

PHOENIX!

NEWSLETTER OF

THE ALLIANCE TO SAVE HINCHINBROOK INC

PLEASE HELP !

YOUR COMMENTS REQUIRED ON IMPORTANT PLANS

REVIEW: Five National Parks Management Plans

TIME IS SHORT! DEADLINE IS 27 JUNE 2008

The Queensland Environment Minister has announced a public review (closing date for comments 27 June 2008) on the following national park management plans:

Hinchinbrook Island National Park
Brook Islands National Park
Goold Island National Park
Orpheus Island National Park
Family Group (incl Dunk) National Park
Horseshoe Lagoon Conservation Park
Bowling Green Bay National Park
Bowling Green Bay Conservation Park (a new draft plan)



ASH will focus on these world heritage listed island national parks

To obtain a guide to making submissions and the existing plans:

phone EPA Customer Service on (07) 3227 8185; or

visit the EPA website www.epa.qld.gov.au and follow these links:

parks and forests

managing parks and forests

management plans and strategies

XYZ national park management plan.

Due to the short timeframe for review the Committee asks you to phone or email your specific concerns to Margaret Moorhouse, and to make your own submission, independently, to the EPA.

Please inspect the plans, prepare your submissions and send your comments/concerns to Margaret as soon as you can.

ADDRESS FOR SUBMISSIONS →

See Address Label enclosed

NOTICE

ANNUAL GENERAL MEETING

Followed by a

GENERAL MEETING

to be held at

“Galmara”

on

Saturday 28th June

AGM: 2:00 pm GM: 2:20pm

How to get there?

For directions to ‘Galmara’ please phone Margaret Thorsborne on

07 40 668 537

PLEASE REMEMBER TO SEND YOUR PROXY!

MEMBERSHIP

RENEWALS ARE NOW OVERDUE

Our financial year ended 31st March.

If you have paid your membership recently you will find your receipt enclosed.

Proxy and renewal forms are enclosed

The Manager

Terrestrial Policy

Strategy and Policy Division

Environment Protection Agency

REPLY PAID 15155

CITY EAST Q 4002

Or FAX (07) 32276 7237

WHY WOULD TWO COMPANIES WANT TO SWAP NAMES?

Two years ago Keith Williams changed the names of two of his companies, Cardwell Properties Pty Ltd and Williams Corporation Pty Ltd, in effect swapping them. The company structure identified by its ACN (company registration number) is the legal entity, no matter what the name. Australian Securities & Investments Commission (ASIC) has a website from which summary company histories are available free.

How to evaluate the effectiveness of an environmental legal system

by Christopher James McGrath,
LLB (Hons), BSc, LLM (Environmental Law)

This environmental law PhD thesis is now available on the web

<http://www.envlaw.com.au/phd.pdf>

In his thesis, Dr. McGrath has used the refusal of "Port Hinchinbrook Stage II" (2004) as a case example, to talk about the improvements in coastal planning since the mid-1990s. He contrasted this to policies on climate change.

On page 205 Dr. McGrath noted that:

The fact that a proposed development will cause serious environmental harm does not necessarily mean it cannot proceed. To decide whether it can proceed requires its impacts to be assessed against the relevant laws, plans and policies that are in force or adopted by the various levels of government with responsibilities for assessing the development.

This is why it is SO important for conservation-minded people to make the effort to send their own personal comments on policy, legislation and planning drafts.

If policy, laws and plans are absent or weak, serious environmental damage cannot be prevented.

Your personal contribution is a sand bag in the dyke against development pressures that would otherwise overwhelm the planet.

Preliminary Application lodged for another "Port Hinchinbrook" canal estate proposal

A word on the application process

The Preliminary Application is lodged when the application fee is paid to the local council. The council must then send the file, comprising consultants' reports, a description of the proposal and completed standard information forms and other relevant documents, to those government departments which, may comment on the Application, whether as advice or concurrence agencies.

Under the *Integrated Planning Act*, An agency may reject an Application only if it has "concurrence" status under relevant legislation. As an advice agency it can give strong advice but the local council need not take that advice in making its decision.

After the departments have made their comments, and if it has not been rejected, the Application is made available for public comment and objections. Council can then make its decision to approve or reject the Application.

For the site of the present proposal, the EPA has concurrence status under the *Cardwell/Hinchinbrook Regional Coastal Management Plan*.

In 2004/2005 the EPA used this power to reject the last "Port Hinchinbrook" canal estate ("Stage II") proposal. Last year it rejected a proposal ("Hinchinbrook Habitats") for a large resort in high conservation value land on the Seymour River.

Developers may challenge an EPA rejection decision in the Planning and Environment court. Keith Williams did not challenge the 2005 rejection of his last development proposal.

Council obstruction

In the last issue of **PHOENIX!** it was reported that Keith Williams was about to lodge a new plan for development south of the present "Port Hinchinbrook" canal estate. In fact a Preliminary Application had already been lodged, in March, but our inquiries to the Tully office of the local council (Cassowary Coast Regional Council) had failed to elicit this important information. The Preliminary Application (PA) is the first stage of the approval process.

When the Committee discovered that a Preliminary Application had already gone to the state departments for comment, we wanted to get copies of the file to our legal and technical advisers as soon as possible. Under the *Integrated Planning Act* the local council must provide copies to the public.

More time was lost because council staff obstructed our members with irrelevant arguments and by simply not agreeing to their requests.

Phone requests for paper or electronic copy of the file were refused.

Two ASH members visited council twice and got to view the file, but were refused photocopies.

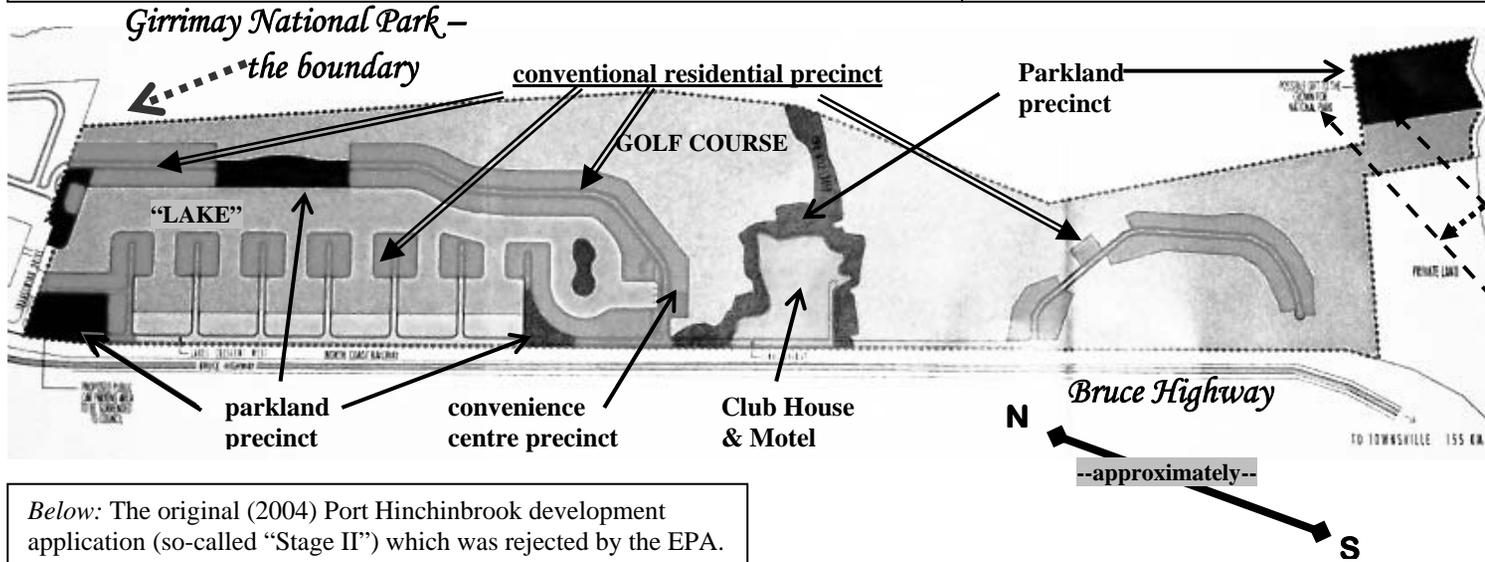
After receiving legal advice, a third ASH member visited the council. This time the council office provided a set of black and white photocopies (at 40c per page) but refused colour photocopies of colour-coded technical diagrams and plans.

Four more ASH members visited the council. They too were refused colour copies, but used a digital camera to photograph the important colour pages.

Comparison of layout of *Port Hinchinbrook Stage II* development proposals - first (rejected) and second (current) applications

Below: Copied from the current (March 2008) Preliminary Application for *Port Hinchinbrook Stage II*: a saline residential canal and lock system and golf course.

Note – “Lake” residential area is smaller not as long or wide. It does not appear to cover all of the old spoil pond. No other water holes are shown.



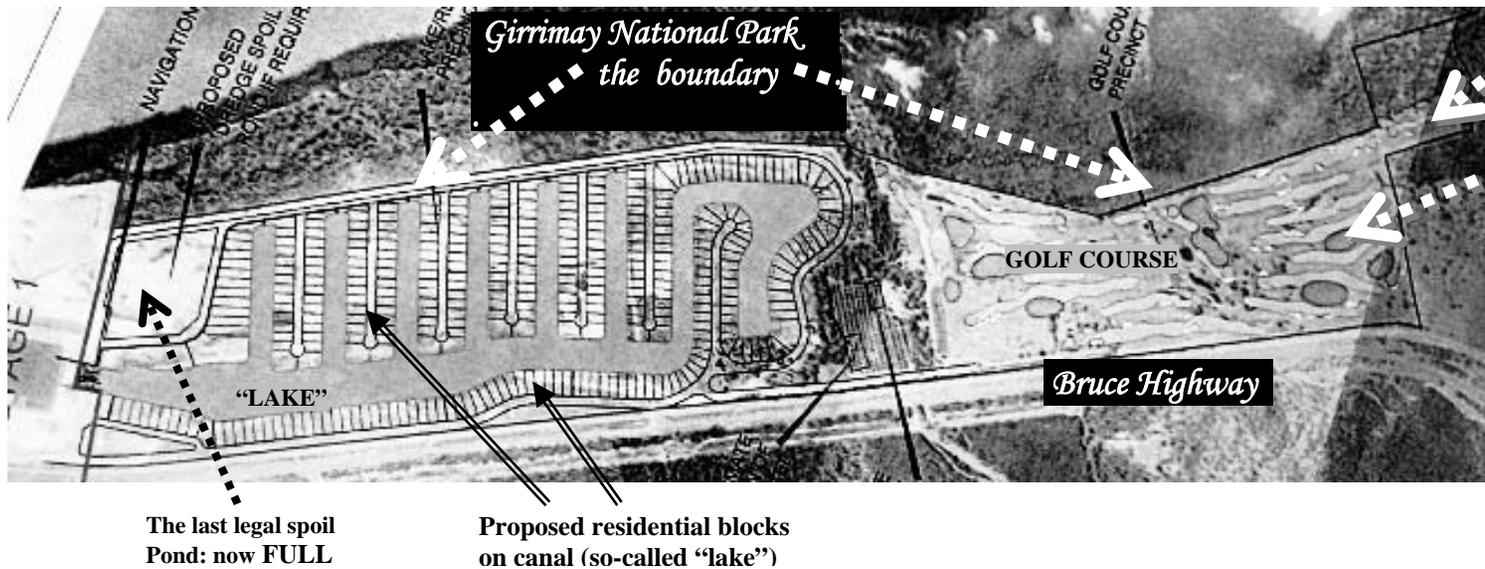
Mary Creek

This land, just north of Mary Creek, and the land south of Mary Creek, belongs to a very large prawn farm on the Hinchinbrook Channel

“Listed vegetation” - no clearing allowed under new Veg Management Act.

Text says “possible gift to the Crown for national park” (it’s no use to a developer if it can’t be cleared!).

Below: The original (2004) Port Hinchinbrook development application (so-called “Stage II”) which was rejected by the EPA.



listed vegetation pre-emptively cleared before Veg Management Act was enacted.

Many water holes

Except for a small northern area set aside for new spoil (now filled), the saltwater canals (“lake”) were proposed to extend eastwards to the boundary with Girimay National Park - that is, over all of the old spoil pond area.

Additional water holes were also proposed.

The basic “Stage II” proposal

The new plan for “Stage II” is very little different to the last, rejected plan. It is for a raised seawater canal and residential canal estate (euphemistically called a lake) covering 26 hectares and accessed via a lock. There would be a further residential estate at the southern end of the land, associated with golf club facilities. See previous page for the 2004 and 2008 proposals compared in approximately similar scale and orientation.

Seadumping of dredge spoil and the role of the GBRMPA

Before the enactment of the *Environment Protection and Conservation of Biodiversity Act*, the Commonwealth had few tools with which to enforce protection of all of Australia’s world heritage areas. Its powers were limited to areas directly under a dedicated world heritage authority or under Commonwealth jurisdiction.

In 1993, under Chair Graham Kelleher, the Great Barrier Reef Marine Park Authority (GBRMPA) was adamantly opposed to the seadumping of dredge spoil in the Hinchinbrook Channel.

Nevertheless, Acting Chair, Wendy Craik took advantage of a questionable assumption about that GBRMP boundary exclude Hinchinbrook Island (in fact it runs along the Hinchinbrook Channel mainland coast) to say that the Hinchinbrook Channel was “not under our jurisdiction”. This could not have improved the GBRMPA’s relevance in the debate over the “Port Hinchinbrook” project.

Then, in 1996, the GBRMPA became the body acting for the Commonwealth Environment Minister Robert Hill in the matter of consent for the Port Hinchinbrook marina dredged entrance channel under the *World Heritage Properties Conservation Act* (now repealed). The GBRMPA commissioned six dugong scientists to review the Sinclair Knight Merz (SKM) Environmental Risk Assessment (ERA), the terms of reference restricted to consideration only of the act of dredging at Oyster Point.

The scientists were not happy with these unrealistic terms of reference. Dr. Russell Reichelt, then head of the Australian Institute of Marine Science, was appointed to collate their comments and make conclusions that would inform the Minister’s pending decision. Dr. Reichelt’s report, although referring only to the activity of *dredging*, concluded:

... the activities proposed for Port Hinchinbrook could go ahead without significant impact on the immediate environment around Oyster Point, that is, within a few hundred metres – provided best practice engineering approaches are used.

In an ABC radio interview, Dr. Reichelt was asked “So, in your work you weren’t able to consider the bigger picture?” to which he replied: “Well, I wasn’t asked to” (Submissions to the *Senate Inquiry into Commonwealth Powers 1998* - this account was written by the late Dr. Brian Robinson, Fellow of the Australian Academy of Science).

Dr. Reichelt is now the Chair of the GBRMPA.

Land to be “filled” (raised)

What you can’t see in these plans is that the golf course and residential areas are proposed to be “filled”, with heights above AHD (mean sea level) proposed to vary from 5 to 17 metres; that is 3 to 15 metres above Highest Astronomical Tide level’ purportedly in case of storm surge. “Filling” would effectively form a barrier to the surface flow of fresh water that is necessary for the survival of the low lying freshwater forests of Girrimay National Park. The new proposal offers no means for removing the present kilometre-long barrier that is already starving the northern end of Girrimay National Park of fresh water, killing it with increasingly salinity.

The developer’s own consultants’ report contemplates the possibility that seawater is leaking through the bottom of the spoil ponds into the ground water and contributing to the vegetation death in Girrimay National Park; as found by the EPA’s consultant (Hillier, 2004). But there appear to have been no checks made as to the amount of seepage, because (they say) the ponds are not trafficable, and one can’t get access to them. Strangely enough, Margaret Thorsborne and Margaret Moorhouse have been passengers in a vehicle driven over those raised “ponds” by a Channel Seven presenter. Perhaps the barrier to access is not so much a physical one as one of will.

Looking ahead – sea dumping of dredge spoil?

An issue not dealt with in this Development Application (DA) is the failure of the breakwalls to keep the access canal open. Despite claims in the DA, access to the Port Hinchinbrook marina remains tidal.

According to Keith Williams, the development company (Williams Corporation Pty Ltd, formerly Cardwell Properties Pty Ltd) has discharged its responsibilities as developer and will not pay for any more dredging. The developer’s dredge is stored ashore and reportedly is in poor shape.

This leaves the residents (all members of *Port Hinchinbrook Services Pty Ltd* by having bought a block on Port Hinchinbrook canal estate) and the local Council with two problems – the legal requirements for keeping the entrance open, huge continuing expense if they do so, and nowhere to legally store and treat the dredge spoil.

Keith Williams sees no problem here – his answer is “put it back whence it came” - seadumping. Perhaps he has overlooked the original source of the silt – farmland on the Herbert and Seymour Rivers.

Sinclair Knight Merz (SKM) Report –exerpts from the description of the raised “lake”

The bed of the lake will be sealed with a 2.0mm High Density Polyethylene (HDPE) Liner ... the liner will be covered with 75mm of reinforced concrete, which will serve to protect the liner from damage (from the use of boat anchors, which will be banned other than in emergencies). Even during emergency situations, boat anchors will only be permitted for reducing momentum from wind effects.

The perimeter will be constructed as a vertical reinforced concrete wall with waterstops provided at construction joints to ensure the wall is waterproof. The connection between the HDPE liner and the concrete wall footing will be sealed with a foam gasket in accordance with the liner manufacturer’s recommendations to ensure a waterproof connection.

HISTORY: THE DISGRACEFUL OYSTER POINT DEVELOPMENT APPROVALS

The original (1994) PH canal estate approval did not include “Stage II” and was for a smaller project than the present development now advertised as “Stage I”.

1993: One of the GBRMPA’s big issues in 1993 was that the proposed development should be considered in its entirety – that the approvals given would not be a licence for extensions or additional development

1994: “Port Hinchinbrook” Marina and Canal Estate was approved, against planning advice and Marine Parks assessment. This approval was granted on the basis that it was the whole-of-project. It was for a smaller project than the development now constructed.

Raised “temporary” spoil ponds were built across three creeks that fed USL (now Girimay National Park).

1996: the Commonwealth approved the dredged access channel.

1997: Approval was granted for a NEW project adjacent to the existing (2004/6) “Port Hinchinbrook” canal estate, on land along Stony Creek (now the “Grande Canal”). This approval was granted against professional planning advice: the “mandatory” Environmental Impact Statement (EIA) was waived on the grounds that *more of the same* would have *the same impacts*, and could be covered by the ex-legislative, unenforceable *Deed of Agreement*.

By 2001: five more rural blocks purchased by Keith Williams. These lie between the Bruce Highway and Girimay National Park, going south from the spoil ponds on Lot 170 (formerly known as Lot 17). The blocks are Lots 1 and 2 on RP739118 and Lots 5, 6 and 7 on RP 732868. The Bendigo Bank holds mortgages (since 2001) over all except Lot 2. Lot 170 was also mortgaged, last year, to the NAB.

Many hectares of USL (now Girimay National Park) found to be saline, dead and dying.

A number of deep, steep-sided acid holes were excavated on the new rural blocks coinciding with the shape and position of the later proposed new canals. The EPA excused these excavations as “borrow pits”.

2004: “Port Hinchinbrook” (approvals 1994/6 and 1997) morphed into “Port Hinchinbrook Stage I”. Perhaps, by calling the new development “Stage II”, the developer hoped that the 1997 arguments (more of the same) might do the trick again.

This time, the EPA had concurrence status for this area under the new *Cardwell Hinchinbrook Regional Coastal Management Plan (CHRCMP)*. They said NO.

After this application had been refused, advertising for Stage II continued unchanged until 2007.

Due to the generosity of donors and our fundraising efforts, and strategic legal advice from barrister Chris McGrath, ASH was able to obtain high quality expert reports and send these to the EPA at the Preliminary Application stage. At the very least, this would have made it difficult for EPA decision-makers to ignore their own departmental advice. The Council thus didn’t get the opportunity to approve this Application, and everyone was saved the trouble of going to court and spending a great deal of money.

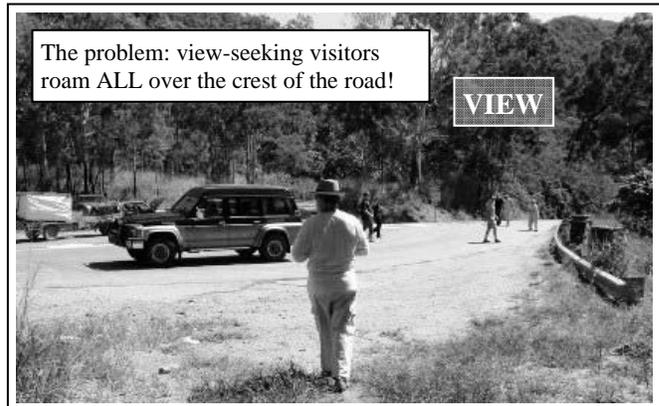
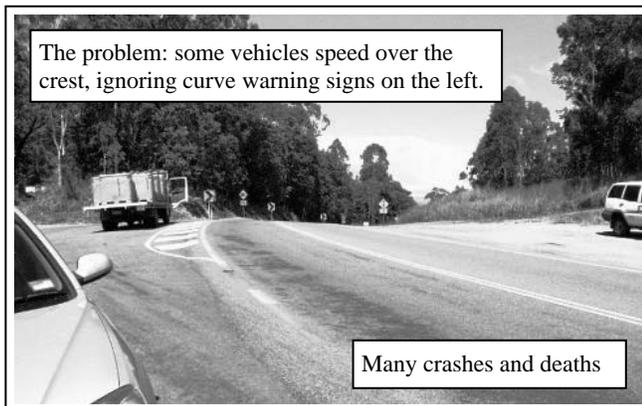
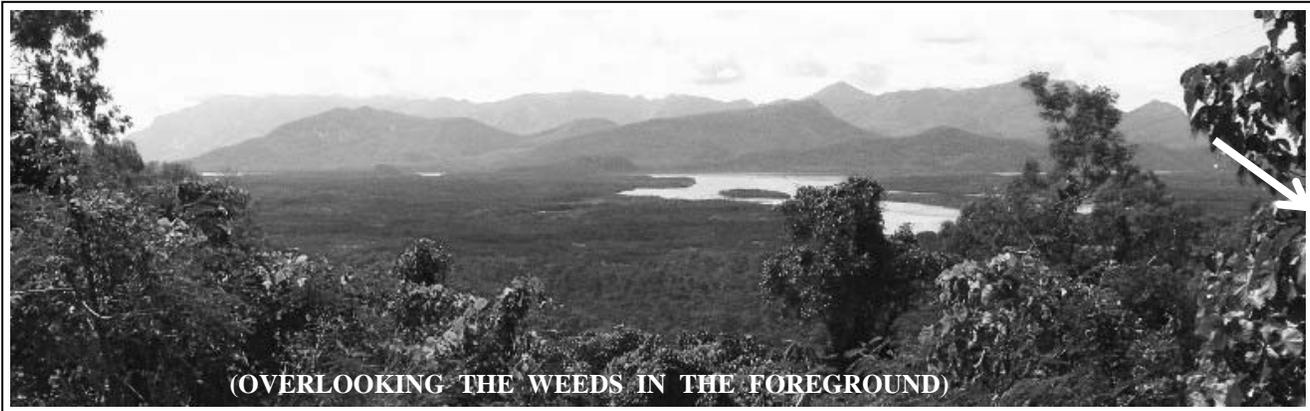
Not that the Council thanked ASH for this benefit.

2007: “Another Stage” - an Application for Material Change of Use (approved) for more intensive residential housing within the area of the existing development. In publicity this was referred to as another stage, continuing the myth that these new developments are part of an existing approved developme tl. The original limit on residential numbers seemed to be no longer in effect.

2008: The present Preliminary Application. Once again we have been offered pro bono assistance from Dr. Chris McGrath, of flying fox fame, a former EPA Northern Region professional officer and now a barrister in Chambers in Brisbane. Thank you Chris!

A WORLD HERITAGE LISTED VIEW

~ HINCHINBROOK ISLAND AND CHANNEL FROM THE CARDWELL GAP ~



The Main Roads Department has been funded to carry out the required planning to re-align the Bruce Highway over the Cardwell Range Gap

The problem at the Cardwell Gap itself is that mahogany gliders could easily traverse the roadway from the upper side of the steep hill. They would not, however, be able to reverse the process, uphill. They would start out and land on the road (or on passing vehicles), and be killed. A road on this slope would represent not just a barrier but a continuing trap.

ASH has written to the Main Roads Project Team, in part as follows:

Our organisation wishes to thank you for the informative evening presentation ... We were impressed by the efforts being made by the project team to make the best of a difficult situation for certain of our endangered native species.

The question of aesthetics and landscape values is perhaps more difficult – one can't mitigate or offset aesthetic effects, as I think the project team is well aware.

We would like you to consider further the twin world heritage issues of mahogany glider travel uphill across the proposed new road and the preservation of the outstanding aesthetic (landscape) values associated with this site.

We would like you to explore an idea which we understood to have been dismissed early in the project design as being far too expensive – that is, a tunnel (one-way) or two tunnels for that part of the range crossing which provides the view over the Channel.

Tunnels in this location could be built, not by cutting through the hill, but by the "cut and cover" method – that is, by excavating an open cut, with steep batters pending

refill, hence making much less "capital damage" to the adjacent forest.

The deeper the cut (for a tunnel rather than for an open roadway) the less steep the road, the more material for fill elsewhere, and the more natural the finished appearance of the rebuilt hillside.

[some options discussed]

Apart from the permanent protection of aesthetic values, including as viewed from the peaks of Hinchinbrook Island, two tunnels would provide the habitat continuity for mahogany gliders that would completely prevent the deaths that would occur from gliders (including endangered mahogany gliders) landing on the road or attempting to walk home from east to west.

Needless to say, because of the impact of the steepness of the slope on uphill-bound mahogany glider travel and the permanent degradation of the aesthetic (landscape) values for which this view was listed world heritage, we would favour two tunnels for this section rather than even one width of open roadway.

The Hinchinbrook Island National Park Management Plan Public Comments close June 27th

WHY YOUR INPUT IS CRUCIAL

Hinchinbrook Island National Park has only its state-level management plan to protect it. Unlike the Wet Tropics World Heritage Area, it has no management authority dedicated to its preservation as a world heritage area.

This is your chance to argue for better conservation protection, against a departmental and ministerial day-to-day background of entrepreneurial pressure from developers.

When writing your submission, it is worth remembering that “wilderness” (described in the Plan as “remote-natural”) can be a more powerful protector of fragile ecological values than *managing*, *minimising* and *mitigating* impacts, the favoured tools of parks managers. Community concern to retain *wilderness* designation over much of Hinchinbrook Island has been a potent reason why it has not yet been overrun by mass tourism.

Hinchinbrook Island is the largest national park island in the world, listed on the national estate and included in the Great Barrier Reef (GBR) World Heritage Area (WHA). The Australian Government wanted it listed world heritage, but faced strident Queensland government opposition, so had nominated the Island in both the GBR and Wet Tropics WHAs. Because the GBR was listed first, Hinchinbrook Island was withdrawn from the Wet Tropics nomination, thus becoming administratively separated from its ecological mainland counterpart and losing the benefit of direct Commonwealth oversight of its management arrangements.

In 1997 conservationists lobbied unsuccessfully to have the Island declared a World Heritage Management Area under the *Nature Conservation Act*, although this would not have provided Commonwealth oversight. As a Wet Tropics mainland-type island Hinchinbrook should, logically, be integrated administratively into the Wet Tropics of Queensland WHA (which already extends along much of the mainland coast opposite Hinchinbrook Island and includes mangrove areas).

Management should be overseen by the Wet Tropics Management Authority (WTMA).

Direct world heritage overview would mean some seemingly subtle but important shifts in concept: from the national park *cardinal principle* to *integrity* and *preservation for future generations*; from mere *nature-based recreation* to *enjoyment of the area for its intrinsic values*; from *landscape* and *visual amenity* to *aesthetic* values.

The Plan presently under review is all we have to protect this ecologically and aesthetically inspiring place. Thirteen years in the making, it was largely written by the Queensland Department of Environment’s Dr. Bill Lavarack.

With Keith Williams seeking mass commercial and private trips to the Island (big selling point for his canal estate opposite), track-hardening, marine and other infrastructure, we can guess that Dr. Lavarack must have had a hard time arguing for provisions that might preserve the integrity of the island.

Although Hinchinbrook Island has elements of European history - a crashed warplane, the resort, and a coconut plantation at The Haven - its value to the world of the future is for its ecological treasures, including a number of plant communities now rare on the mainland; its outstanding grand scale vistas; its connection with the Hinchinbrook Channel (which still has no management plan); and its relatively untouched and natural state in a world where the old natural world is fast disappearing.

The Plan recognises Aboriginal connection with the Hinchinbrook Island and Channel. Traditional stone fish traps at Scraggy Point (The Haven) are protected as a focus for presentation of Aboriginal culture.

FLAWS IN THE EXISTING PLAN

Wording in the existing Plan suffers from imprecision and ambiguity. Numbers and conditions need to be clarified and specified; with no exceptions, no loopholes, no ambiguities (“reasonable speeds”) and no unspecified modifiers – terms like “generally”, “significantly”, “moderately large”.

The Plan uses the zoning method for levels of use. In 1997 conservationists argued (unsuccessfully) that a “level of use” zoning system is not appropriate to this world heritage national park. Perhaps in acknowledgement of this difficulty, the Plan states that the “heavy” use designation on this island is not as “heavy” as in other parks plans. This is potentially misleading and creates a loophole that managers may find hard to close.

Far better to have stated upfront that there will be NO heavy use areas on Hinchinbrook Island.

The present Plan called for certain important actions to be taken, most of which are still waiting to be implemented.

Conservationists have long argued that the resort should be returned to national park control when a lessee quits, not used as a profit-generating football. Having acquired the resort only last year, Keith Williams has already offered it for resale.

A road and esplanade abutting the resort special lease at Cape Richards (a lease within the national park) were to be included as national park. There's no sign of this happening.

Some of the resort facilities (such as the sewage treatment and part of a small dam) are outside the lease.

Lease conditions were to be enforced. They haven't been.

The QPWS Fire rationale was to be explained to the public. It hasn't been.

No helicopters were to land or fly over the Island at less than 1500 ft other than for emergency. Instead, non-emergency (commercial filming and a filmed research expedition) helicopter activities have been permitted for money.

A state marine parks management plan for the Hinchinbrook Channel was to be implemented, to complement terrestrial protection for the Island national park coast and its estuaries.

Only a draft marine management plan exists.

Pigs were to be eradicated. Once confined to a small part of the island, pigs now range widely over it, due to abandonment of control measures.

Research and protection were to be implemented for beach stone curlews, a land margin species out of sight and apparently out of mind.

WHAT THEY SAID LAST TIME

About early drafts of the Hinchinbrook Island National Park Management Plan
Hinchinbrook Shire Council (1996):

(referring to a statement in the draft plan: "The values of Hinchinbrook Island are so fragile and such a scarce resource that increased numbers beyond the limits recommended here are not possible without losing the very reason for the area's popularity")

These are indeed profound assumptions which dictate totally the usage pattern of the National park. It severely restricts access to the island and ties up the visitation for ten years to come. This is unacceptable to the community and exhibits a lack of trust in the Australian public.

The Plan does not encourage any increase in commercial activities ... in fact it puts a stranglehold on any possibility of reasonable activities being introduced ...

Hinchinbrook Shire Council (1994):

Firstly, it is council's view that the plan and the operational constraints are too restrictive. It places unacceptable limitations of visitor numbers in areas considered unwarranted.

There does not appear to be any real opportunities for development of whatever nature at the southern end the island. This could impose barriers for this shire to promote the attractions of the island and adjoining waterways.

Limited opportunities would adversely affect this Shire's ability to attract and create potential in the Lucinda/Dungeness area ...

The Council is genuinely concerned that its efforts to date, the goodwill it has established with the community and other agencies and the expectations of some beneficial economic happenings as a consequence of our actions may be thwarted.

ENTRY IN HANSARD 09 June 1998

Estimates Committee

SENATOR ALLISON – I understand Mr Williams applied unsuccessfully for additional infrastructure at Zoe Bay for a wilderness style experience and that the granting of a permit by GBRMPA to Zoe Bay could make it difficult for the Queensland Department of Environment to continue to protect Hinchinbrook Island and that they will refuse such applications in the future.

DR MCPHAILL -- we are unaware of this entrepreneurial venture on the part of Mr Williams ... the number of people who can land on any one day is controlled by the Queensland Department of Environment through their Hinchinbrook Plan of Management.

SENATOR HILL – I would have thought you would have said that Mr Williams getting into wilderness tourism is probably a step in the right direction.

SENATOR ALLISON – Heaven forbid!

SENATOR SCHACHT – What, with a bulldozer!

2007-2008 retiring Committee, all standing for election

President	Margaret Thorsborne
Vice President	Margaret Moorhouse
Secretary/Treasurer	Malcolm McLean

NO OTHER NOMINATIONS RECEIVED TO DATE

PLEASE REMEMBER TO SEND YOUR PROXY !

Compiler/Editor *Phoenix!* Margaret Moorhouse