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Date: 24th January 2022

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Submission to DA (SUB2019/0030) (52-54 Miles Street, West Yamba)

Introduction

The Clarence Environment Centre (CEC) has maintained a shop-front presence in Grafton for over 32 years and has a proud history of environmental advocacy, particularly in cases of inappropriate development proposals, and by any measure, the above DA is inappropriate.

Background

Up until about 2005, West Yamba, where the above development is to occur, was in the Maclean Shire Council. However, at that point there was a forced amalgamation of all 4 valley councils, and 2 county councils, and all the problems, including West Yamba, were handed to the new Clarence Valley Council.

Fifteen years ago, as Honorary Secretary of the Clarence Environment Centre, I sat as a community representative on Council's Floodplain Risk Management Advisory Committee, when the future of West Yamba was being determined. Most of West Yamba lies between zero and 2m above sea level, and it was clear at the time that Council's representatives, led at the time by the Deputy General Manager (Civil and Corporate), Rob Donges, were the only members of that committee that thought turning West Yamba into an urban growth area, was a good idea.

In fact, a 2007 Sydney Morning Herald article, "Coming to this swamp – suburbia", < <https://www.smh.com.au/environment/coming-to-this-swamp-suburbia-20070319-gdppdl.html> >, describes Mr Donges as the "architect" of the west Yamba urban development.

History shows that the final outcome was the approved rezoning of West Yamba to allow for the construction of around 1,100 homes, justification for which was based solely on the fact that the landholders, including major developers, had been given an understanding, by the former Maclean Shire Council, that they would be allowed to develop the area.

Council now looks back at this development with pride, boasting in its response to the **Draft Productivity Commission Report's recommendations** that "*A relevant case study of Council's approach was the West Yamba development which involved considerable community input over an extended period and examined cost and benefits of developing in an 'at risk' area in regard to future climate change impacts. In this instance Council adopted a precautionary approach requiring land filling to manage inundation risk*".

In 2009, the Yamba Floodplain Risk Management Plan was released, noting 3 key issues (Table ii), specifically that:

- ***The use of flood modification measures (levees, etc.) to facilitate future development is generally not acceptable,***
- ***Any further development will exacerbate the flood hazard,***
- ***The proposal is not compatible with two background reports,***

The Plan also notes that:

Coastal Design Guidelines for NSW - This guideline does not encourage development on lands, such as at Yamba, which are subject to sea level rise, frequent flood hazard or where cut and fill is required to overcome flood hazard or coastal processes.

Grafton and Lower Clarence Floodplain Risk Management Plan (Reference 4) - This states that as a general principle, it is preferable that new urban areas are located outside of the floodplain and intensification of existing urban areas be restricted to a level that can be accommodated within the evacuation capacity of the State Emergency Services.

* * *

Summary:

Consistent with submissions made to the original rezoning proposal, the Clarence Environment Centre opposes the Miles Street DA, and asks Clarence Valley Council to reject it on the following grounds:

- The proposed development, including all West Yamba, will remove the final vestiges of Yamba's "coastal village" identity, the feature that has made the town a tourist Mecca.
- The rezoning was inconsistent with the Mid North Coast Regional Strategy's Suggested Threshold Sustainability Criteria, i.e., "*No residential development within 1:100 floodplain*".
- The Yamba Floodplain Risk Management Plan (YFRMP) contains a statement that the, "*West Yamba development has an assumed life span of 90+ years*". How can suburb with a "use-by date" possibly be approved?
- The proposed subdivision design is bland and unimaginative, clearly aimed at cramming as many lots as possible into the area (average lot size a mere 480sq/m), rather than providing an aesthetically acceptable living environment.
- The massive amount of fill, and retaining walls required to keep it in place, is a monstrous eyesore.

- Council has indicated that it is preparing a **Detailed Drainage Assessment of Carrs Drive and Sullivans Road** by March 2022. Clearly, this is an assessment that should have been undertaken **before** the rezoning was approved over a decade ago. No development applications should be considered until this report is completed.
- The creating of restricted floodways, some artificially, will, over time as climate change impact increase, result in something very much akin to a canal development, something that was banned in NSW many years ago, when the inevitability of sea-level-rise was recognised.
- The handing over of restricted floodways, particularly the artificially constructed ones, to Council, will place a significant on-going financial burden on rate-payers, for maintenance, weed control, mosquito control etc.
- There has been no assessment of the cumulative environmental impacts of importing the fill material to west Yamba. e.g., the loss of native vegetation at the quarry, air and noise pollution from heavy transport vehicles and earth-moving materials. The YFRMP reports that, *“the importation of the required 1.3 million cubic metres of soil would result in one truck movement every six minutes, eight hours a day, five days a week, for nine and a half years”*. Greenhouse gas emissions from heavy machinery at both ends of the fill transfer exercise, combined with the transport, will be enormous.
- There has been no fauna survey of the site, merely the making of a magnanimous gesture accepting certain threatened species are “likely to occur”, then assessing their possible habitat. This implies, “we’ll comply with this requirement which is a waste of time because everyone knows those species aren’t there”!
- We believe the proponent has greatly understated the importance of the occurrence of the endangered, *Rotala tripartita*. The consultant reports occurrences of the species at Black Swamp (Shannon Creek area), Shannondale, and Pillar Valley. However, recent follow-up checks of all 3 populations (by the ecologist responsible for identifying all 3) has failed to find any sign of those plants. This suggests that the Yamba population may be the current southern limit for the species, and should be managed accordingly.
- We believe the consultant’s claim that West Yamba soils are not alluvial, concluding that remnant vegetation on the property is not one or more threatened ecological communities, is wrong, and that those four threatened ecological communities should be assessed as such!

GeoLINK, the proponent’s consultants, referenced work undertaken on an adjoining development by rival consultants, GHD, to argue that the remnant vegetation on the Miles St property is on an aeolian landscape characterised by Quaternary sand sheets, not alluvial soil, and as such was not protected as a TEC. They then make the point that: *“This position (GHD’s) was accepted by Council and the development (and BDAR) (were) approved”*. This statement was finally followed by a less than confident, *“It would be expected a similar consistent approach would be taken with regard to TECs at the subject site”*. However, if precedents count, the determination by Australian Wetlands Consulting Pty Ltd for Council’s Yamba Bypass assessment, accepts that West Yamba is an alluvial landscape, a reasonable conclusion given West Yamba is built with deposits of flood-mud over hundreds of thousands of years. Given an estimated 95% of floodplain vegetation has been lost, we believe, a management plan should be developed for those remnants.

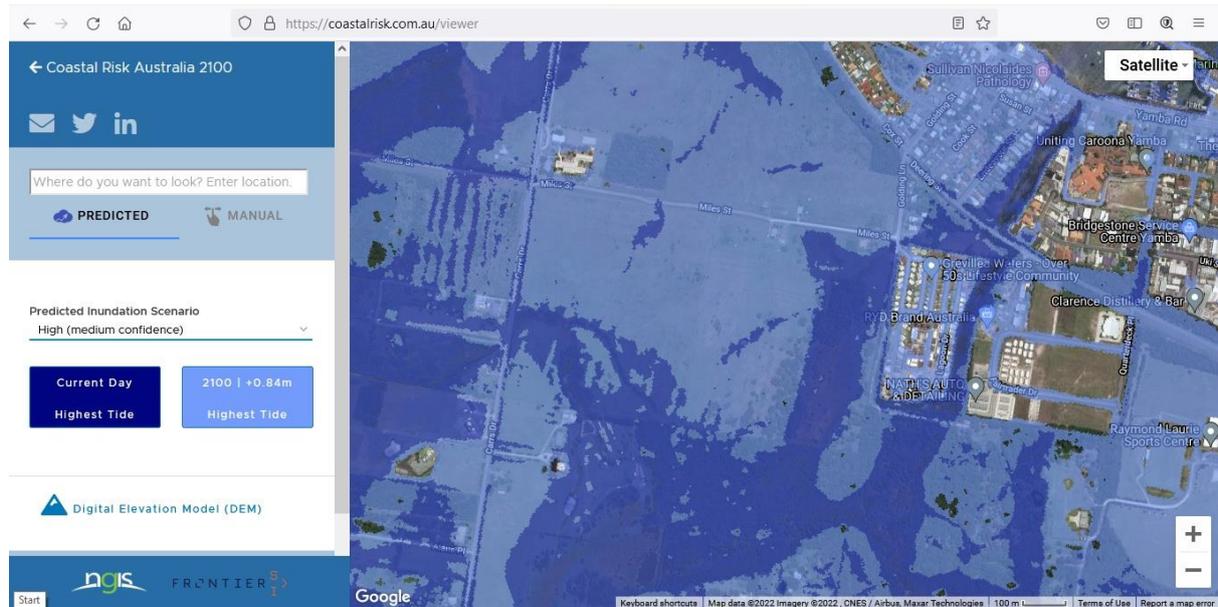
- As the flood-ways will be used by adjoining residents as a dumping ground for garden waste, and there will be significant pollution and nutrient from run-off from the estate, we believe the *Rotala* will struggle to survive. There is no management plan for the habitat of this species, or that of the other endangered species found at the site, the Flared Tree-spider Orchid (*Tetrabaculum melaleucaphilum*)
- There are a number of recommendations in the YFRMP that we need to know have been undertaken, Firstly, the recommendation (Table i) to: *“Undertake a West Yamba levee feasibility study. It would be prudent to initiate this study following resolution of the West Yamba development and bypass proposals as these will have a significant influence on the levee alignment.”* As we understand it, there has been no resolution of the Bypass, or completion of a Levee Feasibility Study. Why are development applications being considered, much less approved, before these matters have been resolved? This goes for the other 6 recommendations in Table i.
- In Table ii of the YFRMP there is a list of “Key Issues: that presumably need to be addressed **prior to** any development being approved. These include: a) *“Further detailed hydraulic modelling required to assess effects of fill and viability of a floodway between Golding and Freeburn Streets”*. Has this been done? b) *“A practical method of evacuation approved by the SES during the planning process needs to be in place prior to development consent”*. Reading the proponent’s Statement of Environmental Effects, we are told: *“A copy of the subdivision has been forwarded to Clarence Valley SES and their response is awaited”*. c) *“The proposed Master Plan must address water related cumulative issues”*. This plan, we are informed, *“should endeavour to achieve a holistic strategy to ensure that the development is integrated and does not create problems when attempting to address cumulative issues. This would include the potential impacts of increased human activity - nutrients, sedimentation, runoff - on the nearby exclusion zones during a flood or ocean event when WSUD (what is WSUD?) capacities are exceeded.”* However, we are told by one reliable source that no master plan has been developed. Again, if this is true, why are developments being approved?
- Table ii of the YFRMP also mentions other key issues relating to future development that should be considered by Council. Specifically, they are: a) *“The use of flood modification measures (levees, etc.) to facilitate future development is generally not acceptable”*, b) *Any further development will exacerbate the flood hazard”*, and c) *The proposal is not compatible with two background reports”*. Were these adequately assessed by Council prior to the rezoning?” Apparently not all, as Council is even now preparing a Detailed Drainage Assessment of Carrs Drive and Sullivans Road.
- Finally, why has the proponent in this instance been granted Council approval to stockpile fill on the property **without** development approval?

* * *

Why is making West Yamba an urban growth area ridiculous?

Half of the West Yamba site is already inundated by high tides (see image below), and under one metre of water during higher floods for which the Clarence is well known. With the prediction that the entire site will go under water at high tide before 2100, the idea of placing 1,100 homes in the area was never going to be an easy sell.

The solution put forward by Council was to fill the area to 0.75m above the expected 1 in 100-year flood level, in the 2100, making allowance for 0.45m sea-level rise resulting from climate change, about half the rise predicted by the International Panel on Climate Change.



This is West Yamba. The dark blue shaded areas are those currently inundated by high tides. The light blue shading shows those additional areas that are predicted to be inundated at high tide in 2100.

Plans, following study after study, were recommended throughout the process, mostly funded (from memory) by taxpayers, channelled through the then Department of Environment, Climate Change and Water. These studies were mostly initiated by that Department, seemingly in an attempt to discover a definitive reason to knock back the entire idea.

Eventually, with every study completed, the Department had painted itself into a corner, and had to add its consent to the rezoning. The State Emergency Services, at least its representative on the committee, was not impressed, reportedly commenting in response to being questioned about the SES's evacuation plan for Yamba, saying: "We'll stand on the Oyster Channel Bridge and throw lifejackets to people as they float by".

During this process, a Grafton-Lower Clarence Floodplain Risk Management Plan was compiled, which specifically excluded Yamba and Iluka. We have a copy of that Plan but, when we searched the CVC website for "Floodplain Risk Management Plans", in search of the Yamba plan, we received the advice pictured in the screenshot at right.

A call was made to a relevant council officer, leaving a message asking for a copy of the Yamba Plan, but that call remained unanswered on the day.



However, the following day, a second attempt at locating the Yamba plan, resulted in a different response, see below:

Completed

More info Download

Yamba - Floodplain Risk Management Plan

Dataset description:

Complete report

Source: [Yamba Floodplain Risk Management Plan - Report](#)

Resources

Yamba - Floodplain Risk Management Plan

License 3rd party licence

Additional Information

Last updated	unknown
Created	unknown
Format	pdf
License	3rd party licence

What is going on? Why is the Yamba Floodplain Risk Management Plan unavailable for public scrutiny during a time when large developments were on exhibition for public comment? Without a copy of the adopted Yamba plan, it would be difficult to accurately comment on the current DA. Fortunately, the message we had left with the relevant council officer was successful, and a digital copy was emailed to us shortly after. However, I don't know how many other potential submission writers would have encountered the same problem. This apparent secrecy must be addressed.

Looking back at the Floodplain Risk Management Advisory Committee's deliberations, I can recall discussion relating to "vertical migration", or "vertical evacuation". However, these terms, which relate to the possible requirement for all future homes at West Yamba to have 2 storeys, allowing residents to "evacuate" upstairs in a flood, do not appear in the final YFRMP. That's how ridiculous it became!

Those terms still appear in the Grafton – Lower Clarence Floodplain Risk Management Plan, explained as follows: *"It is generally considered appropriate that persons are able to evacuate to areas outside of the floodplain. This may not be practical in all cases, such as more remote rural properties and in such cases, vertical evacuation to a refuge on the property (eg. a loft or attic area within the rural dwelling) could be considered acceptable. Flexibility is to be provided within the planning controls for assessment of the individual circumstances of each application, on its merit"*.

Clearly, such ridiculous solutions were not adopted, but there was also active discussion about constructing a levee bank to double as protection of the new suburb from inundation, and possibly to provide all-weather access to and from Yamba, at least as far as West Yamba whose residents are likely to be evacuated to higher ground in Yamba itself during a flood.

One comment from the YFRMP, that cannot be allowed to pass without comment, is the conclusion that the proposed 1100 home West Yamba development had *“an assumed life span of 90+ years”*. We find that comment quite mindboggling. Even Coutts Crossing has been around for double that time, and shows no sign of decaying.

To have Council planners effectively describe West Yamba as a suburb with a use-by-date, is something we find quite baffling. A home is a family’s investment, possibly the biggest most of those buyers would make in their lifetimes, and Council casually writes it off in just 100 years. We wonder how many real estate advertisements will spruik that fact in coming years.

However, at the end of the day, the West Yamba urban development went ahead, not because the majority thought it was a good idea, but because landowners, some 30 in all including 3 major developers, had long had an expectation that urban subdivision would be allowed!

What can be expected from this floodplain development?

The site plan below shows the proposed lay-out of the latest Miles Street development; not a great deal of imagination given to the design, in all, 310 ‘pocket handkerchief’ sized blocks averaging about 480sq/m. The two large elongated blocks are “water detention basins” joining the two low points on the property, to allow free flow of flood and tidal water, with Council to be the lucky owner, and rate-payers footing the cost of maintenance.



We now also have the benefit of being able to see some of the visual impacts of what is proposed here, after another development was approved on the western side of Carr’s Drive over 12 months ago. Most of the homes won’t be visible from the main roads, as the filled land is hidden for the most part by the massive concrete block retaining walls that hold the up to 3 metres of fill in place. The following images show what greets visitors to West Yamba today

As viewed from Carrs Drive, West Yamba in late 2021



Concrete block walls, mountains of fill, and Coral Homes advertising its “vertical evacuation-ready” home.



With low-lying drainage lines and tidal channels being left unfilled to allow for what are described as “flood-ways”, the imminent rising of ocean levels from climate change, the entire area will soon resemble a “canal estate”, the construction of which was banned decades ago.

Council now looks back at this development with pride, boasting in its response to the **Draft Productivity Commission Report's recommendations** that *“A relevant case study of Council's approach was the West Yamba development which involved considerable community input over an extended period and examined cost and benefits of developing in an 'at risk' area in regard to future climate change impacts. In this instance Council adopted a precautionary approach requiring land filling to manage inundation risk”*.

Of course, despite the mandatory requirement to assess cumulative impacts of these proposed subdivisions at no point are the environmental impact on the source of that fill considered, or the greenhouse gas emission generated by the transport of that material. According to the Yamba Floodplain Risk Management Plan, *“the importation of the required 1.3 million cubic metres of soil would result in one truck movement every six minutes, eight hours a day, five days a week, for nine and a half years”*. This is, of course, to fill all of West Yamba, and the following image shows the visual impact resulting from that process.



The Miles St development application

A critical analysis of the Statement of Environmental Effects

Threatened Ecological Communities

It is important to focus on the issue of whether remnant native vegetation on the site constitutes one or more protected floodplain communities (the DA identifies four).

In its Biodiversity Development Assessment Report (BDAR), GeoLINK Environmental management and design acknowledges that:

“Native vegetation at the site is floristically characteristic of four threatened ecological communities (TECs) associated with alluvial floodplains listed in the BC Act:

■ *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion (floristically analogous with PCT 837).*

■ *Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South-East Corner Bioregions (floristically analogous with PCT 1064).*

■ *Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South-East Corner Bioregions (floristically analogous with PCT 1235).*

■ *Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South-East Corner Bioregions (floristically analogous with PCT 780).*

GeoLINK, then referenced work undertaken on an adjoining development by rival consultants, GHD, to argue that the remnant vegetation on the Miles St property is not on alluvial floodplain but on an aeolian landscape characterised by Quaternary sand sheets, and as such was not protected as a TEC.

They directly quote the following passage from GHD, claiming: *“Swamp Sclerophyll Forest on coastal floodplains is unlikely to comprise an occurrence of this TEC on the subject site due (to) its mapped occurrence on aeolian sand sheets of the Iluka Soil Landscape rather than on an alluvial Soil Landscape (Woodburn 1:100,000 Soil Landscapes, Morand 2010)”*.

They then make the point that: *“This position (GHD’s) was accepted by Council and the development (and BDAR) (were) approved”*. This statement was finally followed by a less than confident, *“It would be expected a similar consistent approach would be taken with regard to TECs at the subject site”*.

That lack of confidence probably stemmed from one or more reasons.

Firstly, 9 years earlier, in 2013, Australian Wetlands Consulting Pty Ltd, presented a Species Impact Statement for Clarence Valley Council’s Yamba Bypass proposal, a site immediately adjoining the Miles St property. That Consultant disagrees with the above assessment, having identified all remnant vegetation as true floodplain communities.

Therefore, at least one precedent had already been set!

Secondly, neither GeoLINK or GHD actually sought a specialist soil scientist’s opinion, with GHD referencing the rather ‘broad-brush’ landsat mapping.

Thirdly, nowhere in any of the Scientific Committee determinations of the 4 above named ecological communities, is there any stipulation that those communities must occur on alluvial soil. In fact, a series of variables from clay to sandy loams are listed. For example, Subtropical Coastal Floodplain Forest *“may occupy central or marginal parts of floodplains and sandy flats, including Pleistocene back-barrier flats; habitats where flooding is periodic and soils are rich in silt and sand, sometimes humic, and show little influence of saline ground water”*. Swamp Oak Floodplain Forest on the other hand, *“generally occupies low-lying parts of floodplains, alluvial flats, drainage lines, lake margins and fringes of estuaries; habitats where flooding is periodic and soils show some influence of saline ground water. This latter habitat feature sets it apart from other floodplain communities.”*

Finally, an aeolian landscape characterised by Quaternary sand sheet, consists of blown sand described as, “*extensive, flat to gently undulating sandy surfaces, covered predominantly with wind ripples and marked by the absence of dunes with slip faces (Fryberger et al. 1979. 1979.)*”, mostly, “*fine to medium, non-plastic and uniformly graded materials present in many sandy sites, mainly in desert areas*”.

It’s hard to imagine that West Yamba, where cropping and dairy farming have been part of its history, land which has been regularly inundated by floodwaters for hundreds of thousands of years, does not contain alluvial soils.

We should not be critical of Council planners, or Planning Panels for accepting the word of qualified consultants, after all, those planners are not scientists. **All this example does, is highlight the need for all consultants to be chosen independently, not by the individual developers. The current system ensures that consultants find ways, hopefully within the law, to get his/her employer’s development approved. They see that as their primary responsibility!**

Fauna

It’s disappointing to think that Council might accept the statement that: “*No threatened fauna were recorded*”, after an admission that: “*Targeted survey for threatened fauna species was not completed*”. We believe that simply acknowledging the species that are “likely to occur”, then looking for suitable habitat for those species, is unacceptable. The reason being the inference that, “*we don’t believe there is anything here, but we will be magnanimous and accept that certain species might be here.*” In the end though, as nothing is found, no offset is required.

Flora

The Biodiversity Development Assessment Report identifies the occurrence of the endangered herb, *Rotala tripartite*, at the site, explaining that a, “*Review of records in the BioNet database indicates Rotala has been recorded over various times of the year during the warmer months: January (Black Swamp), March (Shannondale, Black Swamp), April (Pillar Valley, Rappville), September (Casino), October (Pacific Highway [Devils Pulpit]), November (Shannondale, the site).*”

It should be noted that I have extensive knowledge of the three populations to the south of Yamba, my wife and/or myself having been responsible for identifying all three. It was also my wife’s (Patricia Edwards) successful nomination of the species to the NSW Scientific Committee some 2 decades ago, that saw it listed as endangered.

Depressingly, the two occurrences reported at Shannondale and Black Swamp have seemingly died out, having not been sighted for over 15 years. The Pillar Valley population, discovered just 5 years ago, on a property that has since become a blueberry farm, has likewise not been seen since.

Therefore, we believe the proponent has greatly understated the importance of the occurrence of the endangered herb, *Rotala tripartita* at West Yamba, which now could well be the new southern limit for the species. The fact that adjacent home-owners will toss their garden waste over the fence into those floodways, and along with run-off carrying pollutants and nutrients from the 310 homes, we fear the *Rotala* will struggle to survive.

Due Process

On the subject of due process, the YFRMP contains a number of recommendations that we need to know have been undertaken, Firstly, the recommendation (Table i) to: *“Undertake a West Yamba levee feasibility study. It would be prudent to initiate this study following resolution of the West Yamba development and bypass proposals as these will have a significant influence on the levee alignment.”*

As we understand it, there has been no resolution of the Bypass, or completion of a Levee Feasibility Study. Why are development applications being considered, much less approved, before these matters have been resolved?

This goes for the other 6 recommendations in Table i, and then there is Table ii

In Table ii of the YFRMP there is a list of “Key Issues: that presumably need to be addressed **prior to** any development being approved. These include:

- a) *“Further detailed hydraulic modelling required to assess effects of fill and viability of a floodway between Golding and Freeburn Streets”*. Has this been done?
- b) *“A practical method of evacuation approved by the SES during the planning process needs to be in place prior to development consent”*, Reading the proponent’s Statement of Environmental Effects, we are told: *“A copy of the subdivision has been forwarded to Clarence Valley SES and their response is awaited”*.
- c) *“The proposed Master Plan must address water related cumulative issues”*. This plan, we are informed, *“should endeavour to achieve a holistic strategy to ensure that the development is integrated and does not create problems when attempting to address cumulative issues. This would include the potential impacts of increased human activity - nutrients, sedimentation, runoff - on the nearby exclusion zones during a flood or ocean event when WSUD (what is WSUD?) capacities are exceeded.”* However, we are told by one reliable source that no master plan has been developed. Again, if this is true, and if so, why are developments being approved?

Table ii of the YFRMP also mentions other key issues relating to future development that should be considered by Council. Specifically, they are: a) *“The use of flood modification measures (levees, etc.) to facilitate future development is generally not acceptable”*, b) *Any further development will exacerbate the flood hazard”*, and c) *The proposal is not compatible with two background reports”*. Were these adequately assessed by Council prior to the rezoning?” Apparently not all, as Council is even now preparing a Detailed Drainage Assessment of Carrs Drive and Sullivans Road.

Also, why has the proponent in this instance been granted Council approval to stockpile fill on the property **without** development approval?

On the subject of run-off and stormwater management, Council has indicated that it is preparing a **Detailed Drainage Assessment of Carrs Drive and Sullivans Road**, which is expected to be completed by March 2022. Clearly, this is an assessment that should have been undertaken **before** the rezoning was approved over a decade ago, and we believe no development applications should be considered until this report, and others mentioned above, are completed.

Also, with regard to comments in the DA, that we refer to as ‘weasel words’, such as the comment that, “to have regard to and integrate *as far as possible* stormwater management proposals in the stormwater management plan”. We would strongly urge planners, when assessing the merits of any DA, to reject any such ambiguous wording.

Thank you for the opportunity to comment, we hope those comments will provide some food for thought and, hopefully, solutions.

Yours sincerely

John Edwards
Honorary Secretary.