work has taken place, and there is no requirement for works to be completed.

Meantime, the lake and bushland, located within an area of spiralling population growth, offers enormous scope for conservation and recreation. But the area has been locked up in this planning stalemate for close to two decades. As a result, the land is slowly degrading. Cattle are allowed to run free and the waters of Hearnese have become a toxic dumping ground, for the local horticultural industry – primarily blueberries.

The cumulative impacts of rapid urbanisation, a little-regulated intensive horticultural industry and a history of poor planning outcomes has meant that Hearnese Lake is now unusable as a recreation resource, where it is most needed. Instead, researchers say it is polluted to third world standards, with a build-up of toxic chemicals in its sediments and nutrient levels 100 times above the standards.

State government – that has allowed this state of affair to arise – refusers to properly acknowledge the problems exist. For the lake to be rehabilitated urgent solutions are now required.

### **Chronology of key events in relation to development of Hearn's Lake**

2005	The Coffs Harbour City Council (CHCC) Development Control Plan (DCP) placed a limit of 35 lots to be developed on the 49-hectare Hearn's Lake site.
20/12/2010	Concept approval given for 200-house, under Part 3A, by Planning Minister, Tony Kelly, overriding council planning restrictions.
15/3/2011	CHCC challenged to validity of concept approval in Land and Environment Court.
23/1/2012	Decision of Sheahan J in Land & Environmental Court upholding Concept Plan approval of 20/12/2010
2012	CHCC appeal to Court of Appeal against the decision of Sheahan J in L & E court
19/9/2012	Modification 1 to clarify name of proponent in instrument of approval was withdrawn
6/3/2013	Appeal dismissed - concept approval upheld
2013	Application by Sandy Shores Developments Pty Ltd to modify concept approval into 280 residential lots – Modification 1 (Subsequently withdrawn)
23/09/2013	Sandy Shores Development Pty Ltd – application to modify concept approval – Modification 2 – changes sought
28/03/2014	Receivers appointed with respect to the land
18/2/2015	Land sold to Elite Constructions
2/2015	Elite makes application to modify Concept approval - Modification 3 - to extend lapsing date for 2 years to 20/12/2017 – granted
8/5/2015	NSW Planning approval of Mod 3 to extend lapsing period to 20/12/2017
2/2017	Landholder makes application to modify Concept approval to remove laneways on basis of submission of new plan and also remove small swales drains and in place have garages and driveways
01/3/2017	Complying Development Certificates issued by Brett Acheson to demolish 15 & 17 Pine Crescent
21/4/ 2017	NSW Planning assessment report recommending approval to Modification 4
4 May 2017	Demolition of 15 & 17 Pine Crescent completed as certified by Brett Acheson
11/5/2017	Application to amend application for Modification 5 Amendment of the subdivision layout to remove rear laneways and alteration of the drainage design to provide bio-retention areas around the perimeter of the development footprint.  Letter from ADW Johnson on behalf of landholder admits “ Concept approval condition that DA needed before construction of any subdivisional works”.

6/2017	Various submissions lodged in response to application for modification by CHCC (not support); OEH (not support); and public (mostly not support)
8/2017	Elite made further submissions x 2 to modification 5
9/10/2018	Land and Environment Court decides that Elite's concept approval has not lapsed, based on the fact it had commended work with the demolition of two cottages in Pine Crescent, allowing access to the future estate.
2/2018	Application for Modification 7 to the Concept Plan Approval to increase the development footprint by re-instating parts of the site specifically excluded from the Concept Plan Approval
1/1/2019	Elite lodge DA0450/18DA with CHCC for 169 lots
1/2019	DA 0526/19DA lodged for subdivision of land into 3 lots – lot 1 = 39.703Ha by dedication; Lot 2 = 5.863 Ha; Lot 3 6.024Ha
9/2019 DA	0526/19DA approved
10/2019	DA0450/18DA withdrawn
4/7/ 2023	DA 0847/23DA lodged for development of 148 lots to reflect the recent zoning amendments to the Coffs LEP2013....the Application will retain lot 56 to set up Biodiversity Stewardship Site management Plan and flood works, the APZ.
3/8/2023	0847/23DA withdrawn on advice from council that it did not meet basic criteria.

#### **Hearnes Lake – Environmental Assets**

- Two Endangered ecological communities (Swamp sclerophyll forest and Coastal saltmarsh) and habitats supporting 6 threatened species (Wallum froglet, Black-necked stork, Osprey, Greater broad-nosed bat, Eastern free tail bat and Glossy black cockatoo)
- Habitats for migratory birds and marine species
- High conservation value riparian vegetation
- High conservation native vegetation
- Wildlife corridors
- Hearnes Lake is also an important breeding ground for fish and aquatic life crucial to the well-being of the Solitary Islands Marine Park.