

DEVELOPMENT APPLICATION “PORT HINCHINBROOK STAGE II” NOW RENAMED “TWO-MILE CREEK ESTATE”

COMPLICATED HISTORY

The “original” (2008) Application was for lake/canal/marina/golf course etc, on Lot 170 (60 ha dredge spoil disposal site) and other rural blocks south to Mary Creek. Later amended applications (2008 and 2009) withdrew the golf course and some associated activities.

Despite various amendments, the CCRC received departmental advice that the Application should be refused.

The current “changed” Application is for:

- a battle-axe residential/rural subdivision of 2 ha blocks with no activities specified;
- no lake/canal/marina or golf course;
- a different set of lands, excluding Lot 170 (from Figure 2 in the Application it is not possible to identify all the subject blocks listed elsewhere in the Application).
- a new name “Two Mile Creek Estate”

Despite all these changes, the developer, Williams Corporation (WC), claims that the current Application is just a changed version of the original application and should be assessed under old planning legislation (Integrated Planning Act - IPA) that was repealed in 2009.

After receiving the current “Changed Application” the CCRC sent two letters to the developer, quoting their legal advice that the the Application is so different, in land use and site proposed, that it can only be regarded as a new Application. As a new Application it would have to be assessed under current planning law which does not allow urban development on this rural land. Presumably, to comply with planning law, the Application would have to be refused.

Despite Council's legal advice, the developer has advertised the current “Changed Application” for public comment, with due date for public submissions 24 August 2012. It is available on the CCRC website along with the earlier applications and and the two recent Council letters.

“TWO MILE CREEK ESTATE” - A BATTLE-AXE SUBDIVISION

Lot 170 (immediately south of “Port Hinchinbrook”) and all the land south of it is zoned rural. Under current legislation (Sustainable Planning Act and FNQ 2009-2031 Regional Plan), all the land south of “Port Hinchinbrook” is outside the urban footprint.

Nevertheless, the developer, Williams Corporation (WC), wants to have all the land between Lot 170 and Mary Creek rezoned Residential-Rural and subdivided into approximately 2 ha blocks. Mary Creek is about 4 kilometres south of the Port Hinchinbrook entrance. All the subject land lies between the railway (adjacent to the Bruce Highway) and Girramay National Park.

The developer argues that it does not have to state what uses it intends for the proposed subdivided blocks.

The present rural blocks (size 10 to 25 ha) have low-key “occupational crossings” over the railway line to access the Bruce Highway. The Application states that these crossings would have to be blocked, creating a long battle-axe subdivision. The only exit would be via an internal road from the Mary Creek end all the way north to the “Port Hinchinbrook” entrance, a distance 4 or 5 km. This is about 2 km from the nearest part of the proposed subdivision.

Here's the history of the Application, as quoted in the present Application

Feb 08 DA 080/08 submitted to the (former) Cardwell Shire Council

May 08 DA **changed** (delete RoL and add Stage 1 access land and STP)

Feb 09 DA **changed** (marina, not canal, revised Master Plan and uses)

Mar 09 Cassowary Coast Regional Council (CCRC) issue a Request for Information (RFI) (11/3/09)

Mar 09 Referral agencies - DMR (3/3/09), EPA (20/3/09) DNRW (20/3/09) RFIs

April 09 DERM (EPA) (Advice agency) – **advice to CCRC to refuse application** (6/4/09)

May 09: DIP **advice to CCRC to refuse the Application** (20/5/09)

Mar 2010: **Extension** of Information Request (IR) period agreed to for 12 months

June 11: **Further extension** of Information Request (IR) period agreed to till November 2011

Nov 11: **another extension** of Information Request (IR) period to agreed to till 31 May 2012

The extensions of time (2010 to present) have allowed the Application to remain "alive" under old legislation. The Sustainable Planning Act replaced the Integrated Planning Act (IPA) in December 2009, and the FNQ 2009-2031 Regional Plan came into effect on 13 Feb 2009.

The significance is that, under the FNQ 2009-2031 Regional Plan, ***no urban development can occur south of the present "Port Hinchinbrook"***.

COUNCIL'S LEGAL ADVICE:

The CCRC letter of 15 June 2012 was very clear:

"the proposed development does not reflect any part of the original application ... based on the substantial changes and the totally new land use proposed (Residential Rural), it is considered that the proposed changes represent a completely new Development Application rather than a Change to an Existing Application" (15 June 2012)

and, in a further letter (24 June 2012) referring to a court judgement cited by the developer's consultant, criticised the consultant's omission of a crucial statement:

"We particularly note that you failed to include the complete paragraph 59 and possibly use it out of context. We set out below extracts which correctly identify the position including our underlining which was not included as part of paragraph 59 in your correspondence. That part underlined obviously cannot give your client comfort..."

"We reiterate that based upon the substantial changes and the totally different land uses what is proposed, in our view, constitutes a completely new development application rather than a change to an existing application."

A close look at the Application document itself reveals further apparent mistakes, omissions and possibly misquotations.

On the face of it, this "Changed" Application cannot be approved, because it has been erroneously submitted as a changed application instead of a new application. Nevertheless, because the Developer has published the required public notice, it seems that the Council must review submissions received and make a decision. The due date for submissions is 24th August.

Lot 170 - benefit or liability?

A curious part of the current "changed" application is that the 60 hectares of Lot 170, now covered metres deep in dredge spoil and acid soil dumps, would be ceded to Port Hinchinbrook Services Pty Ltd (PHS), the quasi-body-corporate for "Port Hinchinbrook" subdivision block owners. Lot 170's dredge spoil operations caused the death of much of the northern part of Girramay National

Park.

The Application describes this intended transfer as a benefit for PH block and berth owners, stating it will be a "permanent" dredge spoil disposal for "Port Hinchinbrook"; but it fails to point out that there is almost no lawful capacity left on Lot 170 for this use.

Dredge spoil has been accumulating on Lot 170 for 18 years. No satisfactory treatment or beneficial use has ever been found for it. The dredge spoil "ponds" are required to be monitored and damage remediated. Port Hinchinbrook Services members other than the developer (who still has a controlling interest) might regard ownership of this block as a liability rather than as a benefit.

HERE ARE SOME STAND OUT POINTS:

CCRC legal opinion is that this is a new Application, not a Changed Application. Council should heed its legal advice and refuse to consider this Application.

The Application does not comply with the Desired Environmental Outcomes of the Cardwell Shire Planning Scheme.

Council planning "overlays" have not been adequately addressed. These include bushfire and acid sulfate soils.

From Figure 2 in the Application it is not possible to identify all the subject blocks listed elsewhere in the Application.

The Application does not comply with the Desired Coastal Outcomes of the Cardwell-Hinchinbrook Regional Coastal Management Plan (though repealed, this Plan is still applicable if assessment proceeds as for a "changed application").

The oft-repeated assertion in the current Application that it is environmentally better than previous proposals is not a valid argument about this proposal. Each proposal must be assessed on its own merits, not by comparison with some other proposal.

The present state of the rural land is "degraded" (as claimed by the developer) compared with its state prior to the developer acquiring that land many years ago. Its agricultural uses were discontinued, although the mango orchard is still there and light cattle grazing continued for some years after acquisition. This poor management of the land is no reason to degrade it further; rather, it should be returned to agricultural productivity.

There is no information about actual activities intended on the proposed residential/rural subdivision. The developer argues that such information should be deferred to some later approval processes, after the subdivision has been approved.

Likely impacts of the proposed subdivision

The application does not consider the impacts of the proposed 38 new 2-ha residential blocks and activities on adjacent Girramay National Park, Hinchinbrook Channel, Great Barrier Reef World Heritage Area, endangered species etc (eg mahogany gliders), other native fauna, vegetation, and native birds.

Impacts will come from land use activities such as clearing, draining and building, dogs, cats, other pets, quad bikes, motorbikes, sporting activities, shooting; herbicide and pesticide run-off; and sewage (septic tanks proposed, no connection to the sewerage treatment plant).

The Application proposes a 50 metre buffer zone along the Girramay National Park boundary. This will not stop dogs, cats, weeds etc. from adversely affecting the national park.

Any changes to the topography of the land will change the distribution of freshwater surface flows to Girramay National Park, with potentially disastrous results for the affected parts. Such changes

are likely due to built-up house pads and other structures, internal roads, bridges over Two-Mile Creek, and drainage lines.

Human safety and environmental impacts have not been adequately addressed for the proposed battle-axe subdivision:

- these blocks include or are adjacent to coastal hazard (inundation) areas;
- no direct access to Bruce Highway for medical and weather emergencies eg flooding and bushfire, only one internal escape route kilometres from the exit.
- increased road travel times, fuel expenditure and carbon footprint due to an additional 10 km when driving from Ingham to a southern subdivision address via the Port Hinchinbrook entrance.
- quality of internal roads - who will maintain them? Council?

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