

# PHOENIX!

NEWSLETTER OF

## THE ALLIANCE TO SAVE HINCHINBROOK INC

### GOOD NEWS !

After ten years of intrigue, conservationist lobbying, and repeated ministerial reassurances and delays, USL Lots 42 and 33 south of Oyster Point have at last been converted into Girimay National Park.

The former USL Lots 42 and 33 are adjacent to Cardwell Properties' spoil ponds. Lot 42 (a small block close to Oyster Point) is where the 1999 dredge spoil spill caused by the collapse of inadequate dredge spoil pond walls.

The coastal freshwater wetland is habitat for mahogany gliders, beach stone curlews. A long narrow strip lying between the mangroves of the Hinchinbrook Passage and the developed land along the Bruce Highway, it also forms a natural protective buffer between the developed lands and the sea.

"Thank you" to all those who have written letters, lobbied politicians, or encouraged others to do so, to achieve this outcome. Of course there is always more to do:

### OUR NEXT GOAL

About 3 kilometres south of Port Hinchinbrook's Grande Canal (formerly Stony Creek) is Mary Creek, where the agricultural land owned by developer Keith Williams ends and Seafarm's aquaculture ponds begin.

South of the prawn farms, Girringun (formerly Lumholtz) National Park lies on both sides of the Bruce Highway, around existing developed lands. Along the coast, between Girimay and Girringun and around the prawn farms, a sizeable tract of USL still needs formal protection.

In January 2001 Minister Welford, in response to conservationist pressure, cited Lots 1 and 3 on SP 124700, Lot 3 on SP 126731, and Lot 4 on SP131219, to be investigated for inclusion in Lumholtz National Park.

This must be our next goal.

### NOTICE

#### GENERAL MEETING

*to be held at*

**"Galmara"**

*on*

**Saturday 29<sup>th</sup> Sept 2007**

*at*

**2:00 pm**

*How to get there?*

For directions to 'Galmara' please phone Margaret Thorsborne on

**07 40 668 537**

**REMEMBER TO SEND  
YOUR PROXY**

### Port Hinchinbrook Services sends delegation to Council

Port Hinchinbrook Services (PHS) is the body corporate for the owners of land on the "Port Hinchinbrook" (PH) development.

The PH block owners now want to offload onto Cardwell Shire Council much of the maintenance dredging cost burden they accepted when they signed their purchase contracts.

The Tully Times (16<sup>th</sup> August) has published a long report of their presentation to Council.

*See centre pages for ASH responses.*

## Cape Richards – jurisdictional issues – resort facilities and film site

The Hinchinbrook Island National Park Management Plan calls for the gazettal of several lands associated with the Island to be included in Hinchinbrook Island National Park. These lands include a gazetted road and esplanade on the Island (associated with the 8 hectare resort lease) and several small islands around Hinchinbrook Island's coast.

The small islands have now been included in the national park, but the road and esplanade remain as before. The road cuts through the resort lease, separating the lease into two unequal portions.

The esplanade is under the jurisdiction of the Cardwell Shire Council; the resort lease conditions can be enforced only by the Department of Natural Resources and Water (DNRW); and the lease is in the national park under the jurisdiction of the Queensland Parks and Wildlife (QPWS). A Wild Rivers declaration applies over the entire island, and theoretically could apply on the parts not inside the national park.

Although the lease conditions are inadequate and cannot be amended, and the QPWS has no power to enforce them, the Environment Minister's office has stated that the QPWS will ensure the protection of the national park.

In the past, the transfer of the right to occupy the lease and acquire the resort appears to have been achieved by selling the company rather than having the lease transferred to the new "owner". Technically, the owner is the company. We believe that this is the most probable current scenario.

The effect of the Wild Rivers declaration is unknown. The declaration applies directly over the non-national park sections (road and esplanade). Until the interaction of the two acts is tested in court we can only hope that the *Nature Conservation Act* would prevail over any actions affecting the surface or ground water of the national park, even when outside the park boundaries.

ASH was successful in having the Wild Rivers water cap for Hinchinbrook Island reduced from 100ML per year to Zero. The government could however raise this cap again.

The resort water supply and sewage disposal seems to involve areas of the national park outside the resort lease.

ASH members recently made a visit to Cape Richards via the *MV Ian Fairweather*, the dinghy provided out of the proceeds of the Dugongs of Hinchinbrook Art Exhibition in 1996. *Ian Fairweather* has been well-used - now on its second outboard motor.

The visit revealed that the "sewage treatment plant" (as it was described to us some years ago) is little more than a large septic tank.

ASH investigators were of the view that the algae proliferating along some 200 metres of the Hinchinbrook Island coastal coral was a consequence of sewage-related effluent from this tank. The Minister's office denied any connection, but an inspection by QPWS officers quickly followed our letter and images.

Following the QPWS visit the sewage effluent seems to have been redirected, away from the beach and effectively into the national park outside the resort lease.

The water supply is a small stagnant dam on or mostly on the lease. Here cane toads are proliferating in large numbers, contrary to the lease conditions which stipulate that pest animals must be removed.

While a resort is being operated on the Island it clearly needs a clean water supply and appropriate sewage disposal. These commerce-related facilities should not have been allowed to run any risk of affecting the national park and its fringing corals.

So far the Environment Minister's office and QPWS management staff in Cairns have had nothing constructive to say about the obvious long term polluting risks of the sewage outfall,

the state of the water supply dam, and the encroachment of resort impacts into the national park outside the resort lease.

Now a film crew has been permitted to land large numbers of people on Cape Richards - 150 according to news reports. The film crew and their staff will stay at the resort. Media reports have quoted Keith Williams as saying that normal (permitted) public access to the island by ferry will be disrupted for about three weeks for the benefit of this private commercial activity.

The film is not about conservation or conservation education. Its purpose is entertainment and private profit making. We would like to know how this event could be justified under the *Nature Conservation Act*. ASH has written to the Environment Minister asking for the basis of the permit for this exercise. We are awaiting a reply.

While the gazetted road and esplanade remain outside the national park we can expect ministerial equivocation to continue over the extent to which the resort, shortly to be under the control of Keith Williams, is allowed to make inroads into the surrounding national park.

The stated intention of the Hinchinbrook Island National Park Management Plan (HINPMP) is clear: the road and the esplanade are to be taken into the national park.

ASH members are encouraged to write to the Environment Minister the Hon Lindy Nelson Carr, to ask why the determination expressed in the HINPMP in relation to the road and esplanade was not carried out when the small islands were included in the national park. We should also ask when this situation will be corrected.

The resort lease has about 30 years to run. ASH's long held position about Hinchinbrook Island Resort has been that the lease should lapse when the present incumbent wants to quit rather than being sold on. Under the lease conditions some compensation would be due to the relinquishing lessee.

**OYSTER POINT FORESHORE: THE AFTERMATH – November 2006**  
**12 years after the felling of the mangrove forest**  
**Protecting Port Hinchinbrook Services properties (and coconut palms) from the sea**



*Photos by Margaret Moorhouse November 2006*

*Above, left and right:* Port Hinchinbrook waterfront blocks, tide well down. Piles of “sand” and rubble excavated from the developer’s rural land have been dumped below high water mark, ready for spreading. Most of these blocks remain unoccupied.

*Top right:* exposed coconut tree roots and undercut fence. A constant battle between the sea and developer’s deposition of “fill” material to keep some soil under the coconut trees and the foundations of the fences.

The EPA has justified the dumping of excavated material into the Hinchinbrook Passage on the ground that the property developer has the right to “fill” the site to its boundary, which just happens to be below the high water mark. That the quality of the “fill” is variable seems to be irrelevant to EPA considerations. In the past the fill even included truck loads of dark grey wet soils that looked exactly like acid-bearing sulphide soils. Each deposit of “fill” has of course rapidly disappeared in this active wave environment, leaving behind (for a while) a residue of sand – the appearance of a beach where there can be none other than by very costly artifice. Even Professor Peter Sanger, so-called Independent Monitor, had to admit that Keith Williams could not have a beach here.

*Bottom right:* close up of the front fence of one of the water front blocks. This is not the only fence in trouble.

*Bottom left:* ASH Secretary/Treasurer Mal McLean makes an inspection. In the background to the left are more of the coconut trees of Port Hinchinbrook; to the right some surviving, shortened, mangroves. In the foreground some young mangrove trees have taken root despite the sheet erosion that continues to eat away the former mangrove substrate. A thin layer of sand, left after the sea has sifted away the silts from the dumped material, is spreading over the mangrove sediments. This gives the appearance of a beach.



*Photos by Margaret Moorhouse November 2006*

***PHS speaks***

***ASH responds***

*While we do work in conjunction with the developer, we are a separate entity (Hallam)*

In terms of *financial interest and control*, the body corporate Port Hinchinbrook Services (PHS) is not separate from the developer Keith Williams.

Only the remaining (minority) votes in PHS are held by the Port Hinchinbrook block owners.

Thus the developer is not merely working “in conjunction with” the residents but has control over PHS decision-making as well as control over the level of service charges Port Hinchinbrook residents and block-owners have to pay Williams Corporation.

For several years now Mr Williams has been exhorting the Port Hinchinbrook block owners to pressure Cardwell Shire Council to pay for the canal maintenance expenses that are the responsibility of the body corporate.

*We are responsible for the maintenance costs ...*

The liabilities of owners/residents were all made perfectly clear in the Port Hinchinbrook purchase contracts. If prospective purchasers didn't want the liabilities attached to purchase, why did they sign the contracts?

The leader of the delegation to Council is a real estate agent who has profited by selling the Port Hinchinbrook blocks. Mr Hallam would obviously be extremely familiar with the purchase contracts and the liabilities of purchasers.

*We are responsible for dredging costs ... (Hallam)*

Did purchasers really spend hundreds of thousands of dollars without first reading the fine print or engaging a lawyer to peruse the purchase contract?

Did Mr Hallam warn of the high dredging costs and other liabilities, when selling prospective purchasers the blocks?

*It is our belief that the CSC should help us ... (Hallam)*

For “CSC” read “SHIRE RESIDENTS”. If the developer's wish for the Council to pay for the dredging is granted, it could impoverish the whole shire.

to the level of their liabilities, they need to address these with the developer Keith Williams, or simply accept that they took a commercial risk in buying there that has not turned out as they might have wished.

If Port Hinchinbrook purchasers feel aggrieved or that they have been misled as

*Take over the roadways ... (Hallam)*

The roadways are only easements, and this was plain on the plans when the Port Hinchinbrook owners purchased their blocks.

again of the nature of the marine substrate of the filled land.

The risks associated with the acid sulphate soils underlying the roads and houses was very well publicised by conservationists and the Senate Inquiry into the Hinchinbrook Channel. The public was warned again and

Following a letter (some years ago) from ASH regarding legal consequences for councils, the Council has imposed a requirement on block owners to accept liability by supplying an engineering certificate as to the suitability of the soils before building.

*80% of boat ramp users are not PH residents ... (Hallam)*

First, most of the boat ramp users who are not PH residents have small trailerable boats of very shallow draft which require little depth of water and little or no dredging.

development. The presence of visitors attracted by the boat ramp was the trade off benefit to accrue to the Council and the Shire - not be made a cost on the Shire at some later date.

Second, the boat ramp was the developer's principal “come-on” promise to Shire residents and the liabilities for future costs were the agreed basis for the approval of the

Third, the siltation is not being “caused” by *any* of the users. It is entirely due to the siting of the marina/canal estate in a locality known for its serious sedimentation problem.

### ***PHS speaks***

*... the CSC to pay the dredging costs for the Grande Canal ...  
(Hallam)*

*The majority of the dredging has already been completed ...  
(Hallam)*

*Now that the breakwaters have been completed the silt build-up has been reduced significantly  
(Hallam)*

*The breakwaters are working so well that Keith Williams has sold his dredging equipment  
(Hallam)*

*Future dredging costs will be far less expensive  
(Hallam)*

*The completed breakwaters have been very effective ... it would be another six years until the canal needed dredging again ... (Wood)*

### ***ASH responds***

As above: when the PH block owners bought into the PH canal estate they accepted liability for its maintenance costs. No-one forced them.

The entrance to the Grande Canal has a hard bar that has not been shifted.

There are two phases to dredging: *capital* and *maintenance*. The original *capital* dredging cut the channel to a specified depth.

Old Council minutes show that Council allowed the developer to change the original proposed depth, thus reducing the capital dredging liabilities.

There is **no evidence** that the breakwaters have significantly reduced the "silt build-up".

**Even if the breakwaters proved effective, no evidence would be available for some years.**

The developer has failed to provide dredging records (last year in the Supreme Court in Cairns) that would make a comparison possible with post-breakwall dredging.

The developer's failure to present records of dredge spoil raises doubts as to the reliability of the stated rationale for building the breakwalls. Even the developer's technical reports say that the length built is minimal for having the desired effect.

If the developer will not supply proper records, no credence can be placed on

The reason Keith Williams has sold his dredging equipment (if he has) would be because he believes that his company Cardwell Properties has no further legal

**There is no evidence to support these statements.**

**If no dredging would be required for another six years one has to ask why the rush for the Council to take on the liability now?**

They wanted the location, they wanted the view of Hinchinbrook Island, and now they don't want to pay for it.

In view of the unsuitable location of the canal estate, maintenance dredging will have to be repeated frequently, breakwalls not withstanding.

The present depth will be maintained only by repeated dredging.

**Council would be most unwise to accept any liability for maintenance dredging until the effect of the breakwalls has been documented over a period of years.**

predictions that the breakwalls will substantially reduce dredging costs.

If the developer really believed that the breakwalls would reduce the need for dredging, why isn't he keen to present the dredging figures that would prove his argument?

"Significance" in this context means no more than "important" and has no scale or percentage implications. Neither percentage nor absolute amount of dredging reduction has ever been cited in support of the rationale for building the present breakwaters.

At the same time however, these minimal breakwalls, having been built, may have real utility for convincing PH land owners, prospective purchasers, shire residents and shire council that the future dredging maintenance costs will be almost non-existent.

responsibility for the dredging. Naturally he would want to cash in the dredge as soon as he could.

**If no dredging would be required for another six years PHS has six years to monitor the depth in the canals so that they can provide proper evidence on which to base a credible proposal to put before the Council.**

**ASH MEDIA RELEASE 7 August 2007**

**GIRRIMAY NATIONAL PARK  
DECLARED: ADJACENT SPOIL  
PONDS HAVE TO GO**

The Alliance to Save Hinchinbrook is delighted at the creation of Girimay National Park.

Part of Girimay National Park lies along the coast between the Hinchinbrook Passage mangroves and the site of Keith Williams' rejected "Port Hinchinbrook Stage II". It contains habitat for the *endangered* mahogany glider.

Margaret Moorhouse said "We thank a succession of Queensland Environment Ministers – Rod Welford, Dean Wells, Desley Boyle, and Lindy Nelson-Carr – for keeping the promise made ten years ago to protect this coastal wetland as national park."

"ASH now calls on the Queensland government to prevent forest death in Girimay National Park. From the Bruce Highway south of Cardwell the upper limbs of the dead trees can be seen above the surrounding vegetation of the national park. Entire dead areas are obvious from the air".

"Keith Williams' spoil ponds are preventing the natural flow of freshwater from protecting the coastal forest from salinity. These great levees have to go".

Ten years ago the developer Keith Williams first tried to gain control over Unallocated State Land (USL) Lot 33, now part of the new Girimay National Park. There was talk of plans for airport and golf course.

Eight years ago the Hon Rod Welford, the then Minister for Environment and Natural Resources, rejected the developer's lease application. He promised that USL Lot 33 would be protected as national park.

During the early years the developer had built a containment pond four metres above ground level, to hold acid soils. It stretches along a kilometre of the boundary between the development site and the present Girimay National Park. Government documents obtained under Freedom of Information legislation show that this "pond" was allowed as a temporary structure. *Twelve years later it is still there.*

The spoil pond contains acid sulphate soils excavated from the development site, and acid dredge spoil. In 1999 Australian Senators saw for themselves and walked in the acid mud that had spilt into this media, but the facilities he promised have never eventuated."

The pond walls also act as a levee bank, blocking several small creeks and the wet season overland

*continued p 7*

**OYSTER POINT FORESHORE 2007**

*Below: View from the northern breakwater wall at low tide, looking north over sea-sorted sand residue of dumped "fill". Not much of a beach for 12 years of "nourishment" - but it keeps the illusion alive.*



*Photo by Ken Parker August 2007*

This is the artificial beach for which Senator Robert Hill denied, in 1997, that he had given Consent.

This foreshore was once a dense mangrove forest. Sturdy trees, 13 metres high, stood in sediment collected and stabilized by their own spreading roots. This rich habitat and nursery for a multitude of marine and terrestrial species was a safe refuge for thousands of birds, counted at dusk by Margaret Thorsborne and other conservationists.

The forest withstood high energy waves driven by cyclone winds. Resilient mangrove tops ensured the security of the land built up behind. In contrast, the present artificial beach is maintained only by repeated deposition of soils excavated from the developer's rural land. The EPA has two defences for this excavation of soils for the beach:

- excavation is an as-of-right use of rural land; and
- the excavations are "borrow pits" (a term generally related to a small excavation in very close proximity to other activities, and of temporary nature).

Here however the soils are being excavated for a non-agricultural purpose; further, they are being permanently removed, to a different property. Making an artificial beach can hardly be called an agricultural purpose. In effect the developer is mining the land.

The rock wall along the foreshore is not the wall allowed under the *Conformed Deed of Agreement* signed by three levels of government and the developer. The wall of the *Deed* was to be a strategy of last resort – and it was to be out of sight, buried.

Were the Commonwealth government politicians and bureaucrats unable to understand that a rock wall below high water mark, built as a measure of last resort in a high-energy erosion-prone area, even if "buried" when assembled, could not remain hidden beyond the next spring high tide? Or were they just determined that an environmentally bad development should have some appearance of success?

from p6

freshwater flow that the Girimay National Park melaleuca wetlands need to flourish close to the sea. After twelve years of inadequate fresh water supply the soil salinity of the forest has increased. Thousands of tall melaleuca trees, rare *Livistona drudei* palms, pandanus and other trees have died.

For some of this damage the developer was fined; a mere \$1,500.

Margaret Moorhouse said "conservationists will be delighted that this fragile land along the World Heritage listed Hinchinbrook Passage is now national park and that its name recognises the local aboriginal people."

"But now the land must not be left to die. The "temporary" spoil ponds must go. They must be removed to restore the overland flow of fresh water so that the northern part of Girimay National Park can survive".

**ASH MEDIA RELEASE 24 August 2007**

**PORT HINCHINBROOK RESIDENTS  
WISH PORT HINCHINBROOK WOES  
ONTO LOCAL COUNCIL**

**The *Tully Times* is to be congratulated for exposing the latest move to get Cardwell Shire Council to pay the ongoing costs of canal maintenance dredging, sewage disposal and roadway maintenance at the bedevilled Port Hinchinbrook Stage I residential/canal estate.**

**Port Hinchinbrook Services (the body corporate for Port Hinchinbrook) wants the Council to buy the Port Hinchinbrook sewage treatment plant from developer Keith Williams.**

**ASH has been reliably informed that Keith Williams, through one of his several companies, has a controlling interest in Port Hinchinbrook Services (PHS). In other words, the Port Hinchinbrook residents are representing the interests of the developer as well as their own.**

**The dredging liabilities may be higher than Port Hinchinbrook residents are presently aware. The huge dredge spoil stockpile adjacent to Girimay National Park must be removed.**

According to the *Tully Times*, Cr Scuderi pointed out that Keith Williams' promise to provide sewerage and water to Cardwell Shire Council *before* he started Port Hinchinbrook in 1994 has not been honoured. The Port Hinchinbrook development however has its own sewage treatment plant.

After 12 years of property sales at Port Hinchinbrook, it seems that there are too few residents there to create enough sewage for the Port Hinchinbrook treatment plant to work properly, even when dog food (so we have been informed) has been added to bulk it up.

**PORT HINCHINBROOK HOUSES 2007**

**Filled land on Port Hinchinbrook waterfront blocks continues to erode. The fence line is in the sea on many high tides.**



*Photo by Ken Parker August 2007*

Ms Moorhouse said: "We can see that Port Hinchinbrook residents are in an unfortunate position. It is wishful thinking however to suppose that Keith Williams or the local Council will bail them out. Port Hinchinbrook residents freely signed the purchase contracts which have led to their present situation."

Local real estate agent Lindsay Hallam and contractor John Wood have pictured the silt-bedevilled marina and canal access as being cured of its long standing problems just because of the new breakwalls, claiming that no dredging will be required for six years. "In this case" said Ms Moorhouse "you have to wonder why the haste to get the Council to take over the costs of the dredging now."

Ms Moorhouse said "when Mr Williams wanted approval for his dinosaur development he was very prominent in the media, but the facilities he promised have never eventuated."

"Worse, he now wants the township to bear the brunt of the costs resulting from his commercial decision to build a harbour against government engineering advice. But he hasn't seen fit to front Cardwell residents to explain to them why they should pay when a developer's commercial risk doesn't come off."

From the outset, State and local governments ignored conservationists' warnings of these outcomes. The 1977 and 1980 Harbours and Marine Department studies plainly stated that the Oyster Point site was not suitable as a boat harbour because it lacked natural deep water, was flood prone and subject to siltation.

The dredging has resulted in another, hidden, liability. Ms Moorhouse said "Something like 800,000 cubic metres of acid dredge spoil have been dumped in a series of retention ponds adjacent to a kilometre of the boundary with Girimay National Park.

"Thousands of national park trees are already dead and more will die until the spoil is removed. The cost will run into millions. Will this too be foisted onto Cardwell council?"

## **STOP PRESS**

### **MARINE PARKS PERMIT FOR NON-CONSERVATION USE:**

### **THREAT TO HINCHINBROOK WILDERNESS AND DUGONGS**

Recent media stories have brought the news that the EPA has allowed a film crew and 150 film extras to access Cape Richards on Hinchinbrook Island, for the production of a film called Nim's Island.

ASH has written to the Environment Minister twice on this issue, so far without response.

Our words about the lack of dedicated world heritage management of Hinchinbrook Island were prophetic. In our worst nightmares, however, we did not predict the events observed on Thursday 13<sup>th</sup> September:

**A helicopter, with a filming dome mounted on its underside, was videoed flying over Missionary Bay at an estimated height of 3 to 4 metres above the water.**

**The helicopter appeared to be searching the sea systematically, presumably for dugongs, which it then appeared to herd towards Garden Island.**

We have ascertained from the Queensland Parks and Wildlife Service (QPWS) that the film crew have a Marine Parks Permit granted jointly by QPWS and the Great Barrier Reef Marine Parks Authority (GBRMPA). The permit runs until the end of October. The permit allows flying below the 1500 feet minimum altitude, for at least some days during that period.

The investigation is in its early stages.

The other activity in the area at this time was a competitive fishing event. With not one QPWS officer in sight, many power boats were observed speeding over Missionary Bay with no observance of the voluntary speed "limits" or the transit lanes.

These uses of Hinchinbrook Island and the Hinchinbrook Dugong Protection Area have illustrated the point made in our letter to the Minister: making the area available for non-conservation uses changes the perceived character of the place. These users were there for exploitative and instrumental purposes, not to enjoy the area for its intrinsic values as required by the World Heritage Convention.

#### **ASH's first letter to the Minister**

*The Hon Lindy Nelson Carr  
Minister for the Environment  
Queensland*

*By email 24/08/07*

*Dear Minister*

#### **Re filming on Hinchinbrook Island**

*We write to express our concerns about the "Hollywood" filming proposed to be permitted on Hinchinbrook Island.*

*We have read the news reports quoting the EPA as stating that World Heritage values would be protected.*

*We note that there is no management body dedicated to the protection of Hinchinbrook Island as a world heritage national park. Our long experience in this area suggests that the State of Queensland does not always understand what world heritage standards mean, and therefore tends to take liberties with its values and integrity by seeing it as a collection of sites, visitation nodes, trails etc. rather than as the whole powerful wilderness that it is.*

*The character of a place is dependent to a large extent on the public perception of it. How much people will revere Hinchinbrook Island as a truly wild place of unique natural beauty will be affected by the type of activities that are officially permitted to occur there.*

*This application for filming is not for science or conservation education but for mere entertainment. The media have already interpreted it accurately enough as "Hollywood".*

*We therefore ask you to refuse this and future applications for using Hinchinbrook Island as a mere scenic property.*

#### **ASH's second letter, in part:**

*We ask the Minister to explain under what part of the Hinchinbrook Island National Park Management Plan such a very large number of visitors has been allowed to land on the island at one time, and for such a period of time.*

*We ask the Minister to respond with an explanation as to how this situation benefits conservation or the public perception of Queensland National Parks management.*