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DEMOCRACY SUBVERTED
A Case Study of a Local Government System

by

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THE THESIS

Democracy – understood as a government of the people, for the people and by the people – does not exist at the local government level.

- Local government has no recognition under the Constitution.

- Local government is a creature of the State government and is under its control. At the local government level, a token democracy exists at the pleasure and to the measure allowed by the State government.

- Unlike the bureaucracies at a Federal and State level, the local government bureaucracy is not under the control of its elected members , even though the elected Councillors are allowed to go through the motions of presiding over it.

- When other means fail, the local government bureaucracy can enlist the support of the State government bureaucracy to keep the elected members under bureaucratic control.

- For its part, the State government uses its bureaucracy to work with the local government bureaucracy to assume more and more control over local government affairs.

- The State government not only resists any efforts of the elected Councillors to reform or control their bureaucracy, but it intervenes to prevent them from doing it.

- The State government is more inclined to intervene in this way if the political colour of the elected Council is not to its liking.

The above thesis will be demonstrated through a very down to earth account of the workings of a local government system.

The story will highlight what the present system is costing the community in terms of an appalling waste of both human resources and revenue.

Measures need to be taken to give people more control of their own destiny at a regional level.

This will lead to a better use of both human and monetary resources.

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INTRODUCTION

Over a decade ago, the Tweed Heads Chamber of Commence commissioned Professor Ron Goldman to do a study on the status and future of Tweed Heads. *The Goldman Report*, as it came to be called, was scathingly critical of Tweed Shire Council. The eminent professor dubbed it *the Murwillumbah Mafia*

From that day to this, Goldman's nickname for the Tweed Shire Council has persisted. The term is often used in good humour or even with some affection just as one may call one's friend an *old bastard.* But good humour and jokes aside, the Goldman label conveys the idea of

- a power clique
- a ruling elite
- a regime
- a cult
- an organizational culture
- a system

centred in Murwillumbah.

This *Study* will review how this *system* developed, how it operates and what it sometimes does to people. It will scrutinize a power structure or regime that acts secretively, manipulatively and even retributively. In the process revenue is wasted and people are seriously hurt.

A clear distinction between the *system* and the people who have served in it, or even helped to form it, needs to be maintained. It is the thesis of this document that none of these people are bad people. On the contrary, they are all good people who would be good neighbours and decent Australians. The hierarchy at the head of *the system* is as much the victim of *the system* as anybody else.

I have therefore avoided focusing on the people in the *system* as much as I can.

If I may adapt a statement that Nobel laureate, Steven Weinberg, made about religion (for religion is a *system* too), I would put it this way: "With or without a *system*, good people behave well and bad people can do evil; but for good people to do evil,- that takes a *system*."

I shall leave it to others who are far more qualified than I am to comment further on the phenomenon and the psychology of corporate evil. I cannot, however, resist one brief observation: it seems that once people get "behind the wheel" of a *system* they are capable of doing things to other people that they would never think of doing as individual neighbours and citizens. But I will emphasize again, a bad *system* is capable of acting badly, not because bad people are in it, but in spite of the good people who are in it.

I am not so naïve as to think that the local government system in Murwillumbah is unique. I am sure that there must be Councils that operate like this one all over the place. And not just Councils. The same kind of power clique, ruling elite, organizational culture or cult-like manipulation of people can operate in churches, business corporations, the NRMA and organizations as inauspicious as the Cat Lovers' Society.

As for bureaucrats issuing biased meeting reports or orchestrating consultants to say what they want them to say, who does not know that this sort of thing is as common in management structures as wheaties are common for breakfast? As a police chief in *The Witness* movie said when he compared his bureau to the Amish cult, "We're a cult too."

That fact that *the system* tends to be so ubiquitous does not mean that we should give in to its dark tendencies anymore than most of us should give in to the battle of the bulge simply because the fight against it is never over.

Sometimes I am inclined to relent and become indulgent toward *the Murwillumbah system,* especially when I think of all the dedicated people of excellence who work within its orbit. I have nothing but praise for them. There is not one person within the *system* that I personally dislike, beginning with the very amiable General Manager. But the remembrance of a number of very defining cases where there was a serious miscarriage of justice and waste of revenue is enough to rekindle my resolve to maintain the rage against the *system.*

The Bulford Report

Another study into Tweed Shire Council has recently been released. It was sponsored by the Department of Local Government NSW, and has been written by its Senior Investigator, Mr. Robert Bulford, under the title ***REPORT OF AN INVESTIGATION UNDER SECTION 430 OF THE LOCAL GOVERNMENT ACT 1993. RE: TWEED SHIRE COUNCIL.***

My *Study* should be read alongside this government *Report*. Some, although not all, of my *Study* is a response to that *Report.* Whereas my *Study* is written from the

perspective of a Councillor, the *Report* is written from the perspective of a government bureaucrat.

The reader may be astonished at the vast gulf between my view from below and the Bulford view from above. Both of us want to see a better local government system, but we see the problem and the remedy very differently.

The Bulford Report recommends further emasculation of democracy at the level of local government by increasing the power of the bureaucrats and severely curtailing the power of the elected members to subject it to any real surveillance and control.

My thesis contends for the very opposite – more surveillance and control of the bureaucracy by the elected representatives of the people. That is how democracy works at both State and Federal level. This is how it ought to work at a local government level.

My presentation aims to show conclusively that the bureaucratic nostrums offered to us in the Bulford Report is the poison that has made the "patient" sick in the first place.

Toward a Review of the Constitution

As things stand, Shire residents have very little control over their own destiny, and whatever democratic powers they do have are constantly being whittled away by more and more State government regulations.

<u>This factor has played no small part in creating the bad *Murwillumbah system.*</u>

We often hear comments that Australians are over-governed, that there are too many levels or too much wasteful duplication in government. Recent thought papers emanating from the Federal level and elsewhere are suggesting that Australia should look seriously at Constitutionally recognizing local government, giving it more powers and perhaps even by-passing the State government as a wasteful conduit of Federal funds.

Ideas like this have been floating around for a long time and are gathering momentum. It is hoped that this *Study* will add to that momentum.

The State government should have no doubt that if any level of government is going to be downgraded in a Constitutional overhaul, no one has ever seriously suggested it ought to be the local government. Never! For it is here that ordinary people have the best chance of becoming power-sharers in their own destiny. After all, that is the essence of democracy.

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Chapter 1
THE RUDMAN CASE

The Rudman Case is David and Goliath stuff. It is the story of a little Aussie battler against *the system.*

Roy Rudman fell into the hands of the Tweed Shire Council nearly 30 years ago. What followed was cruel and unusual punishment. His family suffered. His marriage suffered. His health suffered. A sentence of 20 years is handed out for murder. Roy was penalized and punished for much longer than that for doing nothing more than insisting on natural justice.

Against him *the system* used discrimination, double dealing and sheer bastardry. There were lies, damned lies and statistics. Roy Rudman copped it all.

After he had suffered about 20 years of this kind of treatment, Mayor Max Boyd asked Roy Rudman if he had a vendetta against the Council. I'll leave it with the reader to decide who may have had a vendetta against whom.

Roy Rudman is a long-time resident of the Chinderah community. Like many of his neighbours, he has roots in the Aboriginal and South Sea Island community. On his mother's side, there was a strong mix of Aboriginal and South Sea Island descent. His father was of English extraction.

Roy never had the advantage of a good education. He learned the bakery trade. After that he undertook a whole variety of jobs from cane cutter to Tick Gate attendant, and did lots of over-time jobs on the side. Roy was ambitious to advance beyond the disadvantaged circumstances of his forebears. He was determined to give his kids the start in life that was denied to him. He started investing his savings in land along Chinderah Road. He did not reckon on Council checkmating every move he made.

It all started when Roy Rudman purchased two allotments along Chinderah Road from the Council on 11/8/72. This land had existed in a single title from 1919 –1972.

After Council secured title to the land for a rate debt, it subdivided the land into Lots 8 and 9 to maximize the return to itself. Roy checked the titles before making the purchase. He received a letter from Council's own solicitor saying that the Lots were clear of any impediments.

Two years later, when he applied to the Council to build houses on Lots 8 and 9, the Council invoked an IDO No.2, Clause 16 rule to say that his two allotments only had only one house entitlement. Roy felt defrauded. The Council had either sold him land on false pretences or having sold the land, had moved the goal posts. He bought the land from Council in good faith that the two allotments had two building entitlements. One wonders what would have happened if two different parties had bought Lots 8 and 9 when they were offered separately at Council's auction? A block of land without a building entitlement is practically worthless.
What made Council's duplicity particularly galling to Roy Rudman was the fact that some of his neighbours were allowed to build on parcels of land that came under the same No2, Clause l6 IDO (which said that Council was not obliged to grant building entitlements on land subdivided since 1964). Roy felt that he was not only the victim of Council duplicity, but of discrimination as well.

He eventually sold Lots 8 and 9 as one parcel of residential land with one building entitlement. Thus, when Council sold this land it did it in a way that doubled its return. When Roy Rudman sold the land, Council halved his return.

In 1994 – 20 years later – the General Manager of Council and Roy Rudman were involved in mediation sessions with a Professor of Law at Bond University in an attempt to bring this dispute and other matters to a close. According to Roy Rudman, the GM admitted in these sessions that the Council had done him an injustice in the matter of Lots 8 and 9. This claim is entirely believable because I was present when the GM frankly told the Council the same thing. To this day, however, Roy Rudman has never been compensated for Council's duplicity at his expense.

Council's double dealing with Lots 8 and 9 was only a small part of a whole series of injustices meted out to Roy Rudman. He also owned the three adjoining parcels of land - Lots10,ll,12. Lot 10 already had a house on it, but by invoking the same N0.2, Clause 16 IDO rule, Council refused him a building entitlement for Lot 12. After he sold Lots 11 and 12 for the virtual price of one, the land eventually passed into the ownership of Roger Harrison. Council granted him a building entitlement for Lot 12.

In 1976 Rudman also purchased a 15-acre parcel of land (Lot A and C) along Chinderah Road. It was zoned Rural or 1(a) according to the l987 *Local Environmental Plan.* Tourism-related facilities and Caravan and/or Mobile Home Parks were permissible in this zone with consent.

In 1988 Mal Logan of *Vapuva Ptd Ltd* offered to buy this 15-acre parcel of land from Rudman for $500,000, and a contract was drawn up conditional on Council consent for some developments appropriate to zone 1(a). As it happened, however, Council by this stage was contemplating establishing a turf farm on land it owned adjacent to the Kingscliff Sewage Treatment Plant to re-use the sludge and the effluent. Instead of measuring the 360 metre sewage buffer zone from the Sewage Treatment Plant,

Council wanted this 360 metre – later extended to 400 metres – sewage buffer zone to start at the boundaries of the proposed 50-60 acre turf farm.

At first the Council had written to Roy Rudman assuring him that his 15-acre property was not in the buffer zone. This was followed by another letter informing him that half of his property fell within the buffer zone. Believe it or not, this was followed by a third Council letter telling him to ignore the previous letters because all of his 15 acres would be included in the buffer zone. With such a blight put upon the Rudman land, *Vapuva* pulled out of the contract. From Roy's point of view, he had a big one on the line, but the Council shark had swallowed it hook, line and sinker.

There are two reasons why Roy Rudman had reason to feel aggrieved by these events. In the first place, two other developments, both nearer to the Sewage Treatment Plant than his property, were given permission to proceed with housing developments. These were Noble Park on the eastern side of Chinderah Road and the Baker Brothers' housing development on the western edge of the existing Kingscliff township. This represented the building of 140 houses within 400 metres of the Sewage Treatment Plant. Naturally, Rudman felt that Council was discriminating against him again.

Roy Rudman claimed that the Council was obligated to compensate him for a buffer zone that seriously devalued his property. We accept the principle that if a person's land is required for a public road, "just terms" requires adequate compensation. If the Rudman land was required for a sewage buffer zone, shouldn't he also be compensated for his loss? To make matters worse, the turf farm was touted as a business venture for Council. No one else could set up a business like this and then expect other people to provide it land necessary for a buffer zone.

In 1988, as if to torture the Chinderah battler even further, Harry Scott drew up another contract to purchase Rudman's 15-acre parcel of land for $1 million. This sale also fell through when Council refused to remove the property from the sewage buffer zone. It may be all very well for Council to argue that the rules would still allow a range of things happening within a sewage buffer zone – industrial buildings for example – but the buffer still drastically devalued the property and made it very difficult to sell.

Roy Rudman had two moves left to avoid being checkmated by Council. One option was to sue Council for compensation on account of putting his property under a buffer zone. (Egis Consultancy advised Council in 2000 that this kind of legal action by a landowner would "probably succeed.") This, however, would require Supreme Court action, and Roy Rudman did not have the means to mount this kind of legal challenge.

Justice is like the Ritz Carlton: it is open to all!

A less expensive move was open to Roy. This was an appeal against the Council's Turf Farm on environmental grounds to the Land and Environment Court. He waited until the Council had done its Environmental Impact Statement (EIS) and granted itself a development approval for the Turf Farm in 1992. He sold his truck, his few cows, borrowed money from his own kids and raised the $15,000 necessary to lodge his appeal. (It took him a few years to pay it all back).

At first he was offered assistance from the Aboriginal Legal Services. But a legal expert provided by the Service considered Roy was fighting a lost cause and dumped his case.

Roy was not prepared to give in. He had studied data on turf farms viz a viz the environment so thoroughly that he was convinced of having a sound case. If his opponents thought he was going to be a push over, they were in for a surprise. Roy did his homework. He had obtained from Agriculture NSW a paper on *Guidelines for Turf Farms* that was full of valuable environmental data. Having carefully studied Council's EIS and compared it with the guidelines published by the Agriculture department, Roy was ready to fight on the ground that Council's Turf Farm did not comply with the environmental guidelines.

The hearing took place at Murwillumbah July 21, 1993 before Justice J. Bignold.

The Council team filed into Court with two engineers, three great boxes full of paper work, a solicitor and one barrister flown up from Sydney.

Roy Rudman appeared before the Court without legal representation – he couldn't afford it – and armed only with Council's EIS and the *Guidelines* on the uses of effluent and sludge from Agriculture NSW.

Roy cross-examined the Council team using these *Guidelines* – which none of the learned men had read – and prevailed against them in the exchange. During the lunch break the learned men went scurrying off to read the *Guidelines.*

The Rudman appeal was based wholly on environmental grounds. From the State Environmental Planning Policy No. 33 he claimed that the proposed Turf Farm was "an offensive and hazardous industry." On environmental grounds, he argued that the Turf Farm was

- too close to houses (there were 13 houses in close proximity. In humid conditions bacteria laden aerosols from spraying effluent on turf could travel up to 1 km, taking in most of Kingscliff),
- too close to the water table (turf farming uses more hazardous chemicals than any other form of agriculture with the possible exception of cotton),
- too sandy (the site being almost pure sand, the chemicals would go straight down into the water table less than a metre from the surface)
- and too close to the river (it would be like putting the Turf Farm chemicals straight into the river).

The judge reserved his decision until September 28. The verdict read as follows:

> ***Environmental Planning and Assessment Act 1979 s98 – appeal by Objector against designated development consent for extractive industry – proposed turf farm to be nourished by re-use of treated sewage effluent and sludge –State Environmental Planning Policy N. 33 – Offensive and Hazardous Industries - …on merits appeal site not suitable for proposed development – appeal allowed – development consent refused."***

Roy Rudman was with two close supporters who were waiting for the verdict to come through on the appointed day. They were Felicia Cecil, the president of the *Chinderah District Residents Association* and the Association's consulting engineer, Mike Allen. There were tears, laughter and celebration for Roy's stunning victory – and a victory for the Chinderah residents.

Second Round of the Turf Farm Contest

Council refused to accept Justice Bignold's verdict saying that the Turf Farm was an "offensive and hazardous industry" under the EPA. Neither did Council accept the judge's ruling that the site "not suited for the proposed development."
But since Council's approval for the Turf Farm had been lodged under Section IV of the Act, there was no provision for an appeal against this verdict of the Land and Environment Court.

This did not stop Council from figuring a way around the impasse. Backed by legal advice – which alas, has been far too prone to support what its client wants to do – Council decided it would make the Turf Farm a part of its Sewage Treatment Plant (SPT). This would supposedly allow Council to grant approval to the Turf Farm as "sewage works" under Section V of the Act. In this arrangement, Council simply revamped its first EIS to fit this legal fiddle. Apart from this, nothing changed. The Turf Farm proposal was just the same as the one thrown out of court by Justice Bignold. All the objectionable features of the site were the same – too close to the houses, too close the water table, too close to the river, the soil too sandy, etc. This was the same old chestnut brought back under a different legal guise.

In December 1998, the Council granted itself another development approval for the Turf Farm, this time under the legal umbrella of being part of the Sewage Treatment Works and under Part V of the EPA.

Roy Rudman was now staring at the prospect of a final checkmate. He had no money left to wage another battle in Court.

When his cause appeared lost, John Dartnell of Kingscliff Reality introduced him to a Sydney client, Dr. Stephen Segal. Under the company name of Gales Holdings, the Segal family have owned most of the undeveloped land in West Kingscliff for about 30 years. Up till this point, the Segal family were not aware of the problems associated with the Kingscliff STP and Turf Farm. But after he was thoroughly briefed on the issues by Roy Rudman, Dr. Segal resolved to take the ball from a financially exhausted Roy Rudman and run with it himself.

Stephen Segal not only called the Turf Farm proposal into question, but he challenged Council's plan to build a new Sewage Treatment Plant for 50,000 people on the existing site. He took up the argument of the *Chinderah District Residents Association:* the STP was too close to town and would soon be enveloped by a rapidly expanding urban region. Segal employed consultants to argue that it made no planning sense to leave the STP in what would soon become the middle of an urban area.

Dr. Segal then commissioned one of the top accountants from *Ernst and Young* to investigate all the documents wherein Council had purportedly costed all the options for the new STP.

The *Ernst and Young* report was devastating. **It found that the Council had dismissed other possible sites for the STP without doing a professional cost analysis of the options.** [Councillors were told a cost analysis had been done] *Ernst and Young* found that Council had failed to factor in the sale of the existing 65 acre site. It found that the authors of the Council documents had merely thrown around some figures from the top of their heads in a very unprofessional manner. In other words, decisions were being made about the future of Kingscliff based on information that was worthless.

When the *Ernst and Young* Report was made public, Mayor Boyd and his management team went into damage control. Tony Smith, the Council solicitor, was brought into the Council Chamber to convince the Council that the *Ernst and Youn*g Report was fallacious and possibly defamatory. As the issue of the Turf Farm was heading back to Court courtesy of a challenge by Dr.Segal, it was obvious that the Council solicitor was trying to shore up the Council position in the minds of the Councillors.

After the lodgement of Dr. Segal's appeal to the Land and Environment Court against Council's approval of the Turf Farm, Roy Rudman organized a community group called SACK (*Sewage Action Committee Kingscliff*) to alert the residents of Kingscliff/Chinderah to the issues surrounding the STP and Turf Farm. SACK published a little flyer to present its case for moving the STP and stopping the Turf Farm. It soon gathered about 1,000 signatures of support.

The Council was appalled at the "lies" being told by SACK's little flyer, so it decided to reply with a Tweed Shire Council *Fact Sheet*. In its rebuttal, the *Fact Sheet* made four claims that were soon to be exposed as completely false.

- It said that moving the STP would impose a $10 million cost penalty that would cost the Kingscliff community $4,000 per household.
- It said that operating the SPT on a new site at Stotts Creek, as proposed by some, would "increase energy consumption by 270%."
- It said that moving the STP would result in "a development moratorium…for a number of years."
- It said that if the STP was moved, "the highest and best use of this land is arguably for rural activities…the likely return on this site as rural or industrial land is not significant in relation to the relocation costs." (This conveniently ignored Dr. Segal's offer of $5 million for the 65-acre site.)

Council was determined to keep the STP where it was and to proceed with the Turf Farm before the impending Council elections in September. Council management therefore decided to clear the land and lay the pipes for the Turf Farm in a swift operation.

Much of the land on the proposed Turf Farm site was covered in Melaleuca Paper Barks, Gum Trees and Bottle Brush. Chinderah's small koala colony foraged on the

site and on the Golf Course on the other side of the Chinderah Road. Many small wallabies called paddy melons lived in its bushland. Council's EIS made no mention of either koalas or wallabies. Bulldozers were sent in to sweep the area clean of all trees – and wildlife. [There were no Green protests because even the "environmental" Councillors were supporting the Turf Farm] The bulldozers had almost finished the clearing operation when Dr. Segal secured stop work orders from the Land and Environment Court.

The Final Victory

Dr. Segal's appeal against the Council's approval for the Turf Farm was heard in the Land and Environment Court at the end of August,1999. The case went for three days. Segal's legal costs amounted to $125,000. The sole point of the dispute between the legal team on each side was whether the Turf Farm could legitimately be considered part of the Sewage Treatment Works under Part V of the Act. On 31/8/99 Justice J. Lloyd upheld Segal's appeal. In his summing up, the Judge called the Council arguments "absurd," "absurd," "absurd," "absurd," "absurd" – a total of five times. Costs were awarded against the Council.

A few days later the Boyd/James faction decisively lost the Council election.

The new Council acted to form a Kingscliff Sewage Committee consisting of officers from two government departments (PWD and DLAWC), a manager from Council's engineering department and three Councillors including myself. The Committee's first task was the appointment of a nationally recognized sewage consultant to review all the documents and to advise Council on the best option available. *Egis Consultancy* was unanimously chosen from a short list of tenders. The consultant was directed to remain at arms length from Council officers and Councillors alike, and to bring back to the Council a thoroughly objective report. After several months Egis delivered its findings:

- There were basically 5 different options available to Council – leave the sewage plant where it was or move it to one of four different sites (South Kingscliff, Stotts Creek, Banora Point STP or a site to the West of the Chinderah Road.)
- Taking into consideration Segal's offer to purchase the present Sewage Treatment site from Council for $5 million, there was no cost penalty in any of the five options. Construction costs and running costs for the five options were line-ball.
- Given the high probabililty of litigation by landowners against the buffer zone encroaching on their land,
- given the residents' opposition to the STP remaining in Kingscliff,
- and given good Town Planning considerations,

Egis recommended removing the STP from the present site in Kingscliff. Its preferred site was a rural location West of the Chinderah Road on land adjoining Bolster's tea tree plantation.

The new Council accepted the Egis recommendations. It subsequently negotiated selling its present sewage treatment land to Segal for $5 million and purchasing a new site at the preferred location at a huge cost saving.

The way is now cleared to eventually move the STP away from an urban area and to remove the buffer zone from encroaching on any private land. The whole Kingscliff/Chinderah community owes Roy Rudman a great debt of gratitude.

Dr. Segal estimates that Council would have lost at least a $l million of ratepayers money in the Turf Farm misadventure. If that estimate is anywhere near the truth, no one in the Council bureaucracy is prepared to acknowledge the real cost of this Turf Farm debacle.

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Chapter 2
THE TAGGET CASE

Neil Tagget bought a farm close to the beach at Pottsville in 1985. The 204-acre property contained some rolling hills and 130 acres of flat land running out toward Moobal Creek and the Ocean beyond. The flat was covered by a mixture Melaleuca trees and grass that had been used for cattle grazing over many years. In the middle of the flat there was an old cultivation paddock of about 10 acres that had a history of growing small crops. It had not been used for 20 years except for grazing. Being somewhat neglected, young Melaleuca or Paper Bark trees were springing up all over it.

A hill over-looking the flat in the foreground and the Ocean in the background was a delightful aspect where Neil and Robyn Tagget built their new home to raise their young family. The farm had been somewhat neglected, but here was an ambitious and energetic young farmer who intended changing all that by running cattle and growing bananas in the short term and by growing sugar cane in the longer term.

In 1987 the NSW Department of Urban Affairs and Planning (DUAP) proclaimed a new Sepp 14 area known as Wetland 54. It included the 130 acres of the Tagget flat. The Tweed Shire Council also zoned the area as 7(a) or Environmental Protection wetland. These new wetland zonings had followed a lot of pressure from the aggressive conservation lobby.

The Taggets were not informed by either the State Government or Council about the impending re-classification of their land. They did not see the unobtrusive notices in the local press. Consequently they made no submissions to oppose these new zonings that devalued their farm and placed severe limits on its farming potential.

Two very important facts, however, emerged in the debate that was soon to erupt.

The first important fact to emerge was that neither the State government nor the Council had ever done any on-the-ground studies to confirm the genuine wetland status of the land. There were simply some lines drawn on a map, lines reasonably

suspected of being put there in response to the urging of a local Green lobby group. Questions about the mapping accuracy and the wetland status of some of the land were bound to arise. For instance, Neil Tagget wanted to grow Lady Finger bananas on the old cultivation paddock, and anyone familiar with bananas knows that they won't grow on an existing wetland.

The second important fact emerged when a senior officer from DUAP, Mr. Neville Apitz, very emphatically pointed out that the new wetland legislation was never intended to disrupt traditional farming activities. Landholders were entitled to "existing use rights."

None of this, however, prevented the Council from waging a relentless war on the Taggets "existing use rights." The war continued until they lost not only their existing use rights, but their entire farm as well. The Taggets ended up giving their 130 acres to Council for $l – for less than the price of a cup of coffee.

This is a story that fully justifies calling *the system* that did this *the Murwillumbah Mafia*. For there is no doubt at all that the Council acted illegally, conspiratorially, unjustly and mercilessly to drive the Taggets from their land and to put them into a position from which they have not fully recovered after more than a decade.

We pick up the story where the Greens gleefully became the self-appointed custodians over most of Neil Tagget's land in1987. Henry James of the *Tweed Conservation Trust* marshalled a small army of volunteers to monitor the property and to report on all suspicious work activities such as slashing of weeds, cleaning of drains or construction of fences. Neil could hardly start his tractor without his movements being reported. As if this was not enough, Henry James from time to time chartered flights over the farm to take photographs of ongoing activities and to report to the Council about everything not to his liking. These reports were sent to Council officers on a fairly regular basis. The officers not only received them gratefully, but at times urged Henry James to gather even more information from his vigilante Greens. If ever there was a Tweed witch-hunt, this was it.

The harassment of the Taggets did not stop with constant surveillance by these self-appointed Green spies. It was backed up by Council entering their property without due process (eg. gaining owner's permission, giving notice of entering to inspect, etc.) and issuing stop work orders and threats of prosecution. There was no attempt on the part of Council to resolve the conflict by dialogue or negotiation.

To get the full context of this war on the Taggets, we need to step back and take in the sweep of the new political alliance that was developing on the Tweed.

Max Boyd had left the National Party after a falling out, and was fast losing his support base among the farmers and the business community. If he was to stay in power, he needed a new support base. He impressed the far Left when he effectively stopped any big-ticket projects proceeding at Fingal and South Kingscliff. But it was in *the Tagget Case* that Max Boyd cemented a working relationship with the Greens who had become a very strong group on the Tweed. In other words, he did a Graeme Richardson thing on the Tweed. Just as Graeme Richardson orchestrated an accord

with the Greens that kept Labor in power Federally, so Max Boyd did a similar thing to stay in power on the Tweed.

On the eastern boundary of Neil Tagget's 130-acre flat was another 100 acres of land also classified as wetland. This was owned by Peter Krekleberg. On the eastern side of his wetland Krekleberg was developing a residential estate called Pottsville Waters. This development featured a very controversial canal. I say "controversial" for two reasons: Bob Carr as Minister of DUAP had recently banned any further canal estates along the Coast without ministerial consent. Kreckleberg had somehow managed to scrape through a closing door by securing an approval for the canal from Tweed Shire Council, but Council had not secured the required approval for the canal from the Minister.

The Greens had a particular reason to detest this canal. They feared it would drain too much water from the newly declared Tagget wetland, thus jeopardising its newly acquired status they were so determined to protect.

The Greens threatened to lobby the State government to take action against Council for not gaining ministerial approval for the canal unless Council imposed one special condition on the next stage of the Pottsville Waters residential development. Since the wetlands behind the canal, which included the Tagget land, drained into the canal by an East-West drain, Henry James demanded that the spillway where the drain flowed into the canal be raised from an existing 1m.R.L. to 2.5m.RL. Raising the spillway would prevent water draining from the Tagget land and put its wetland status beyond all doubt.

Peter Border, the Shire Engineer, warned the Council officers that raising the spillway to 2.5m.R.L.would effectively turn Tagget's land into a lake – for his land had an average elevation of about 1.5m.R.L. But that's exactly what the Greens wanted. Despite Peter Border's caution, the Council imposed on the Krekleberg development the condition that he build a bund across the drain to raise the spillway to 2.5m.

Council agreed to do this and gained the Minister's consent to raise the spillway to 2.5m.R.L. The person who was calling the shots in all of this was Henry James, the "watchdog" of *the Tweed Conservation Trust.*

Raising the spillway was done illegally in that Council had a legal obligation to require that any property owner likely to be affected was notified. Council knew that Neil Tagget would be adversely affected by it, and it knew there was an obligation to notify him so that he could lodge an objection. He was not notified. This was a deliberate, surreptitious and conspiratorial act to appease the Greens and to deprive Neil Tagget of his rights under the law.

Just as Peter Border had predicted, the raised spillway at the end of the East-West drain began to dam the water up on Neil Tagget's land. He could not understand why the water was not draining away as it usually did. He did not know that Council had directed Peter Krekleberg to block off the end of the East-West drain as a condition for his housing development. He could see, however, that his pasture was deteriorating with an excess of water.

Neil Tagget began to do a number of things to improve his farm, having no idea of the storm that was about to break over his head.

There were about 25 acres of a noxious weed called groundsel bush on his flat. The noxious weed authority required him to remove this infestation. When Neil Tagget used his tractor to slash the large groundsel bush, the Green spies reported him to Council. The Council threatened him with prosecution, gave him stop work orders, and told him that he could continue the noxious weed eradication only by hand. Not only was Council being totally unreasonable in this demand, but its threats proved to be a paper tiger. The Council was advised by its own solicitor, David Connie, that Tagget had a legal right to slash groundsel bush. The only thing Council could do, therefore, was to harass and bluff Tagget into complying with its unreasonable demands. When that failed, the Council eventually dropped the matter.

After a fire – very common in that area – had destroyed the fence along his eastern boundary, Tagget began to clear this fence line for the construction of a new fence. Again, the Green "police" reported the matter to Council. It responded with more stop work orders and demands that Tagget lodge a Development Application for a new fence. David Connie advised the Council that Tagget had a legal right to clear the land along his fence line for either construction or maintenance without a DA. He suggested that the only thing Council could do was to bluff Tagget into complying with its demands. When the bluff did not work, Council eventually stopped harassing Tagget on this account also.

When Neil Tagget ploughed up the old cultivation paddock in preparation for planting Lady Finger bananas, Council took this issue all the way to the Land and Environment Court. Since this cultivation paddock had not grown any crops for 20 years, the judge ruled that "existing use rights" did not extend to growing bananas. This was the only part of the dispute which Neil Tagget really lost. But since the land in question was quite capable of growing crops, including bananas, it certainly called its zoning as a wetland into question.

The DUAP office at Grafton indicated in a letter to Council that it was prepared to consider removing Tagget's land from the wetland zone, but Council and the Greens did everything possible to thwart any review of the matter. The Greens had a plan that would put its wetland status beyond all question, and to this end they received Council's full co-operation.

The Dispute Over Drains

All these aforementioned areas of dispute were mere skirmishes compared to the all out war over the drains. This is where the real battle was joined.

Neil Tagget sought relief from the unusual amount of water that was backing up over his land and spoiling his pasture. He commenced cleaning out his old drains, using an excavator as everyone does nowadays. It was only then that he learned why the water was not draining away from his land. He discovered that Peter Krekleberg had constructed a bund wall to raise the spillway where water from his farm drained into the canal at the Pottsville Waters Estate. In the short term, Tagget sought immediate

relief by cleaning out an old north-south drain through which water from his farm could drain into Cudgera Creek to the north.

Neil Tagget's drain cleaning activities brought a great chorus of protests from the Green watchdogs. Their plan to turn Tagget's land into a valid wetland was in danger of becoming unstuck. The Council responded to these Green protests with inspections and stop work orders. Within a few days Council resolved to prosecute Tagget in the in the Land and Environment Court.

Solicitor David Connie, however, warned Council that should Tagget sue the Council for raising the spillway and flooding his land, he would probably prevail. So in a very cynical move that was really an admission of its own guilt, Council asked the Minister to agree to lower the spillway to1m.R.L. for a period of six months. Why this cynical change of heart? Council did not want to be found taking Tagget to court for doing something illegal, only to be exposed as the party who started the dispute by illegally ordering the spillway to be raised for the purposes of flooding Tagget's land.

The Director of Development Services refused to concede that Neil Tagget had merely cleaned out the old farm drains. He declared, "Court proceedings should continue because of evidence that the drains did not exist before the date of the alleged works and the general strength of Council's evidence." (Memo on 5/9/91). In a note to Council's solicitor on 30/4/91, Council officer Darryl Anderson said that he was not prepared to admit any "existing use rights" of drains on the Tagget land.

In response, Neil Tagget was able to marshal irrefutable evidence for the prior existence of the drains. Frank Harper and Barry Murnane submitted written affidavits saying that they participated in digging the drains by hand in 193l. (How could anyone forget such arduous labour?) Two pre-Tagget owners of the land (one of which was Don Beck, M.P.) provided affidavits declaring that the drains were in existence when they had owned the property. A long time farming neighbour said in his affidavit that he himself had often cleaned out the disputed drains over a period of many years.

On the strength of this eye-witness testimony, David Connie advised Council on 22/4/91 to concede that the drains were in existence before Neil Tagget began his drain cleaning operation. But in a file note response on 30/4/91 Anderson replied, "Council does not concede."

Shortly after this exchange, David Connie left Halliday and Stainlay and was replaced by Tony Smith. He urged the Council to locate witnesses who could negate the affidavits of Harper, Murname, G.E. Taggett, Johansen and Beck. (Why not simply believe that they were telling the truth?) He also urged the Council to enlist the help of an expert in aerial photography to disprove the eye-witness testimony about prior existence of the drains. Council officers frantically sought evidence from Henry James and his Green friends to support the Council case. They also wrote to DUAP asking for expert witnesses, but DUAP replied that it could not help.

As a new Councillor, I researched the Council files and found enough disturbing material to cause me to question this crusade against the Taggets. Tony Smith expressed his concern that some Councillors were entertaining reservations about the

soundness of the Council case. He confidently affirmed that Council would win based on the evidence of a photogrammetrist. He said that this evidence would prove that Tagget had not simply cleaned drains, but had dug new drains on his property. Bolstered by a memorandum of Advice from Council's barrister, Tony Smith claimed that Tagget had a weak case.

When the matter was heard before Justice Bannon, Darryl Anderson's evidence collapsed. He was forced to admit that a 1989 photographic Exhibit that had been in his possession for 6-8 weeks clearly showed the prior existence of a drain. Here is a piece of this embarrassing moment for Darryl Anderson in cross examination:

> *Q. I suggest, Mr, Anderson, that that photograph shows the perimeter drain on the subject property standing out like the nose on your face… It shows a clear drain running along the wetland…doesn't it, Mr. Anderson.?*
>
> *Anderson: It shows some work which appears to be a drain.*
>
> *Q…Sherlock Holmes…the Goon Show, your Honour. It shows the drain doesn't it Mr. Anderson?*
>
> *Anderson: It shows what appears to be a drain.*

Anderson and the Council were up the drain without a paddle!

Needless to say, the Council case on the drains collapsed. Justice Bannon said that Neil Tagget was an honest witness who told the truth. Whilst conceding that the use of the excavator has somewhat enlarged the drains, he concluded that cleaning the drains was "an existing use right."

After the verdict of the Court was handed down, Council set about trying to convince the Councillors that Council had really won the Tagget case after all. In a perverse kind of way they proved to be right. The legal battle had cost Neil Tagget an enormous sum of money and had financially brought him to his knees. The *system* knew only too well how to finish him off – just keep the financial strain of the legal battle going until he financially expired.

Council appealed to the Court in respect to a dispute with Tagget about Court costs, and then appealed to the Court again in respect to a removal of more vegetation in further drain cleaning operations.

By this stage of the contest, Tagget was like an exhausted boxer who, despite being ahead on points, was too exhausted to come out for further rounds. His legal debts forced him to throw in the towel. He agreed to give his 130 acres of wetland to the Council for $1 in return for being able to cut the rest of his land into a few blocks to pay his legal bills - which by this time amounted to over $200,000.

How much did the Tagget case take from Council's big bucket of ratepayers' money? No one was saying, but Council costs would have been comparable to Tagget's costs.

With Tagget out of the way, the spillway at the end of the East-West drain was raised again to flood the land that had been under dispute. Neil Tagget lost more than his "existing use rights" through the costly legal process; he lost his entire farm. A decade later he had not fully recovered.

As we will see, this was neither the first or last time that this local government *system* used the process of legal attrition to wear a ratepayer down and thereby deprive a citizen of his rights.

When I started calling Council's dispute with Neil Tagget into question, Max Boyd was the one who led the charge in defence of what the *system* was doing. He vehemently resisted my suggestion that the dispute over the drains should not proceed to court. He brought Tony Smith into Council Meetings to vigorously advocate proceeding to court.

The President of the Council kept insisting that Council was only doing what the State government required it to do. He would say, "We don't have an option in this matter. We have to obey the orders of the State government." But the State government authorities were sending entirely different signals to Council. Mr. Neville Apitdz from Planning NSW clearly contradicted the claims of President Boyd by saying that the boundaries of the wetland had never been supported by any on-the-ground studies. According to a file note by Darryl Anderson on 11/1/91, Jennifer Sullivan from the Planning NSW office in Grafton had phoned suggesting that the Department would like to do an inspection of Tagget's land with a view of excluding it from its wetland classification. But that is the last thing that Henry James and Max Boyd wanted to happen. Council actually held the Department's suggestion at bay by its own prosecution proceedings.

The Council knew that there were other Councils in the same situation as Tweed in respect to wetlands. These other Councils were resolving conflicts with landowners by negotiation and reasonable compromise. But Council wanted no negotiation or compromise in the Tagget case. DUAP's Mr. Apitdz made is clear that the wetland legislation was designed to protect "existing use rights"of landowners.

The Council wasn't listening to the state government at all. It was listening to Henry James. Council was going all out to support the Greens' bid for control over Tagget's wetland. But as it turned out, support between the two parties was not a one way street. Apart from the support of Henry James, Max Boyd would have been a dead duck in the 1991 and 1995 Council elections.

On 2/3/92 the General Manager suggested in a file note that the Council might explore mediation with a view of settling the dispute out of court, but unfortunately this suggestion was like a mere straw against a strong current. At the end of the day the General Manager was prepared to be a loyal servant of *the system.*

As for Henry James of the *Tweed Valley Conservation Trust*, he had more influence on Council business than all the other Councillors put together. It was his idea to raise

the spillway at the end of the East-West drain. He determined how high it should be raised. He orchestrated the complaints against Neil Tagget's farming activities, and he insisted that Council prosecute him.

On the 23rd of May 1990, the system had acted with unusual haste in recommending that Council prosecute Neil Tagget for illegally digging new drains. The Councillors accepted the recommendation without any resistance. Among these Councillors were three farmers who had experience with drains on farms, but that made no difference. The Business Papers misled the Councillors with biased, one-sided reports that fed the Councillors with misinformation. The Councillors were not informed how Council had illegally directed Krekleberg to raise the spillway. They were not made aware of evidence about the existence of the drains since 193l. David Connie's advice to concede that Tagget had "existing rights" to the drains was withheld from the Councillors. A lot of other vital information was withheld. The Councillors were kept in the dark, misinformed and manipulated like zombies to do what the system had pre-determined they should do. Good people unwittingly became parties to *a system* responsible for a disgraceful miscarriage of justice and a waste of ratepayers funds.

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Chapter 3
THE KARLOS CASE

Stephen Karlos is a young restaurateur who lives on the Tweed with his wife Samantha and their four young children. He owns land in Terranora which was subdivided into eight lots carrying building entitlements in 1958. The land has been in the ownership of the Karlos family for nearly forty years.

About ten years ago Stephen Karlos went to the Council to enquire about building a family residence on one of his allotments. He was told that his eight lots carried no building entitlements. Apparently his building entitlements had been lost in a series of rezoning procedures associated with producing a new Local Environment Plan(LEP) in 1987 and 1998.

It did not help the Karlos cause that first his father and then his brothers once had some conflict with Council in respect to their *Fisherman's Cove* restaurant beside the river in Tweed Heads.

Stephen Karlos tried for several years to get his building entitlements at Terranora recognized by the Council, but without success. The use of professional consultants to put his case to Council was costing him a lot of money and getting him nowhere.

Finally, on the advice of a barrister who assured him he had an impregnable case, he decided to take the matter to the Land and Environment Court. Acting on legal advice, he applied to Council for a boundary adjustment for his eight-lot subdivision. As expected, this was refused on the advice of the Director. Karlos immediately appealed the decision to the Land and Environment Court.

Prior to the Land and Environment Court hearing, Karlos's barrister discovered that according to Clause 31(3) in the Tweed LEP, Karlos could not lose his Appeal. The barrister was obliged to inform Council's barrister of this fact.

Council's barrister (Ian H. Hemmings) agreed that this was the situation, and accordingly advised Council officers that "the council has no option other than to approve the subdivision application."

The Council chose to ignore its own barrister's advice, and insisted on going into Court on an issue that Council could not win. Accordingly, the Court upheld the Karlos Appeal for his eight-lot subdivision, and determined the conditions appropriate for the residential development.

The Judge lopped more than $50,000 from the development conditions asked for by the Council because it had no right to impose Section 94 contributions retrospectively for an existing subdivision. The Court, however, agreed to the other Council conditions [already accepted by Karlos] such as an affluent management plan, sewage connections to eight houses, electricity and water connections to eight houses and some special road works to cater for eight residences.

Karlos did not submit any building plans because he was not in Court to ask for actual Construction Certificates – that is, building consents. So the Judge said, "The Court orders that: the appeal be upheld…the development shall be completed in general accordance with[the following] conditions…This is not a consent for the erection of dwellings. Each dwelling is subject to the lodgement and approval of a separate development application and construction certificate application." (8/7/99)

The question that begs an answer is this: Why did the Council insist on going to Court when barristers on both sides agreed that Council could not win and Karlos could not lose?

The only answer that makes any sense is to say it was done to bleed Karlos dry with Court costs. The Appeal had in fact cost Karlos about $50,000 and certainly strained his financial resources. But if Karlos thought he was now going to have clear sailing, he was in for a rude shock. When he approached Council for consent to build a home on one his lots, the Director still told him he had no building entitlements.

The planning department presented to Council a rambling and deceptively confusing report on the matter in Council's Business Paper. This report actually read as if Karlos had lost his appeal and Council had won the court case.

This was like having George Foreman get into the ring with Mohammed Ali, lose all rounds, get knocked out in the eighth, then wake up saying, "Well, I really won that fight, didn't I?" The planning department's claim to victory over Karlos in the Land and Environment Court was just as ridiculous as that.

The report in the Business Paper tried to obfuscate the issue and cover-up Council's debacle in a court case that its own barrister said was unwinnable. The planning department seized upon the Judge's words (cited above) saying, "This is not a consent for the erection of dwellings." Whilst the context is merely stating the obvious, namely, that Karlos would need to lodge plans and seek an approval for each building, the planning department turned this around to say that the Court awarded no building entitlements to Karlos. This was totally deceptive.

As if the Court would impose all the conditions appropriate for an eight-lot subdivision, including conditions for eight residences to be connected to sewage, water and electricity, yet give the appellant no building entitlements! What the planning department did was to confuse the issue by confounding an *entitlement* to build a house with the actual *approval* to build a house. For instance, if a person buys residential land it will carry an entitlement to erect a house on it. But to obtain a building consent, he must submit house plans, engineering drawings and anything else required for a Construction Certificate.

I talked to two consultants- one an engineer and the other a planner – who were thoroughly acquainted with the Karlos case - as well as the barrister who won the Karlos appeal. They all said that if the matter returned to Court it would be no contest and all costs would be awarded against the Council for a vexatious refusal of a Development Application.

The planning department would have known that it had no chance of winning a second appeal, just as it knew it was going to lose the first appeal. So what was *the system* trying to do? I have to conclude that it was trying to defeat Karlos by the process of costly legal attrition. If it could keep creating an obstacle that would send Stephen Karlos back to court, he too might financially bleed to the point of exhaustion as Neil Tagget and Roy Rudman had done.

A few hours before the Karlos matter was to come before Council with the recommendation to refuse the DA for a house, I privately protested to the General Manager, John Griffin, about the outrageous behaviour of the planning department. It had refused to accept the advice of Council's own barrister. It had lost the Karlos case in court. It was still refusing to accept the barrister's advice that Karlos had eight building entitlements. And to top it all off, here it was trying to mislead the Council in yet another devious Business Paper.

John Griffin tends to keep clear of involving himself in conflict in the Council Chamber, but he did nevertheless write a late memo to Council citing the Council's barrister. It was in effect a low-key endorsement of my motion that Council recognize Karlos's building entitlements. The motion was carried six votes to five. Max Boyd, of course, voted against the motion.

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Chapter 4
THE POWER BASE

Murwillumbah used to be the banana capital of Australia. In those days there were also more than a thousand dairy farms up the valleys and along the hundred little creeks of the Tweed. Murwillumbah was then the commercial hub for a vibrant agricultural economy.

The elites of Murwillumbah were some dominant families of long standing in the history of the Tweed. It used to be said that one had to live here for fifty years before one could be considered a local. These dominant families were smart enough to get their man into Federal Parliament (an Anthony), into State Parliament (a Boyd) and into the local Council (another Boyd). All good National Party boys, of course!

Even when the agricultural economy of the Tweed was in serious decline and the Coastal towns and villages began to overshadow Murwillumbah in terms of population, Murwillumbah continued to be the political centre of the Tweed.

The Shire Presidents, as they used to be called, were generally Murwillumbah men of farming background. Somehow Murwillumbah has always enjoyed more than its fair share of Shire Councillors too. Some suspect it has also enjoyed more than its fair share of patronage compared to the more populated areas of the Shire. But that is another subject.

The important point to be made is that whilst Murwillumbah might have become the tail of the dog in a rapidly developing shire, the tail has still continued to wag the dog.

Today, Murwillumbah's special appeal is that it is off the beaten track (official with the opening the new Chinderah-Yelgun bypass in August 2002), and it exudes the special charm of a heritage town unruffled by any rush to get into the 21st century. Yet for all that, it still remains the political hub of one of the fastest growing Shires in NSW. The Tweed Shire has a staggering $5 billion worth of exciting Coastal projects in the development pipeline.

Max Boyd became a Tweed Shire Councillor in 1964 – almost forty years ago. He has also been the President/Mayor of the Shire for a record eighteen years. No one is likely to top that record. He was honoured with an A.M. in 1999 in the Australia Day Honours list

Max Boyd came from one of the big name families of Murwillumbah. National Party, of course! His older brother Jack was elected to the NSW Parliament as the Member for Byron (which included the Tweed) in 1973. As a returned soldier and one of the Rats of Trobruk, Jack Boyd was a popular son of the Tweed.

Max Boyd served as a young Councillor when Charles Lundberg and Clarrie Hall were Presidents of the Shire. In 1978 he replaced Clarrie Hall in a very bitter *coup*. At least the Halls would call it that, and the Hall family has remained unreconciled to what happened until this day.

Like most of the Shire Presidents before him, Max was also a farmer. But after he lost his leg due to a circulation problem related to smoking, he settled down to make a life-long career in local government.

With small dairy farms like his no longer viable on the Tweed, he subdivided his property into several very saleable residential allotments. It has been a very sore point with many Tweed landowners that Max Boyd has vehemently opposed extending the same subdivision rights to others trapped on poor farms that will never be viable again.

Despite his achievements as a Councillor, it would be fair to say that Max lived in the shadow of his more popular older brother. He had been too young to serve in the War as his brother had done. But after Jack's retirement one year before he was to die in 1985, Max aspired to his brother's mantle as the Member for Byron. He went through the National Party pre-selection process, never doubting that his Party would recognize that his late brother's Parliamentary seat should be given to him. He did not anticipate the challenge from a Councillor by the name of Don Beck. Don had operated a very successful refrigeration business, and was also a grazier like other successful politicians in good National Party tradition. (Does the bull ring and the political ring suggest something in common?) Anyway, it was still a great surprise that in the National Party pre-selection ballot Don Beck defeated Max Boyd in a canter.

Max was devastated, furious and deeply wounded. He saw himself as the victim of an unforgivable injustice. This was to be a great turning point in Tweed politics. He resigned from the National Party and began a political journey that would finally see him get into in bed with Greens and fellow travellers on the far Left of the Labour Party.

Years later, on the eve of the 1999 Council elections, Max said to me, "I will never forget nor forgive what the National Party did to me."

Max Boyd's humiliating defeat in the National Party pre-selection process was a watershed event in his public career. It triggered a feud with the Becks so bitter and

enduring that it poisoned the waters of local government on the Tweed for the next two decades.

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Chapter 5
THE NEW POWER BASE

If Max Boyd felt that the National Party people had deserted him, the farmers and business people of the Tweed Valley began to sense that their man in Council was deserting them too. A mutual feeling of alienation was setting in.

As Max became more and more isolated from his National Party power base in the Tweed, he was smart enough to start building a new one.

He made moves to consolidate his support from within the Council organization itself, and at the same time he made moves to find a new support base out in the electorate. This would keep him at the top of the greasy pole (to use a famous Gladstonian expression) for another ten years.

No one ever looked after Council's senior management team better than Max. Their generous salary was supplemented with lurks and perks, one of which was quite outrageous. The senior staff were given an entitlement to "untaken sick leave" upon their retirement. This meant that upon their retirement, Peter Border, the chief Engineer, and Peter Nixon, the Town Clerk, each received about $130,000 for "untaken sick leave" – and that was on top of their generous retirement packages. After some time the Local Government Department protested so strongly against this rort, that the Council was forced to rescind this gratuitous and somewhat scandalous handout of ratepayers' money.

In 1989 the State Government directed the Council to restructure its organization along the lines of a modern corporate organization. Max Boyd presided over the restructuring process. A senior management team of a General Manager and four Directors were appointed to head up the new-look organization. Underneath these were sixteen managers. It was an extravagant, top-heavy hierarchy. When Inspectors from the Local Government Department reviewed this organizational structure in 1994, they recommended that it should be cut back to half the number of Directors and half the number of managers. This recommendation was never implemented.

The extravagance did not end with having too many chiefs at the top of organizational hierarchy. The chiefs were then put on salary packages that were well above the going rate. To start with, the General Manager's salary package - worth over $200,000 p.a. back then - was higher than any Council salary of its kind in Australia. The four Directors were also given salary packages well above the going rate.

It may be said, of course, that the Mayor simply believed in the old saying, "If you pay peanuts you get monkeys." Some peanuts!

On top of this financial generosity, Max Boyd gave to the senior staff undeviating loyalty. He insisted that Councillors should never criticise them for anything. He carried this to the point of being almost paranoid about it. It was as if the first article of the creed in this Murwillumbah cult had said, "I believe that the senior staff can do no wrong."

I distinctly remember how, as a new Councillor, I went into bat for Neil Tagget when *the system* was threatening to financially ruin him . I was taken into a basement room and verbally beaten around the head for about two hours because I had dared to suggest that the Council Business Papers had "misled" the Council. I felt as if I was before the Inquisition of a cult for using a blasphemous word.

If the Mayor was loyal to the senior staff in terms of generous salaries and placing them above criticism, the question now to be answered is whether that loyalty was reciprocated. The evidence abundantly indicates that it was. I have seen the General Manager and the Directors go beyond the call of duty to support the Mayor. I have seen the Mayor call upon that loyalty to discredit the voice of dissent. This has been the genius of *the Murwillumbah system* – or at least one side of it.

The genius of *the system* was a cohesive loyalty that sucked Councillors into itself with a kind of gravitational power. Not that this ever made them real power-sharers within the system.

The Mayor was like a cult leader who continually harped to the Councillors about loyalty to *the system*. The hierarchy must never be criticized. Once *the system* had made a determination, no Councillor should ever break ranks with the corporate decision, especially not by expressing any public dissent. These were his rules.

As the gulf between the incumbent Shire President (later to be called Mayor) and his traditional support among farmers and business people widened, he began to make some noises and do some things that earned him brownie points from Greens and fellow travellers on the radical Left.

(Their negativity toward any economic development in the Shire earned them the nick-name of the Banana Party – ie., **B**uild **A**bsolutely **N**othing **A**nywhere **N**ear **A**nybody)

The Boyd Council effectively drove any big-ticket projects away from Fingal. That pleased the coalition of protestors dedicated to "keep Fingal special." The Boyd

Council also stopped anything happening at South Kingscliff. That earned him more applause from the Banana Party. Down at Pottsville, he worked hand in glove with the Green crusader Henry James in a test case to turn a working farm back into a wetland.

In the 1991 Council elections, Max Boyd positioned himself as the candidate in the middle of the road between a group of "progressive candidates" and a group of Green/radical Left candidates. The reality was that he only narrowly avoided being swept from office by exchanging preferences with Greens and other candidates on the radical Left. For an old National Party boy it could truly be said, "Max, you've come a long way!"

We say "narrowly avoided being swept from office" because the 1991 election resulted in a "hung" Council. Six Councillors supported Max Boyd for the chair, and six (including Lynne Beck and myself, both newly elected) supported the newly elected Warren Polglase.

The matter had to be decided by a draw of the names of the two Mayoral contenders out of a blue bucket. Max miraculously won the draw from that notorious blue bucket year after year. This gave him the casting vote in the new Council, and with the loyal support of the senior staff in fending off all kinds of challenges, the *Murwillumbah system* remained intact.

Since Don Beck had also retained the Seat of Murwillumbah in the State elections in the same year, the relationship between the Council and the Coalition government in Sydney was sometimes a frosty affair. Anything Don Beck succeeded in getting the State government to do on behalf of the Tweed had to be done in spite of continual sniping and non-cooperation from the Mayor.

On one occasion, when Premier John Fahey was visiting the Tweed on some official business and function, he hissed some unprintable vulgarities to let his minders know that he didn't want the Mayor of Tweed sitting anywhere near him. Things between the State government and the Mayor of Tweed were that bad!

Still hankering after Jack Boyd's old seat in the State Parliament, and possibly fearing that his hold on power in the Council was shaky, Max Boyd ran against Don Beck as an Independent in the March 1995 State elections. His minders were confident their man would win, but Don Beck trounced him by a whopping four-to-one margin on primary votes. Yet Labor won Government in NSW, and Don Beck had to sit on the Opposition benches for the next four years.

A few months after his crushing State election defeat at the hands of his old rival, Max received a consolation prize from the electorate. He bounced back to top the poll at the Council elections in September with a record of Number 1 votes. He led Mrs. Lynne Beck by a margin of nearly two-thousand primary votes. But more importantly, his team narrowly won a very polarised election by a 6/5 margin in terms of Council seats – the number having been dropped from 12 to 11 to prevent a hung Council.

In this new 1995 Council, nothing could disguise the fact that Max hung on to power only through support from the Greens and fellow travellers on the radical Left. The only possible exception to this designation of "radical Left" was his running mate in

the Council elections who has held office in a Murwillumbah branch of the Labor Party. So “the gang of six,” as they came to be called because of their solidarity in block voting on almost everything, were Max Boyd, Barbara Carrol, Bruce Graham, Ron Cooper, and two new Councillors in the person of Bronwynne Luff and Henry James of the Greens Party. This was no mere Labor-leaning Council. This was undoubtedly the most radical Leftist Council in the history of the Tweed.

For all those who lamented the Tweed being an economic disaster zone due to the negativity which kept driving quality development away from the Shire, these were to prove a very depressing four years. It was a do-nothing Council, except that it did support an urban sprawl of some very poorly planned housing estates. The Coastal villages kept growing with all the planning panache of a dog’s breakfast. Whilst the gang of six kept up their refrain about not becoming like the Gold Coast, they were fostering an urban sprawl that was threatening to turn the Tweed into something like the Western Suburbs of the Gold Coast – or the poor sister of the Gold Coast.

The Boyd Council did not stop all development. It could not stop population growth. But the “gang of six” had allowed itself to become so paranoid about an imaginary “white shoe brigade” (it probably won the 1995 election by playing on “white shoe brigade” fears) that it drove out the big ticket projects urgently needed for better planning and a world-class tourism infrastructure. Unemployment rose. This negative Council had a terrible effect on investment and business confidence throughout the Tweed.

With Labor in power down in Sydney, the relationship between the State government and the Council became very amicable. At the end of Labor’s first term in office, Max Boyd had become the darling of the State Labor government, its loyal ally on the Tweed. The transformation of this old National Party boy was complete. Even though he never joined another political party, Green or Labor, there was no doubt with whom he was in bed. His brother in-law, John Constable, was Max’s close political ally who once ran for State Parliament on a Labor Party ticket.

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Chapter 6
THE GATES OF EDEN

The title for this chapter was inspired by my reading of a remarkable book called *Higher Superstition: The Academic Left and its Quarrels With Science*, authored by scientists Paul R. Goss and Norman Levitt (published by the John Hopkins University Press). In a chapter called the *Gates of Eden* they critique the "romanticism," "environmentalism pietism," and "ecotopian enthusiasm" of people who believe that all human problems could be solved if only we would return to a more primal way of life.

A lot of local people would not be aware to what extent the Council of 1995-1999 flirted with the kind of eco-radicalism depicted by Goss and Levitt.

Mayor Boyd defined his place in the political spectrum by the company he relied on to keep him in the Mayoral chair.

Henry James was the Green Councillor who didn't appear to have any occupational/employment CV. As a self-taught botanist, he earned a reputation as some kind of environmental watchdog, stopping the Doug Moran Sanatorium on Mt. Nullum, stopping a resort at Forest Hills (Duranbah), stopping Neil Tagget draining water off his land and sometimes stopping landowners from slashing unwanted regrowth.

His closest colleague in ideological bent and voting patterns was Bronwynne Luff. That Councillor Luff managed to get herself elected to Council on a Liberal Party ticket had outraged other Liberals - unless a Liberal can be defined as someone who thinks that a Liberal should be somewhere to the Left of the Labor Party.

Bruce Graham had been a High School teacher before he became the Deputy Mayor. He was the most able and moderate member of the Boyd faction, and certainly the most articulate. As a young man he had been an ardent Communist, but after the Party

died in Australia, Bruce Graham did a Jack Mundy by becoming involved in environmental causes. Bruce made a name for himself when he led the protests to keep the Ocean Blue Resort and other big ticket developments out of Fingal. He aligned the campaign to "Keep Fingal Special" with local Aborigines. It was an irony that during his last year in Council he bitterly opposed the State government's move to give back most of the Crown Land at Fingal to the same Aborigines. Councillor Graham secured Council backing for a legal challenge against the State government. Council not only lost the verdict, but $100,000 of ratepayer's money in the exercise.(I was the only Councillor who supported the State government's decision to give the land to the Aboriginal community.)

How far Ron Cooper had gone into the wilderness of some kind of radical eco-topianism is best illustrated by a special seminar he organized on the theme of ***sustainability***. The venue was the Rainforest Retreat at Crystal Creek in the Spring of 1996. One evening plus one full day was set aside for the Seminar. Ron Cooper apparently not only arranged the venue but chose the three guest speakers as well.

A number of senior staff plus the Councillors from Boyd's majority faction attended the seminar. I was the only Councillor from the minority of five to attend. The setting was idyllic, the accommodation was first class, the food was terrific and the Margaret River wine was fantastic. I did my best to blend in with the amiable company.

I can scarcely remember what two of first two papers were about. My guess is that no one else would remember much about them either. One of the speakers did say some bland and predictable things about not allowing our eco-tourism assets to be damaged by the feet of too many tourists.

Ted Trainer from Newcastle University, however, was the one speaker not easily forgotten. He looked like a bearded Abraham Lincoln and sounded like Jeremiah, the prophet of doom. Ted Trainer did not beat about the bush. The essence of his message was this:

- First, the extravagant consumption of the so-called Western world is unsustainable and immoral. The world cannot sustain our standard of living. There are not enough resources to go around.
- Forget about hordes of tourists flying in from all parts of the world to damage our eco-tourism assets. Fuel supplies will soon run out, and there will be few gas-guzzling jets to pollute our skies.
- Our expectation of $200,000 houses, not to mention the decadent extravagance of better ones, is both unsustainable and immoral. $15,000 mud brick houses are all that we need, and we shall soon be living in them.
- Forget that indulgent and wicked dream for a red sports car. Private transport like this will become a thing of the past.
- We should plough up most of our roads and highways, and use the space to plant communal orchards.
- Why should every man have his own drill and expensive tools in a world where resources are scarce? The communal villages of the future will have communal workshops from whence each resident can have access to expensive tools. [I get access to tools not in my possession through

Kingscliff Hire. It's more efficient than trying to find what neighbour had the polisher last, and then discovering that it does not work!]

- Most of all, each region would be self-sufficient, producing its own goods and services to drastically reduce the need for long distance haulage and an expensive road network. If you don't grow it or make it, do without! **Sustainability means regional self-sufficiency**.

That was the essence of Ted Trainer's environmental gospel – or was it an apocalyptic dirge of gloom? This was all about ending the decadence of our developed world and returning to the pure and simple life of something more akin to a primal existence (read *third world conditions).* According to Ted, that's the only thing that would be sustainable in our world from here on out.

The Council group did not just listen to Ted Trainer politely, but there was a positive response all round as we contemplated this retreat to the life of a more simple age. Trying to appear seriously receptive, I asked Ted how long he thought we would have to create a communal society like this. He replied that he thought it may take up to 40 years, and would require an educational process.

Before the session broke off for lunch, Ted Trainer gave the Council group a pep talk on showing leadership. Progress in the direction he indicated would require education and leadership from people like us.

During the lunch break, under the trees in the garden, Ron Cooper expressed the view that the *Tweed Link*, Council's own newsletter, could be used in this process of educating the public about this move toward ***regional self-sufficiency.*** A senior officer of the Council opined, "Leadership means pissing people off. If we are going to start showing leadership, we have to start pissing people off, especially the vested interests."

At the end of the day, a discussion session centred on the message of Ted Trainer. It was more in the nature of a testimonial session of appreciation for the value of the seminar. Bronwynne Luff glowingly said that Ted Trainer was saying things that she had believed for years. Max Boyd said it all reminded him of the good old days when his grandmother used to make all their own soap instead of buying it from the shops. Now that was an example of regional self-sufficiency!

For a while there I thought I was in an environmental revival meeting, looking at the Gates of Eden.

For all the good feelings about saving the world from environmental doom by putting away indulgent dreams for that red sports car or cutting back on consumptive waste, it was hard not to reflect on the irony of the expense of our up-market rainforest retreat, our sumptuous dining, and our liberal consumption of expensive wine. Or Ted Turners plane ticket on one of those gas-guzzling jets, and yes, the generous salary packages of the Council elite, beginning with John Griffin's $1,000 per work-day salary.

When I reflected on these things, I knew that this rainforest experience was just a cerebral wank to make us feel warm and fuzzy about the environment. A good

substitute for the real thing! Tomorrow we would all get back to the real world, lobby for that salary rise, [called *performance bonuses* for bureaucratic fat cats on fixed contracts], push for air conditioning in all the Council cars and better working conditions all round. As they say, the path to [environmental] hell is paved with good intentions.

It was just after this that we were reminded of this "Western decadence" when Ron Cooper slugged the Council $9,000 for calls on his mobile phone

Bronwynne Luff, however, was still in the after-glow of that seminar in the rainforest when the matter of the proposed Yelgun to Chinderah bypass came up in Council for debate. Councillor Luff said she was against building the motorway on the grounds of fostering more regional self-sufficiency. Super highways only made it easier and cheaper to import our lettuce from Sydney, she pointed out, instead of growing our lettuce here. And not just lettuce. [No mention of good roads making it easier for Tweed producers to send sugar, avocados and bananas to Sydney, or giving more tourists access to Council's caravan parks!]

Perhaps that sexy little red sports car might be better than flirting with radical environmentalism. Better red than Ted!

There's an old political proverb that says, *If you don't lean a little to the Left when you are young, you have no heart: but if you don't lean a little to the Right when you get older, you have no brains.*

The electorate evidently came to the conclusion that the Boyd/James did not have the brains to lead the Council into the new century.

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Chapter 7
THE 1999 COUNCIL ELECTIONS

In March 1999, Bob Carr's Labor government was not only returned to power in the State Elections, but Don Beck lost his seat to Labor's Neville Newell.

In the run up to the Council elections in September, this new Member for Tweed weighed in for the re-election of the Boyd Council. He did not hesitate to publicly vilify the opposing *Balanced Team* that was cobbled together by Bill Bedser, a highly respected Tweed business leader, and his Small Business group.

It had taken time for some of Max Boyd's traditional supporters to realize he had deserted their more conservative circle. In the run up to the 1999 Council elections, winds of change were indicating the possibility of a sea-change election.

Sensing that the Boyd's Green/Labor alliance was facing a possible defeat, Neville Newell and former Labor Party candidate for Tweed, Trevor Wilson, prevailed on Premier Bob Carr to make a special effort to shore up support for the Boyd Council. Max was owed a big pay-back in support.

Accordingly, just before these crucial Council elections, Bob Carr held a Cabinet meeting for the NSW government in Murwillumbah. Max may have winged about the amount of support Bill Bedser was giving the *Balanced Team,* but in terms of putting up cash or in-kind support, nothing could compare with the Premier's contribution to the Boyd campaign from the big bucket of the NSW taxpayers.

In a public press conference in the Council Chambers, Bob Carr urged the return of the Boyd Council. Then in an arranged photo shoot with Max Boyd on the steps of Council, he proclaimed, "Max is the man." This picture and these words were featured on the front page of the *Daily News* two days out from the Council elections. Nothing could top that kind of support.

All this illustrates how completely Max Boyd had re-invented himself as a champion, if not a member, of the Labor party government. The Carr government wanted Boyd's support to retain the newly won seat of Tweed, and Max wanted the Carr government's support to retain power in Murwillumbah. This must not be forgotten if we are to understand the state of play for 2002/2003.

Yet for all his alliances with the Labor and the Greens, Max Boyd was swept from office in the watershed Council elections of 1999. The *Balanced Team*, led by the incumbent Councillors - Lynn Beck, Warren Polglase and Bob Brinsmead - defeated Boyd's Green/Labor team 7/4 in terms of Council seats. Lynne Beck topped the poll with about 2000 more Number 1 votes than Max Boyd. With her election as the new Mayor, the era of the old Murwillumbah *system* appeared to be over.

Or was it?

Not really. The old king may have been sent into exile, but the senior management team that over the years had been loyal to him was still intact. One aspect of the relationship between Mayor Boyd and the senior management team deserves our full attention.

Just prior to the 1999 elections, Max Boyd had been smart enough (some may say cynical enough) to oversee the giving of new five-year contracts to the General Manager and the four Directors, even though their old contracts were not due to expire for another twelve months. But for this very questionable move, the new Council could have chosen their preferred General Manager and Directors, much the same way as a newly elected Federal or State government can choose its Departmental heads. What Mayor Boyd did, however, was to saddle the new Council with his own carefully cultivated management team for the entire life of its elected term.

He set things up for *the Murwillumbah system* to survive.

Although an ex-Mayor, Max Boyd still retains some leverage with the team that reciprocated his loyalty for so many years.

He also maintains the leverage of his connections with the State government bureaucracy built up over nearly forty years as a Councillor and eighteen years as Mayor. And that leverage still exists with those NSW Labor politicians who pulled out all stops to get him re-elected.

In some of the following chapters, we will see how Max Boyd has pulled all these levers to frustrate, discredit and if at all possible, to destroy the elected Council that swept him from the seat of power. These extraordinary machinations of *the Murwillumbah system* have finally resulted in the Bulford Report's extraordinary support for the Council bureaucracy and extraordinary bucketing of the majority Councillors.

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Chapter 8
CONTROLLING THE COUNCILLORS

In any government of the people, for the people and by the people, the elected arm of the government is over the non-elected bureaucratic arm. This is how it is in the Federal and State governments. A Minister, who is an elected member of Parliament, presides over a government department, is responsible for that department, and is called upon to resign if that department fails in its duty.

We know, of course, that the head of a department may play "Yes Minister" very effectively to get his own way with the Minister, but for all that, when the chips are down the Minister is the boss because he is an elected representative of the people. This means that the ultimate boss in a democratic system are the electors. The bureaucrats are public servants rather than public masters.

This is how it should be at the level of the local government. The elected Councillors are like the board of Directors in a corporate organization. They are elected to make corporate decisions in all matters of Council policy and to preside over the organization for the implementation of those policies. These decisions are final as far as Council is concerned. The senior management team are executive officers whose role is to carry out the corporate determinations of the elected Councillors.

So on the face of it, the elected members are over the non-elected bureaucracy at the level of local government as they ought to be in any truly democratic system. But this, however, is not the way things actually work out in local government because the Council is a creature of the State government and under its control.

The way things really are in *the Murwillumbah system* is represented in the symbolism of the Council Meeting Room.

As soon as I entered this dreary room I sensed the unspoken mind-set of the place.

Sitting along an elevated bench sat the Mayor flanked by the senior officers of Council. The Councillors were seated down below from whence they could look up and speak up to their superiors on the bench. As the need arose, the Mayor would call upon the professional staff beside him to pass their word of advice down to the Councillors like Moses handing down commandments from the mountain.

I realize that the officers would laugh at my caricature of the symbolism of the meeting room. They know that it does not work out exactly like this with Councillors determined to exercise their democratic freedoms. Yet the symbolism of the hierarchy elevated above the Councillors does represent the real situation.

The bureaucracy has ways to manipulate and control the Councillors. There are ways to corral them into voting in accordance with the pre-determined decisions of the ruling elite. The trick is to let the Councillors think they are calling the shots. And as we will see, if the worst comes to the worst, the Councillors can be bludgeoned into submission by pulling some State government levers.

It would be fair to say that the elected representatives of the people at the third level of government are generally not as sophisticated, experienced or as “street wise” as their counterparts in State and Federal government. Councillors come and go, but the bureaucrats are the more permanent fixtures in the local government system. They have the experience, they have the professional expertise, and they know the ropes. The Councillors, being laypersons when it comes to things like engineering, public health, town planning and legal matters, must rely on the staff for advice in all these specialized fields. And so they should.

The Council needs more than in-house advice. From time to time it needs input from a whole range of professional consultants, including legal ones. Crucial to this whole process is that Councillors have confidence in the competence, objectivity and transparent independence of these outside consultants.

The main channel through which Councillors are advised by the professional staff is through the Business Papers. These contain professional reports and a concluding recommendation on matters before Council for determination. They generally work very well in that they help the Councillors to proceed expeditiously toward a resolution.

The problem arises when a report within the Business Paper is designed to lead the Councillors down a pre-determined path. This may be done by writing a biased report, by not canvassing all sides of an issue, or by not setting before the Councillors all the advices relevant to the issue.

For example, the Mayor and his senior staff decided that they wanted to keep the Kingscliff Sewage Treatment in Kingscliff. They thought it would be an ideal site for a Turf Farm using the effluent and sludge. The Business Papers supported the proposal without alerting the Councillors to the downside of the project. Accordingly, the Councillors voted in favour of leaving the Sewage Treatment Plant in Kingscliff and augmenting it with a turf farm. The Councillors were not advised through the Business Papers how vulnerable their proposal was to legal challenges from neighbouring landowners. Neither were they given true costings of all the options.

Council subsequently suffered two disastrous defeats when first one landowner and then another had Council's own Development Approval for a turf farm thrown out by the Land and Environment Court. **The power elites of *the system* wasted an enormous amount of ratepayers money pushing something that failed for a whole raft of reasons that the Councillors should have been alerted to in the first place.**

Or to take another example: the Council hierarchy decided that it would support *Agriculture NSW's* proposal to build "a secure Toxic Waste Facility" at Stotts Creek. As with the ill-fated turf farm at Kingscliff, the hierarchy, having few business skills, thought that this could be a good revenue earner for Council, or if not, it would at least earn the Council some kudos for being first cab off the rank with an innovative environmental solution for contaminated dip sites.

The aspiration to find an environmental solution to contaminated dip sites was not all bad any more than the dream of the turf farm using sewage waste was not all bad. But the Business Paper was slanted toward convincing the Councillors to support the Toxic Waste Facility. Neither the experimental nature or the risks inherent in the proposal were adequately canvassed. Up-to-date scientific information about other solutions to old dip sites was never flagged to the Councillors. They were given a very one-sided, blinkered view of the matter. The Councillors were conned into supporting the toxic waste facility. But some time later, so many suppressed concerns about the facility came out of the woodwork that the project had to be abandoned.

The Councillors are somewhat like jurors. They need to hear all sides of a case before making a determination. Sometimes the Councillors are like jurors who only get to hear the case for the Crown. They only learn from other sources that there is another side of the story begging to be heard.

I have complained again and again to the relevant people in *the system* about this kind of one-sidedness that sometimes appears in the Business Papers.

There are times when the Business Paper seems to use a big fogging device to deliberately obfuscate the facts with a surfeit of waffle and meaningless jargon. The poor Councillor, having lost sight of the point in all the meandering through the textual fog, finds that giving up and just voting for the recommendation is the easiest thing to do.

The most reprehensible Business Papers are those that mislead the Councillors. One department in particular has turned this into an art form. It has done this so often over more than a decade, that I have no confidence at all in its Reports.

When the Business Paper reported on the Karlos case it read as if the Council had actually won the legal contest despite the judge's verdict which said, "The appeal[against the Council] is upheld." About $50,000 of ratepayers' money went down the tube, even though Council's own barrister warned Council its case was unwinnable.

The Business Papers convinced the Councillors to take Neil Tagget to Court for digging new drains without a Development Application. The farmer presented

irrefutable evidence that the drains had been in existence for 60 years. There were old photos to prove it. The previous owners of the property verified that the drains were there. Two of the three men who dug the drains by hand in 1931 were still alive to prove it. The neighbours could verify it. Even Council's own solicitor advised the Council to concede that the drains were there. I moved that Council concede the point before it proceeded to Court, but my motion was defeated.

The judge ruled what should have been obvious to everyone – that the drains had been there for 60 years. The Business Papers had misled the Council.

One way to mislead the Council is to tell a half-truth. For instance, the planning department proposed running a four-lane access road to Kings Forest through the middle of Ken and Lyndel Small's Cudgen farm. The Business Paper reported to Council that the owners of the land would be notified. On the face of it, this sounded like the planning department had done the right thing by the landowners. What the planning department did not did say in the Business Paper, however, was that the landowners were not notified about the proposal to put the road through their farm until after it was put on public exhibition. This was not a consultation process as the Business Paper pretended, but a disgraceful sham.(See the Appendix, pp.106-112)

Another way *the system* manipulates and controls the Councillors is through the clever orchestration of legal advice. Two things must be remembered about legal advice:

Firstly, any advice is always going to be constrained by the client's Brief. The legal advice cannot be properly evaluated without evaluating the Brief. But the Councillors generally did not see the Brief – if such a thing existed at all!

Secondly, one should always be aware that a lawyer will be inclined to represent the view of his client where that is possible within the bounds of professional constraints. In this case, the client would generally be the Council department that interfaced with the legal adviser. The officers of *the system* are the ones who engage the legal adviser and sign off on the legal accounts. Councillors should take these realities into account.

At critical moments in the decision making process, the Mayor and/or the senior officers would bring the Council's solicitor into the Council meeting. Sometimes I gained the distinct impression that he was brought in to give us the kind of legal advice that was calculated to corral us into supporting the viewpoint of the hierarchy.. I cannot recall one occasion when his legal advice would have led us to question the wisdom of the hierarchy.

For all that, Council's solicitor was a good lawyer – and sometimes convincing. But not always!

On one occasion the Business Paper advised the Council that the Development Approval for the hotel resort on Terranora Heights had lapsed. This meant that the proponent would have to go through the whole DA process again. That is always attended with some uncertainty for a whole variety of reasons. The solicitor for the proponent, however, argued that the Development Approval was still alive. The majority Councillors were not of a mind to force the proponent to go through the

approval process again unless it was absolutely necessary. In other words, we were prepared to give the developer the benefit of the doubt if a real doubt existed.

The Director brought Council's solicitor into the Council Meeting to convince us that the Approval had lapsed, but having the advice of another solicitor to the contrary, the majority Councillors were not convinced. The Director then asked the Council's solicitor to up the ante with a barrister's advice. The proponent's solicitor went one better and obtained a QC's advice.

At the next Council meeting the barrister's advice saying that the Approval was dead was trotted out. Then the QC's advice saying that the Approval was alive was tabled. After the Greens Councillor Henry James entertained us with his claims to know more about the law than the QC, the Council voted that the Approval was still alive – and that proved to be the end of matter.
Another weapon in the arsenal of *the system* is the manipulation of reports by outside consultants. How can mere lay persons question the advice of people who are experts in their field? So if the professional staff is able to table the advice of an independent consultant, that is generally the end of the matter.

Or is it the end of the matter?

Not if there is some reason to call the independence of the consultant into question. Until quite recently, the preparation of Briefs and the appointment of consultants were left wholly to the officers. It has sometimes happened that consultants who refused to bend their reports to suit the Council got no further work from the Council and had to go elsewhere or even leave the area to secure further business. I have interviewed some of these consultants.

On the other hand, consultants more responsive to what the planning department wants them to say tend to get return work. This has been the culture of *the system*.
One consultant sent a draft of his report to the planning department, saying, **"This is for your review to ensure that it says what you want it to say."** Apparently the draft did not say what the planning department wanted the consultant to say, for the next paper was revised to say something completely different to the draft report. Whereas the draft had said that the next mega-shopping centre of the Tweed should be at Kings Forest rather than Kingscliff, the next version said that the shopping centre should be at West Kingscliff rather than Kings Forest.

I have raised questions about the genuine independence of reports by some consultants. These questions go to the heart of a consultant's credibility. One would have to be naïve if one did not suspect that some consultants might be willing to bend their reports to say what their client wants them to say if only as a means of securing more patronage for their services.

In the preparation of the Local Environmental Study (LES) for Kings Forest, an independent consultant was jointly funded and chosen by Council and Narui Kings Forest. The consultant prepared and printed a document that did not meet the approval of Council's planning officers. So the consultant was asked to rewrite and amend the document "to the satisfaction of the Council." Since this was work over and above

the original contract, Council officers paid the consultant to do this extra work. The consultant wrote into the amended LES what Council officers directed it to write.

When the consultants for Narui Kings Forest, including its solicitor, protested that the independence of the LES consultant was compromised, I agreed with their protest. I had looked into the Council files to review the correspondence that passed between the planning department and the consultant. It was clear that the consultant had revised its report to say what the planning department had directed it to say.

When I expressed my concerns about this to the General Manager it sparked the Bulford Investigation. More on this later.

The ultimate weapon in the arsenal of *the system* to control the Councillors is one that can bludgeon the Councillors into submission. It is the ability of *the system* to pull the levers of State government authority to overrule the jurisdiction of the Council, to bring in findings against the Councillors, to take away Council's planning powers in any matter at the discretion of big brother, or even to dismiss the Council altogether. All this is possible by reason of the fact that the Council is the creature of the State government and is under its jurisdiction.

It is a very disturbing fact *the Murwillumbah system* has in a number of ways invoked the State government authorities to come to its aid against Councillors who are not sufficiently malleable to *the system*. More on this later.

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Chapter 9
THE BLUNDELL CASE

The Blundell Case illustrates how the Council bureaucratic system can enlist the aid of the state government authorities as an ultimate weapon to defeat or even to bludgeon the elected Councillors into submission.

The facts cited here are drawn from a case that went before the Land and Environment Court, with Justice Perrigton presiding, in 1983. The dispute concerned land that is now called *Expo Park* in South Tweed.

The owners of the land (Blundell Ptd. Ltd.) had dreams of creating what would eventually become one of the Tweed's finest industrial precincts.

In 1978 the Council bureaucracy did not share Blundell's vision at all. It recommended against rezoning the land for the proposed industrial development.

The majority Councillors, however, did not accept the recommendation. They voted to rezone the land. At the same time Council resolved to call in expert consultants (Wills Denoon and Partners) to do the necessary studies to support the rezoning application to the Department of Urban Affairs and Planning(DUAP) Minister.

The deputy Town Planner, phoned his bureaucratic counterpart (Mr. Southwell) in the DUAP office at Grafton to enlist his support to defeat the resolution of Council. This was all cloak and dagger stuff until evidence from a Council file was divulged in a case before the Land and Environment Court a few years later. We pick up the relevant testimony of the Court proceedings before Justice Perrigton at the point where Blundell's barrister is questioning a DUAP officer from Grafton:

> *Hemmings Q. Well, that would be very proper for council would it not if it is of the view so far as it is concerned that the area is suitable for industrial*

development to support that view by writing to your department and at the same time write – or commission experts to prepare appropriate reports that it could submit to your department in support?

A: (Nichols - Grafton DUAP officer) Yes, I would normally expect such supporting information.

Q: Yes, but what you did you did not write to the council did you?

A: No.

Q: You did not communicate with council itself, your officers had a telephone call with an officer of council and that's all isn't it?

A: Yes.

Q: And you recommended rejection out of hand the proposal without giving the council the opportunity to inform you it had undertaken a report through an independent consultant of material necessary to support that application?…Why didn't you write to the council before recommending to the Minister that they be criticised in this way?

A: I think the normal process is to seek advice from council's officers…

Q: You did not call for the council reports and resolutions, correct?

A: No.

Q: And you did not communicate in writing with the council, correct?

A: No, correct.

Q: You merely spoke to the council's deputy town planner?

A: Yes, or Mr. Southwell did.

Q: And on whatever he told you over the 'phone the council was then recommended to the Minister to be severely criticised?

A: Yes, that's correct.

Here is an officer who is employed by the Council to execute the determinations of its elected members. But instead of doing that, he surreptitiously enlists the aid of his fellow bureaucrats in a state government department to frustrate and defeat a decision of the body that employs him.

If this was any other corporation, this executive officer would be disciplined or fired for insubordination to his board of directors. If it were a government department at State or Federal level, the elected Minister presiding over that department would not tolerate this kind of insubordination either. But this kind of manipulation, circumvention or blocking of corporate decisions repeatedly takes place at the level of local government.

This demonstrates that the Council system does not function as a government of the people, for the people and by the people. Being a creature of the State government and under its control, the bureaucrats at the local government level can enlist the aid of the State government bureaucrats to thwart or veto legitimate local government decisions. This means that whenever Council bureaucrats can enlist the aid of their big brother bureaucrats, they can assert their authority over the elected members of Council to establish their own government of the bureaucracy, for the bureaucracy and by the bureaucracy.

In the Blundell case, the Council bureaucracy enlisted the support of a State government department to pull the wool over the Minister's eyes. The Minister refused the rezoning application and severely criticised Council on the basis of

misleading information fed to him by the planning bureaucracy. As time was eventually to prove, the Minister made the wrong decision. A much needed development for Tweed was held up for a few more very expensive years. That's been a familiar story with many fine, wealth-generating projects on the Tweed.

The Same Bureaucratic Culture Remains

Although this incident happened some years ago, the culture of the local government system has not fundamentally changed. Time and time again the elected representatives of the people have made decisions that have been thwarted, circumvented or even overturned because certain persons within the system enlisted the support of the State government bureaucracy to carry out their own agenda.

This is what happened with the Dune Management Plan for Lot 500 adjoining the Casuarina development. This is why the Minister took over Council's planning powers for the Resort/Hotel site at Kings Heath site at South Kingscliff. Certain persons within the system did not like the conditions for the development proposed by Council. They prevailed upon the Minister to intervene by way of taking away Council's planning powers for that development. When the Minister intervened to set the conditions, he found that he could only make the conditions easier rather than harder for the developer. So in that respect, Sir Humphrey's little game did not work as planned. (See details in Chapter 11)

The local government system has played the same game with Council's decision to rezone the Seaside City land as it did with the Blundell land at Expo Park. It has resisted Council's decision to rezone the land. It has orchestrated the State government bureaucracy to frustrate the rezoning application for all kinds of spurious reasons.(See details in Chapter 13)

With the same kind of manipulations and misrepresentations it has tried to frustrate the Kings Forest development.

Until recently, there was one area of planning that the bureaucracy appeared to have to itself, and that was in holding meetings with developers where it determined the planning process to its liking, drew up Briefs for consultants, appointed consultants to do Local Environmental Studies(LES) and other planning documents; and when those documents did not suit it, to have consultants change findings and conclusions to suit its own agenda.

Some unsatisfactory proceedings in major development projects such as Casuarina, Seaside City and Kings Forest have prompted Councillors to become more actively involved in the planning process. The Mayor, the Deputy Mayor or other Councillors have from time to time sat in on talks between developers and Council officers, with the result that more satisfactory (and faster) outcomes have been achieved in the negotiation process.

The last Council election saw the new Council receive a huge electoral mandate for change. On the one hand the new Council stood on an election platform of opening the Tweed for business and attracting investment into the area. It has been remarkably

successful in fulfilling this election commitment. The Tweed is enjoying a great upsurge in investment and business confidence.

The new Council also pledged that it would change the culture of the Council organization. Achieving this kind of change has proved to be much more difficult.

The Bulford Investigation in Perspective

When the old *Murwillumbah system* saw that its long-entrenched independence in planning matters was threatened by Councillors' intervention in the matter of the Kings Forest LES**, its most senior bureaucrat came up with the recommendation of an investigation into these planning issues at Tweed Shire Council.** The Local Government Department responded by appointing a bureaucrat, Senior Inspector Robert Bulford, to do this investigation into planning matters at Tweed Shire Council.

In this investigation of the bureaucracy by the bureaucracy, the Council bureaucracy has been completely whitewashed. In reality, Bulford is the bureaucracy's white knight in shining armour, arriving on the scene in the nick of time to put the elected Council once more firmly back under the control of the non-elected bureaucracy. The Bulford plan is this: Councillors are to be severely rebuked for getting involved in meetings with developers and Council officers, for interfering in planning matters supposedly beyond their expertise and understanding, and for not compliantly accepting the recommendations of their planning Director.

In other words, the Bulford verdict is that the elected members are out of step with their planning Director! There is no suggestion that the planning Director might be out of step with the elected leaders of the people!

Mr. Bulford is a bureaucrat who thinks that elected Councillors need their wings clipped and putting back in their place - under the control of their bureaucratic masters, meekly accepting their guidance and recommendations.

In the face of threats to back off or be sacked by Big Brother, this new Council is now under great pressure to surrender the democratic principle that the elected members are the governing body of Council. Councillors are under pressure to rescind policies that involve the elected body in the entire planning process.

These matters are dealt with in much greater detail in Chapters 12-14.

For too long local government has been the last bastion of "government of the bureaucracy and by the bureaucracy." The challenge for the new Council is to press ahead to fulfil its election commitment to restructure the organization. The real change sought, however, is a change in the *culture* of the organization. It must eventually become more responsive to its elected members. Otherwise the people are not going to have any real say in their own destiny.

DEMOCRACY SUBVERTED
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Chapter 10
THE CASUARINA STORY

To the South of Kingscliff and just north of Cabarita Beach, a new 3.5 km beachfront resort city is taking shape. This is the $650 million Casuarina development.

When the new Council was elected in September 1999, one of its first priorities was to get the Casuarina project up and running as soon as possible. The majority Councillors had been elected on a platform of getting the Tweed moving after years of economic stagnation. These Councillors rightly judged that the opening of this very significant coastal development would open the Tweed for business. And so it has proved to be.

Casuarina has been a catalyst for the greatest surge of business confidence and investment ever seen on the Tweed. This one up-market beachside development has totally lifted the image of Tweed Coast and sent land values soaring throughout the Shire. I would not want to suggest that Casuarina was solely responsible for the Tweed's economic resurgence, but it has certainly been the door that has opened the Tweed for business.

Casuarina is one of the most successful beachfront resort projects ever seen in Australia. It is a master planned township for 600 homes, 1500 apartments, 3 boutique international hotels and an architecturally innovative town centre. When it is completed, it will have a population of 6,000 - about the size of Byron Bay.

Casuarina is designed to become the quintessential Australian beachside community. The entire built environment, including the homes, is designed to reflect a distinctively Australiana style of beachside architecture. With visitors expected to make up about 60% of the population at any one time, this unique Australiana image is meant to play an important role in Casuarina's identity and tourism appeal.

Highest on the list of priorities for the Casuarina creators has been their plan to conserve and enhance the natural environment. Of the 180 hectares of the original estate, 60.8 hectares of the land along Cudgen Creek has been set aside for environmental protection. Before handing over this land to public ownership, the landowners planted out some 15,000 native trees. The 120 hectares of developed land has numerous parks, sporting fields and recreational facilities – all landscaped to the highest international standard.

Along the 3.5 kilometres of ocean frontage there is a 100 metre-wide strip of Crown Land. The Casuarina developers are committed to spend $5 million on regenerating and re-vegetating these sand dunes over a five-year period. This represents the largest investment in sand dune enhancement and protection on public land ever undertaken by a developer in NSW.

In 200l, the Australian Chapter of the *International Erosion Control Association* gave the Casuarina planners and engineers their prestigious *Environment Excellence Award* for its state of the art system of swales and drainage facilities designed to filter all storm water from the development.

Casuarina features 26 kilometres of walk/cycleways. The community facilities are designed in such a way that the resident is within a five-minute walk or bike ride to every important facility within the town. Casuarina is a place where the pedestrian and the cyclist rather than the motorist is king.

In the quality of its built environment, its brilliant walk/cycleway along the foreshore, its parks, gardens, general landscaping, public amenities and in all that is done to conserve and enhance the natural environment, Casuarina is far in advance of any development seen to date on the Tweed, or indeed, far in advance of most coastal developments in Australia.

The 27 Year Saga to Get It Up and Running

Behind Casuarina's brilliant success story, however, there is another story that needs to be told. It is a story about 27 years of obstructionism, anti-development green tape added to loads of bureaucratic red tape, the aggravation of jumping all kinds of hurdles and the frustration of encountering one road block after another. The approval process dragged on for 27 years before the first sod was turned at Casuarina.

We use the name *South Kingscliff* to identify that stretch of land that fronts the ocean between the Cudgen Creek at Kingscliff and Cabarita Beach. It is about 7 kilometres in length.

About 5 kilometres of this ocean-frontage land has been owned by the Barclay brothers (Lenen Pty Ltd) since the early 1970s. In 1990, under the company name of Richtech Pty Ltd, they also acquired an old 1920's subdivision called *Seaside City.* This is right in the middle of this stretch of beach between Kingscliff and Cabarita, and joins Casuarina on its northern boundary. This 30 hectare *Seaside City* estate has 900 metres of ocean frontage. This gave the Barclay group ownership of nearly 300 hectares of land along nearly 6 kilometres of the Tweed Coast.

This entire stretch of coastal land between the ocean and Cudgen Creek was extensively sand mined between 1940 and 1970. Some of it was mined five times, and in the process the land was stripped of all vegetation. The beach was exposed to the elements without the benefit of one blade of vegetation for many years.

The remarkable stability of this 7-kilometre stretch of beach was demonstrated in that it lost no sand nor was there any encroachment into its sand dunes during all those years that the sand dunes remained denuded by mining. Coastal studies reaching back to the first records made more than 103 years ago have also shown that this entire South Kingscliff Coastline down to Cabarita has remained stable and unchanged for more than a century.

When sand mining ceased, the mining operators were required to undertake rehabilitation measures that fell far short of current standards. They chose the bitou bush from South Africa and the local casuarina or horsehair to be the main vegetation. Some impoverished looking native vegetation was sparsely scattered throughout this former sand mining cite. Consequently, the vegetation along this section of the Tweed Coast was dominated by a scrappy mono-culture that seemed to be a parable of the local economy in a state of neglect.

It would be hard to find an area of land on the Tweed that had fewer environmental constraints than South Kingscliff. The vegetation was highly disturbed and infested with bitou bush, now considered a curse to the Tweed Coast. Yet for all this, the land was a magnificently positioned resource that begged for a development that would enhance both the environment and the image of the Tweed. If ever the development of an area should have been welcomed with open arms, this was it!

Lenen Pty Ltd first approached Council to develop this land in November 1973. It was not until the year 2000 – 27 years later – that the first sod was turned to begin the Casuarina development.

Unless we secure some changes for the better in Tweed Shire Council, it may take another 27 years to get other major projects along this stretch of the neglected Tweed Coast (such as Seaside City or Kings Forest) up and running. Things are that bad!

The Environmental Planning Act of NSW is admittedly a hard Act to follow – some say it is the toughest in the world. A major development project such as Casuarina or Kings Forest has to comply with 40 pieces of planning legislation. I have no quarrel with the content of these stringent legislative guidelines, but I can confidently argue that none this legislation was intended to tie up projects for more time than it takes to serve a life-sentence.

We have come to expect that extreme Green and political far-Leftist groups will invoke and manipulate existing legislation to thwart, frustrate and slow down economic growth as much as possible. Some of these groups have even published their own text-books on how to use all the red, green and black tape available to hold up a development until it is strangled by the cost of the holding charges.

These groups have not only been active on the Tweed, but they received far too much comfort and support from the Council organization. It has been shown that Max Boyd depended on Green support to remain in the Mayor's chair. Under his leadership, the Council put major development projects such as Casuarina through a process analogous to slow water torture. Nothing ever looked like happening at South Kingscliff if he could help it. Or the Greens could help it. Their art was to avoid saying "No" to a development proposal, for that would only expose them to the charge of being "anti-development." They would just demand one study after another, raise all kinds of hurdles and impose so many conditions that the development would not be viable or possible. Not many would-be investors stayed around as Lenen did to endure a long 27-year approval process.

Having reviewed the Diary recording the negotiations with Council, the dreary delays achieved by arranging one study exercise after another, the constant shifting of goal posts, the excuses and red herrings over 27 years, I can say without any hesitation that **the process was an utter disgrace to Tweed Shire Council.**

The Saga of the Blossom Bats

By 1996 – after the frustrations of about 23 years – Lenen decided that the only way forward was to lodge a Development Application for the Casuarina estate whether Council was ready to process it or not, and then appeal the matter to the Land and Environment Court. Council was not ready to deal with a DA because, after all these years, it had not even completed a Draft Local Environmental Plan(LEP) nor a Development Control Plan(DCP) for the site. Its failure to complete this essential planning work was a dereliction of duty. Lenen indicated that it was prepared to take matters to the Land and Environment Court whether Council was ready or not, knowing that the Court will deal with a DA on merit if the Council has no local LEP or DCP in place.

The thought of an impending Court Appeal, like the thought of impending death, can wonderfully concentrate the mind. Council became sufficiently motived to move ahead to bring its Draft LEP documents up to-date. But it never managed to prepare a DCP for the area before matters came to Court.

With help from the *National Parks and Wildlife Service* and a Tweed environmental group, Council brought in two new issues to delay matters for two more years. These issues were about ***Queensland Blossom Bats*** and ***significant native vegetation***.

In the first place, a small colony of Queensland Blossom Bats was found to be foraging among the banksia trees scattered through the estate. It was argued that any development on the land would threaten the bat colony with extinction.

This species of bat is found right down the Queensland coast into Northern NSW. The main reason that their numbers are diminished in this region is because it happens to be at the extremity of the bats' natural territory. These bats are not an endangered species.

The landowner, however, negotiated with the Council to plant 15,000 native trees, mostly banksia, between the Tweed Coast Road and Cudgen Creek to compensate for any clearing on the Casuarina site.

Altogether, thousands of pages were written by an astonishing array of Blossom Bat consultants. The issue dragged on for more than two years. The cost to Lenen ran to possibly seven figures. But hey, who cares? It was only socking the landowner! Keep this up, and who knows, he might even go away before he goes bankrupt!

After this saga of the bats dragged on without resolution, Lenen enlisted help from two of Australia's top experts on bats. By clarifying the following points, they finally put the issue to bed. The experts found that -

- The likely size of the colony was only 50-60 bats. They were not an endangered species.
- The development did not pose a threat to the existence of the colony. The bats had a travelling range of 4 kilometres. They had enough food sources along Cudgen Creek and the northern end of the Cudgen Nature Reserve to sustain them.
- Any interruption caused by the development would not be as serious as the fires that frequently ravaged the site, and no worse than a prolonged dry spell. At worst, the development would not diminish the size of the bat colony, only its reproduction rate by about 5% until the compensatory plantings of banksia became a food source within a few years.
- The compensatory banksia plantings were found to be far in excess of what the bats would need. In other words, the provision that the developer had already agreed to make for the blossom bats was over the top and unnecessary.

Significant Vegetation Dispute

The other issue that delayed the project was the amount of land to be set aside for environmental protection. In 1996, Council engaged the *Caldera Environment Centre* in which Councillor Henry James was a Director, to do a vegetation study of the Casuarina site. Councillor Henry James was the person who did the actual study. He mapped and pegged out more than 65 hectares of "significant native vegetation" for environmental protection. This included an area of degraded land that had become covered with blady grass.

Based on the findings of Councillor James, Council proposed an LEP Amendment (106) for the development site.

Lenen enlisted environmental consultant James Warren to review Henry James' work. In this review, Warren pointed out that James's work was riddled with "errors," "anomalies" and "inaccuracies." The inclusion of blady grass among "significant native vegetation" was identified by Warren as a "serious error." Warren reported that there was no correspondence between Henry James's mapping and reality.

Councillor James has no formal academic or professional qualifications either as a botanist or in any area of environmental science. On the other hand James Warren is

very highly qualified both academically and professionally to do both flora and fauna studies. He clearly had both the authority and the mastery over Henry James in this dispute.

It seems that Henry James did not forget this humiliating encounter with James Warren. The conflict between the two environmentalists was to resurface again in the Kings Forest saga a few years later (see Chapter 12).

When Lenen pressed ahead to have its Development Application brought before the Land and Environment Court on 1/10/1998, Council suddenly found the time and the inclination to negotiate a settlement with Lenen on the broad terms of a Development Approval. Those terms of a general agreement between Lenen and the Council were ratified and embodied in the Court Orders of 16/12/1998.

Reaching this point had taken 25 years.

Yet it would take another two more years to work out the detailed conditions of the Development Approval enabling the Casuarina project to turn the first sod in the year 2000. Things would have dragged on indefinitely had not a new Council, elected on the platform of getting economic growth moving on the Tweed, taken office in 1999.

Whilst the Boyd/James faction was relegated to minority status in the new Council, the ex-Mayor had prepared for this eventuality by prematurely giving – or consenting in the General Manager's giving - new five-year contracts to his senior management team before the election at which he was to be defeated. This meant that the new Council was to be saddled with Boyd's old management structure during its entire term of office. Some sections of Council acted as though they were more responsive to the Boyd/James faction than they were to the electoral mandate given to the majority Councillors.

In working through the detail of Casuarina's Conditions of Consent, construction certificates and other approval processes, some sections of the bureaucracy seemed to function by finding the most tedious, expensive, pedantic and time-consuming way of progressing the consent from one point to another. For instance, after the developer already had the approval from Council to fill an area with several metres of sand, Council would then insist that it must seek a further approval to remove the vegetation when that consent was implied in the consent to fill the land in the first place. This pedantic, bureaucratic humbug was making the process an end in itself. At this stage every delay was weighing down the project with a needless cost of time and money.

Some of the main issues that had to be worked through were the construction of the storm water drainage swales, the ownership and management of the 30 meter protection zone along the beach-front allotments, the use of cul-de-sac street designs to keep public traffic confined to the distributor roads, and the revegetation of the sand dunes.

The Sand Dune Restoration Dispute

The management plan for the sand dunes along the ocean frontage proved to be the most contentious issue of all. The land (sand dunes) from the high water mark back to

the 50-year erosion line is about 100 metres wide. This is Crown Land (Lot 500) under the control of the Department of Land and Water Conservation (DLAWC), but managed by a Trust in which the Councillors are the Trustees.

According to the Court Orders of 1998, the Casuarina development consent would be conditional upon drawing up a management plan to rehabilitate Lot 500 "to the satisfaction of the [Council's] Director of Development Services."

Cardno MBK, acting as Casuarina's consultant, drew up a management plan for Lot 500. This consultancy had already won a prestigious award for a dune restoration project at Stradbroke Island. It submitted a plan for the removal of bitou bush and for the replanting of the public foreshore with a large variety of native trees and ground-cover vegetation, at a cost of $5 million to Consolidated Properties, the developer of Casuarina who had taken over the land from the landowner. This would constitute the largest investment ever made by any developer in public foreshore restoration anywhere in NSW.

Although the Council voted to approve a revised version of the Cardno MBK Management Plan for Lot 500, Greens Councillor Henry James and ex-Mayor Boyd expressed their determination to have it overthrown. In this they were supported by the Director of Development Services who maintained that according to the Court Orders, the Management Plan had to be "to the satisfaction of the Director of Development Services."

According to two separate legal advices available to the Councillors, whatever is to the satisfaction of the Council must *ipso facto* be to the satisfaction of its Director. As an executive officer of the Council, a Director is not entitled to represent a position contrary to what his Council has determined.

The Council solicitor, however, did not agree with those legal advices. Following a strictly literal reading of the Court Orders, he supported the Director's right to insist that the Dune Management Plan must be to his own satisfaction rather than Council's.

The Director of Development Services took it upon himself to hurriedly appoint (by telephone) a "bush regenerator" by the name of Tein McDonald to do a critique of Cardno MBK's Dune Management Plan. Ms.McDonald did not even inspect the site. Her comments on bush regeneration were not altogether applicable to the needs of Lot 500. Council therefore reaffirmed its support for the Cardno MBK Management Plan.

Opposition to this Management Plan from the Boyd/James faction was vehement and determined. It had the support of Council's planning department. This opposition to the Council-approved Management Plan did not appear to spring from any practical considerations about the kind of vegetation and ground covers that would provide the best protection for the sand dunes. It rather appeared to be driven by a sentiment that did not want the residents of Casuarina to have even a filtered view of the ocean.

What happened next is what happened in that classic case when the Councillors did not follow the advice of the staff in respect to rezoning the Blundell land for Expo Park. **The planning department enlisted the support of the state government bureaucracy all the way up to the Minister for the Department of Land and**

Water Conservation (DLAWC). Soon DLAWC officials from Murwillumbah and Grafton were waving the big stick of State government authority over the heads of the Councillors, warning them that their government department, the ultimate custodians of Lot 500, would not support the Dune Management Plan as endorsed by Council.

This was another classic example of how the big brother bureaucrats of a State government department were called in to shore up the power of *the system* viz a viz the elected members. The system acts like grounds troops calling in the American 52 bombers when it encounters any stiff resistance.

Democracy does not exist at local government level.

So this coalition against the elected Council majority insisted on a ridiculous density of trees – planted about two metres apart. That happens to far exceed the natural density of trees in a rainforest. It is a recipe for impenetrable scrub made up of spindly, over crowded trees struggling up for sufficient light. This density of trees is guaranteed to inhibit any undergrowth of grasses or other dense ground covers.

If it is a matter of sand dune protection, grasses and other small ground covers are the most effective vegetation to prevent soil and sand erosion. Trees have a value from the standpoint of shelter and aesthetics, but if they are planted too closely, they will inhibit the growth of grasses and other dense ground covers. As an experienced horticulturist in terrain subject to soil erosion, I know only too well that the worst erosion can take place where large trees are planted close enough together to develop a total canopy. When this happens, the only way to prevent erosion is either to thin the trees or to prune them back sufficiently to let in enough light to produce some ground covers.

An agenda driven by ideology and practical wisdom are rarely good bedfellows.

The Casuarina developer found that the launching of its development was now being held to ransom by this “thou shalt not see the beach” ideology. The developer decided that it was better to give in to the demands of the planning department, the DLAWC officials and the Green agitators in respect to Lot 500 than to hold up the Casuarina project indefinitely. The parties therefore settled on the more radical plan to rehabilitate the sand dunes with trees planted at an extreme density.

All systems were now showing green to get Casuarina started at last. There were some last minute efforts to find a reason to stop it. Someone reported discovering some turtle eggs on what experts admitted was a very unlikely stretch of beach to find turtle eggs. There were some desperate last-hour appeals to the Department of Urban Affairs and Planning (DUAP) to intervene and suspend Council’s powers to approve the launching of Casuarina. The Boyd/James faction voted against the terms of the final approvals – again and again. Some sections of the Council bureaucracy seemed to make the release of every particular construction certificate as difficult as possible. Yet before the 27th year of the long approval process had ended, Casuarina actually turned the first sod in the year 2000.

This momentous occasion also opened the door to a new era of investment and business confidence on the Tweed. Whatever happens now, the Tweed will never be the same old economic backwater again.

Casuarina is now moving forward ahead of schedule, but tensions and skirmishes about the Dune Management Plan continue. No plan of dune management will finally succeed unless it has the support of the residents who must live with it and are most affected by it. There is no doubt that Casuarina is going to be a very environmentally aware community, but they will eventually insist that the dunes that front their homes should be both environmentally appropriate and aesthetically pleasing. One does not need to be a prophet to predict that the Casuarina community will want to have more say in the management of their own foreshore than unsympathetic outsiders seem to have had up to this point of time.

As for the criticism that the new Council is too soft, too accommodating or too close to developers, it should not be overlooked that this Council imposed on Casuarina the toughest and costliest environmental and public infrastructure conditions ever imposed, not only on any development in the Tweed, but on any coastal development in NSW.

It is to the credit of this developer that it not only complied with the conditions, but in the standard of excellence of its public facilities, parks, gardens, recreation facilities, landscaping, street designs, the kilometres of walkways/cycleways and the award-winning drainage systems, it went beyond mandated standards in so many respects.

The Casuarina development has been obliged to fund, not only its own water and sewage infrastructure, but water and sewage mains big enough for spare capacity beyond the needs of Casuarina. In other words, it has provided an infrastructure for other developments that will take place in the area. Council will no doubt charge other developments for this spare capacity in water and sewage, and so reap a handsome windfall gain.

So much for these wild, irresponsible accusations about the new Council being too lenient on developers.

Casuarina has given the Tweed a world-class resort city that has already put the Tweed on the map, and maybe on the way to upstage even Noosa or Byron Bay.

When the cost of all this high standard public infrastructure, paid for by the landowner and later by the developer, is added up to well over $35 million, one may begin to appreciate that only an up-market precinct like Casuarina could have paid for a development with this standard of environmental excellence.

At the end of the day, it just goes to show that the best environmental programme of all is the generation of enough wealth to pay for it.

DEMOCRACY SUBVERTED
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Chapter 11
THE STORY BEHIND THE FAILED CLUB OF CLUBS

When the new Council was elected in 1999, the first major development approval that Council had to deal with was not Casuarina, but the Club of Clubs resort hotel/ golf course on the Kings Heath site to the northern end of South Kingscliff.

The real story of what happened with this development approval needs to be told. It aptly illustrates how *the Murwillumbah system* works to solicit the State government authorities to intervene for the specific purpose of defeating the majority Councillors.

Along with the Casuarina land, the Kings Heath estate has been owned by the Barclay group since the early 1970's through Lenen Pty Ltd. It adjoins the northern boundary of the Seaside City estate.

Kings Heath consists of 73 hectares of South Kingscliff land with 1.2 kms of ocean frontage. It too was denuded of vegetation when it was repeatedly sand mined between 1940 and 1970. Its revegetation after the sand mining years left much to be desired. It became dominated by a mono-culture of bitou bush. Any other vegetation looked disturbed and scrappy. Despite its derelict appearance however, it was not hard to see that Kings Heath enjoyed a superb ocean-front position begging some kind of development and environmental enhancement.

Kings Heath is zoned 2(f) which permits only tourism facilities.

The landowners first approached Council in 1973 to allow a suitable development to take place on this land. That is now almost 30 years ago. Still nothing has happened. No one could accuse the approval process of being too hasty in Tweed Shire!

A Sheraton resort hotel and golf course received a development approval for the Kings Heath site from the Boyd Council in 1990. But the development conditions were an insurmountable obstacle to development. This project had to be abandoned because, when the financiers did their financial modelling and number crunching, it was found that the development was not financially feasible.

The Boyd years became renowned for giving development approvals to projects that never happened. They were killed off by unreasonable development conditions. But still, the granting of such development approvals proved that the Boyd Council was not anti-development. Didn't it?

Something needs to be said to put the urgency of doing something at South Kingscliff into the context of the needs of the tourism industry. Anyone who understands the dynamics of the tourism industry would know that as long as it has to rely so heavily on day-trippers as does the Tweed region , tourism is not going to experience significant economic growth. The Tweed tourism industry has been stunted for many years for want of an adequate accommodation infrastructure – and that means having some international standard facilities that are fundamental to making any area a recognized tourist destination. It goes without saying that an adequate accommodation infrastructure needs the full range of facilities from five-star international resort hotels all the way down to camping facilities. Yet it just happens that international standard resort/hotels are the engine that has the pulling power to drag the rest of the accommodation infrastructure along.

Now given that the Tweed desperately needs an "engine" like this to drive the tourism industry forward, where else to locate it if not South Kingscliff? It is not prime agricultural land. It has fewer environmental constraints than any other land available on the Tweed. Its situation for the provision of tourist accommodation facilities is ideal. Left in its present state of neglect, this is an inexcusable waste of a valuable tourism resource that has begged for this kind of development decade after decade. It is all very well to keep harping, "We don't want Gold Coast-style development," but the fact is that the Tweed Shire Council has been wandering around in the wilderness for 40 years not knowing what it wants except to stop things happening.

Ten years after the Sheraton dream for Kings Heath collapsed, another plan was drawn up to establish another resort hotel/ golf course complex at Kings Heath. The concept was modelled after the Hyatt resort hotel/golf course complex at Coolum on the Sunshine Coast. The project was driven by a syndicate called the Club of Clubs.

The new Council, elected in 1999, was called upon to work through the development conditions. There were some environmental issues to resolve as there always will be on $l00 million plus projects. The main issues centred around Cudgen Creek buffer zones, foreshore protection, public access to the beach, public open space, provision for public parking, walk/cycle ways, etc.

The Council, including the planning department, recognized that there needed to be some relaxation of the rules in respect to the residential component associated with the resort hotel to make the project viable. No use going down the dead-end road of

the aborted Sheraton resort. But as we will see, that relaxation of the rules about a residential component in a 2(f) zone was not enough.

I actually think that the planning department admirably managed to steer a course between the unrealistic demands of some community groups and the expectations of the landowners and the would-be developers. With modifications to the proposed conditions sought by the majority Councillors, the planning department finally drew up 120 tough conditions for the development.

There were a couple of contentious issues that remained to inflame debate within and without the Council. The planning department, sensitive to certain community groups who kept accusing the developer of wanting to privatise the beach, proposed taking a considerable amount of land along the ocean frontage and dedicating it to public ownership. This approach posed the danger of putting the whole project in jeopardy. The majority Councillors decided that in lieu of dedicating so much of their prime ocean front land to public ownership, the landowners would be required to contribute $1 million toward the embellishment of the public beach south of Cudgen Creek. Besides this, we proposed adding the condition that extensive parking facilities were to be provided adjacent to the hotel to provide convenient public access to the beach in front of the hotel. The Council was accordingly all set to approve the Club of Clubs development along these lines.

The Boyd/James faction of Council, supported by some sympathetic voices in the community, protested that the new Council was more accommodating to the wishes of the developers rather than it was to the needs of the community. Listening to these protests, one would gain the impression that the majority Councillors were bent on playing Santa Claus to the developer. In the week leading up to the day when the Council was to approve the development, these opposition voices, with every assistance and support from the State member for Tweed, began an orchestrated phone-in/fax-in to the DUAP office in Sydney.

Just before Council was to sit and grant the development approval to the Club of Clubs, the Director-General of DUAP, Sue Holiday, phoned Mayor Beck to ask, “What on earth is going on up there. We have been deluged with complaints and demands for government intervention.” This phone call was followed up with a formal notice to the General Manager that the Minister, under the provisions and powers of the Planning Act, had taken over the responsibility of becoming the approval authority for the Club of Clubs.

When this government intervention was announced in the Council Meeting, Councillor Max Boyd indicated that he knew this was scheduled to happen. He even knew that the Director-General had phoned Mayor Beck before it happened. He knew about this impending intervention because he was part of the network that had solicited this intervention. That is how the Murwillumbah system works: call in the state government authority to bring the elected Council into line!

As for the planning department, I don’t believe for a moment that it was strictly neutral in all of this, or that it knew nothing and did nothing to bring this government intervention about.

It soon became quite clear that DUAP did not in this instance heed the motto, “Look before you leap.” It leapt first, and then had to start asking the vital questions after that. It soon became clear to Sue Holiday that there was very little room to move in the 120 conditions already drawn up by Council. It was not possible to squeeze the Club of Clubs developer any further without losing the project altogether. After working her way through the issues, her department came to the view that the conditions of consent needed to be relaxed in favour of the developer. The developer got a better deal from the government department than it did from the “developer friendly” Council!

Within a few days the Director-General arrived on the Tweed to negotiate a settlement with all the parties – the Councillors, the planning department, the landowner (Lenen Pty Ltd) the developer(the Club of Clubs) and the community groups that had demanded tougher conditions on the developer. We met in the late afternoon at the new Twin Towns resort. It was to be a long night, for Mrs. Holiday insisted on a resolution before we came out. She divided us up into three separate rooms – the Council people in one room, the community groups in another, and the landowners and developer in still another. She was a skilled negotiator who moved from room to room until consensus was achieved.

At the beginning of this long evening, I said to Sue Holiday, “If this development falls over your department is going to wear the blame.” She replied, “Bob, trust me, I am not going to lose this development.” She certainly did her best.

Two changes were negotiated at the initiative of the Director-General.

First, she proposed moving the car parking from the centre of the estate,(that is, from near the hotel), to two parking areas at either end of the Kings Heath estate. “We don’t want the public with their eskies going through the hotel grounds to get to the beach,” she said, “so let’s move the public parking to two areas well away from the hotel.” With all the accusations levelled at the Council for allowing the developer to “privatise the beach,” here was a change favouring the developer beyond what even the Councillors had dared to contemplate. Sue Holiday not only suggested this bold re-location of the public parking, but she even managed to get all parties to agree to this amendment before the night was over.

Second, she proposed allowing the developer to discount that $l million contribution toward the public beach at South Kingscliff on the public infrastructure it was already required to provide on the development site – walk/cycle ways, dune restoration, public parking, etc. This would save the developer the outlay of an additional $1 million. From the developer’s point of view, this was almost too good to be true. Sue Holiday also managed to get all parties to agree to this amended condition before the midnight deadline. (Did some of the community protestors even realize how far the parties had caved in to favour the landowner and the developer that evening? I doubt it.)

By the time the evening was over, the Kings Heath landowners must have felt like shouting everyone a celebratory drink. They could hardly believe their good fortune - laughing all the way to the bank with their $1 million saving!

A few days later, Minister Refshauge announced that his government had intervened to impose 120 tough conditions on the Club of Club developments, guaranteeing the protection of the environment and the safeguarding of community interests.

His department had simply plagiarised the conditions drawn up by Council's own planning department, with the exception of two amendments favouring the developer.

This was a piece of media propaganda and acting deserving of an Academy Award. But Lenen and the developer were not going to complain, so why should anyone else?

No Intervention at Casuarina

Shortly after this Council was ready to approve the massive $650 million Casuarina project. Led by bitter opposition from the Boyd/James faction, the same type of negative arguments began to re-surface – privatising the beach, not enough public parking, unsatisfactory street designs, encroachment on public foreshore land with storm water swales, and all summed up in the old refrain, "Caving in to developer demands at the expense of the ratepayer."

As D-day for the approval approached, the lobbying for government intervention intensified. This time, however, the government was not prepared to leap before it looked. It was not so ready to respond to more cries of *Wolf, wolf.* Several days before the Council Meeting was due to approve Casuarina, the 2IC from DUAP, Mr. David Papps, visited with Mayor Beck and myself in the Mayor's office. When we reviewed with him the contentious points of the conditions of approval (his office had been monitoring the approval process), he frankly said that he had no objections nor saw any outstanding issues that needed to be resolved. He assured us that the government had no intention of intervening in the Casuarina development. After meeting with us, he conveyed the same message to a community protest group that had been calling for government intervention again.

The full story of Casuarina and the costs imposed on Lenen (the landowner) and Consolidated Properties (the developer) by Councillors supposedly "too close to developers" is told in a separate chapter. That chapter gives an account of how this "soft" and "indulgent" Council managed to gain more for the community out of this developer than any other Council had even dared to dream of getting before – in terms of public infrastructure, community facilities, walk/cycle ways, plus millions of dollars spent on environmental protection.

Unfortunately, the Club of Clubs project bit the dust like the Sheraton project before it. To be fair, neither the government nor Sue Holiday were at fault, since the only thing they did was to relax the burden on the developer. When the blow torch of financial modelling and number crunching was put to this development proposal, the wings fell off this project too. Investors could not be found for a project guaranteed to lose money. It was as simple as that.

The whole approach to 2(f) zones needs a re-think. For a fuller discussion on this issue, see the chapter 13 on *Seaside City*.

DEMOCRACY SUBVERTED
A Case Study of a Local Government System

Chapter 12
KINGS FOREST AND THE BULFORD COVER-UP

When the Bulford Report was released on 20/3/2002, the media articles focused almost entirely on its findings against some Tweed Shire Councillors. The subsequent debate has also tended to focus on debating such questions as whether some Councillors are too close to developers or whether they put pressure on Council staff to cave into the demands of developers, and so on.

To the extent that the media stories and the debate have focused on the actions of the Councillors, the very serious questions that sparked the investigation in the first place have been almost entirely forgotten. Or have they even been understood to start with?

The Bulford Report has cleverly orchestrated a strategy to shift the attention of both press and public away from the audacious planning misadventure that it was supposed to investigate.

This is the reason why I have been reluctant to respond to all the mud that has been thrown at the majority Councillors in general or at myself in particular. The more I allow myself to be distracted by these accusations the more I will help my opponents deflect the debate from the one issue that was supposed to be central to the whole inquiry.

I know what I am talking about. I was the one who raised the concerns that launched the inquiry in the first place.

Let me therefore restate as simply and as clearly as possible the complaint that led to the inquiry. The reader can then decide whether the Bulford Report has honestly tried to address these matters, or whether it has tried to cover it up with a diversionary attack on the Councillors.

Narui Kings Forest is an estate of about 1,000 hectares immediately to the West of South Kingscliff and Casuarina. It is bounded by the Coast Road to the East and the Duranbah Road to the West.

After a long rezoning process, it was zoned for residential development in 1987 – which is about fifteen years ago. The land had been used for Slash Pine forestry and some grazing, but had never been considered as having any significant agricultural value. Strategic planners therefore ear-marked the land for future urban expansion to cater for about 15,000 people.

Soon after it was rezoned, it was sold to Narui, a Japanese forestry company. Since that time the company has been harvesting the pine trees and maintaining the estate that is zoned for a mixture of residential, tourist and industrial development – amounting to a $2.5 billion development over the next 20-30 years. This has generated an enormous amount of paper/planning work in the form of drainage studies, soil studies, flora and fauna studies, design studies and so on. All up, the company has already spent millions of dollars beyond its actual purchase price of the site.

When the company signalled in the mid-1990's that it was anxious to move forward with a Development Approval(DA), the Council's Planning Department advised the company that Council needed to have a *Local Environmental Study*(LES), *Draft Local Environmental Plan*(LEP) and a *Development Control Plan* (DCP) in place before proceeding with the DA.

This trio of study/plans are the responsibility of Council. The developer is not legally required to contribute to the cost of preparing these planning documents. But these days they often do. The developer may be motivated to contribute on the grounds that it will hasten the approval process if the Council can find the money to employ an outside consultant to prepare these documents.

Technically, the developer may not only refuse to pay anything toward preparing the LES, Draft LEP and DCP, but he can lodge his DA before they are prepared and force the Council to judge the DA on its merits. After a 40-day delay, the developer may appeal to the Land and Environment Court to have the matter determined. If the Council were to plead before the Court that it has not prepared its LES, Draft LEP or DCP, the Court will say that this is entirely Council's fault, then proceed to examine the DA on its merits.

Narui Kings Forest, however, decided to jointly fund the preparation of these study documents with Council. The two parties agreed also to jointly choose the independent consultant to do the LES, Draft LEP and DCP. A company called GHD was jointly selected and then commissioned by Council to prepare these documents.

The agreement to do these things together in a co-operative relationship was amicably negotiated by Daryl Anderson, acting for Council, and Solicitor Paul Bolster, acting for Narui Kings Forest. It was also jointly agreed that Kings Forest would make all of the studies it had commissioned available so that Council could pass them on to the consultant. The most important of these documents was to be a *Species Impact*

Statement (SIS) to be prepared by James Warren, an environmental scientist/consultant highly respected on all sides. This massive SIS took about 2 years to prepare. It contained over 900 pages at an all up cost to Kings Forest of over $200,000.

Not only did Council agree to pass on the SIS along with all the other relevant studies to the consultant preparing the LES, Draft LEP and DCP, but it agreed to keep the Kings Forest management informed at every step of this planning process. Everything seemed to proceed smoothly as long as Daryl Anderson continued to represent the Council. It was after he left the Council to enter a private consultancy business that the wheels began to fall off this amicable relationship.

The LES was finalized by the consultant and published in October 2000 (although it was dated August 2000). Shortly after, the Council paid in full the account for what was called "the finalized LES."

Mr. Bulford, against all the evidence to the contrary, argues that this LES was only a Draft version. But I have never seen a professional author produce a Draft without clearly labelling it *Draft*, and more often that not, on every page of the document. But this LES was published with colour cover and all the bells and whistles of a final document. Nowhere does it say that it is a Draft.

But for all this, questions about its exact status and who got to see it, do not get to the heart of the real issue.

This August 2000 edition of the LES had relied on the information supplied in James Warren's Draft SIS, a document of about 500 pages. Like all such documents, it was clearly labelled *Draft*. It signalled that the final SIS would contain further information to substantiate its major positions. The consultant who was preparing the LES accepted the findings of the Draft SIS and commented favourably on the Warren document.

Council's planning department, however, did not find this LES acceptable. It asked GHD to amend it in two very important areas. The consultant agreed to amend it "to the satisfaction of Council" on condition that Council would pay for the extra work. The Council officers agreed.

Mr. Bulford admits that the additional cost of amending the LES amounted to an increase of 38% above the contracted price. This proves, of course, that the planning department was not just asking GHD to finalize a Draft according to contractual arrangements, but they were asking for an amended LES that went beyond the original contract.

In essence, the consultant agreed to do an amended LES that would say what Council wanted it to say.

The planning department required two major changes in the LES. First, it wanted it to change the road access to the Kings Forest estate, and second, it wanted to increase the environmental protected areas of the Kings Forest estate from about 37% to nearly 50% of the total land.

In either case, the only way this new road access and this new land grab could be justified was by calling James Warren's Draft SIS into question.

Accordingly, Council's planning department directed the consultant to change its favourable comments about Warren's Draft SIS to unfavourable ones. In a paper outlining the changes demanded, the planning department made the amazing admission that it had never even read Warren's Draft SIS, yet it asked GHD to expose its *deficiencies.*

The point not to be lost here is that the only way a new road access and a new land grab could be justified was to call Warren's environmental studies into question.

If Warren's Draft SIS, being an incomplete study, might have made any criticism of the study's so-called deficiencies possible, Warren closed off this avenue when his final SIS, containing 400 more pages of supporting data, was sent to Council on January 12, 2001. It arrived whilst GHD and the planning department were conferring to make amendments to the LES based largely on the so-called "deficiencies" of James Warren's Draft SIS. They were still three months away from finalizing this amended LES. It was not too late to consult Warren's final SIS with all its additional material.

The planning department, however, had apparently made up its mind what it wanted the amended LES to say. So contrary to its obligations and to its agreement with Kings Forest, it did not pass on Warren's 900-page SIS to GHD. Neither did GHD ask to see it. Warren's two years of environmental studies and Kings Forest investment in the $200,000 plus document was set aside. The planning department did not even read it.

If this devious sleight of hand can be considered amazing, here is something that tops that. Instead of sending Warren's SIS to GHD as it was obligated to do, the planning department sent it to Steve Phillips of Biolink instead. Without being given any Brief, Phillips was hurriedly appointed to do a critique of Warren's SIS. In this way the planning department hurriedly substituted a little document done within a few days and costing a mere $2,500. This was sent to GHD in the place of the 400 additional pages of information provided in Warren's final version of the SIS - the document that all the parties had agreed to use.

So much for Council's agreement to keep the Kings Forest people informed! Were these people as mad as hell when they found out about all this devious skulduggery? You bet they were! Moreover, James Warren's has sued both Council and GHD for defamation at the Supreme Court of NSW.

The Phoney New Road Access to Kings Forest

With the Warren SIS out of the way, the planning department directed the consultant to amend the LES in respect to choosing the preferred access to Kings Forest.

Until now, all sides had agreed that Depot Road was the obvious access route, and James Warren had done the environmental studies in support of it. But the planning department, supported by Steven Phillip who had been brought in to critique the Warren document, had other ideas. It chose an access route that took a diversion to the north and then passed through Ken Small's organic farm at Cudgen. It instructed GHD to amend the LES accordingly.

There was just one *little* problem that was to catch the planning department out red handed and red faced. It evidently didn't want to alert Ken Small that a four-lane access road was being proposed to go right through the middle of his prime agricultural land – at least not until after they had the LES amended and published. It wanted its plan to be finalized and published before it dropped it on Ken Small like a bomb. So much for the consultation process!

One mistake like this generally leads to another. Since the planning department did not want to alert Ken Small to what it had in mind for his farm – his protest would alert the Kings Forest people too - it could not inspect its preferred route.

Hence neither the planning department nor GDH's amended LES could support this preferred route with any assessment of agricultural impacts, environmental impacts or even engineering impacts.

Whereas the Depot Road access had been exhaustively studied to support its selection as the preferred route in the first LES, there was not even an on-site inspection undertaken to support this new access road. And of course no study done. It just looked good to the planning department and GHD on paper. Some study process!

The day after the amended LES was put on public exhibition, Ken Small received a notice to see the planning Director. The Director wanted to inform him about the proposal to put a four-lane access road through his farm.

The Bulford Report says that Mr. Small was notified before it went on public exhibition. This is playing fast and loose with the truth.

- A letter from the planning department informing Ken Small of the road through his property was dated April 2.
- The LES was put on public exhibition on April 4.
- Ken Small received the letter on April 6. (See the Appendix pp.106 – 112)

One could be forgiven for questioning whether the Bulford Report was deliberately misleading!

Procedural fairness demands that stakeholders be included in the consultation process when the proposals are being considered, not after they are published. Actually there was a "stakeholders workshop" in November 2000, but Ken Small was not even invited.

The consultation process with Ken Small was non-existent, and for the government Investigator to pretend otherwise speaks volumes about the integrity of his Report.

After the LES was published with this stunning new proposal of a four-lane road through a piece of prime agricultural land, Ken Small invited the Council officers to inspect their preferred route for the first time – yes, for the first time!

When two of the planning officers, together with Steve Phillips, actually walked through Ken Small's farm for the first time, they saw with their own eyes the stupidity of their proposal. Ken Small alleges that they candidly said to him and his wife that their preferred route would not work, adding that they would have to return to the drawing board.

The General Manager and some senior Council staff now seem to be unofficially acknowledging in conversations that this access route through this Cudgen farm will not work. Even Mr. Bulford allegedly told Ken Small in a telephone conversation not to worry because the access road will never go through his property. Depot Road is now unofficially the favoured route again, just as it was in the August 2000 LES.

The selection of a preferred road access to Kings Forest in the amended LES was a planning fiasco. This was Faulty Towers stuff.

- **It would never have happened if *the system* had not been so devious, manipulative, and secretive about it.**
- **It would never have happened if an open consultative process with one of the vital stakeholders had been used.**
- **It would never have happened if the Councillors were kept informed.**
- **It would never have happened if the planning department had stuck to its agreement to keep the Kings Forest people informed.**

The Kings Forest people had a right to be very upset, for according to their planning consultant, Jim Glazebrook, the preferred route of the amended LES was so unworkable, that Kings Forest would have to seriously consider whether it had any future as a development. It was that bad!

Yet for all this, the Bulford Report wants us to believe that the planning department never put a foot wrong in a single matter in this planning process.

The other main issue in the amended LES of 2001 was the additional amount of land quarantined from any development by an environmental protection status. James Warren's suppressed SIS would have shown the planning department and its consultant that the grab to set aside more land as environmentally sensitive was not supported by the environmental data.

When all the additional land to be set aside for environmental protection was factored into the financial modelling calculations, the Kings Forest development no longer stacked up as a viable development. That at least was the argument from the landowner's point of view.

It is one thing to get from either the landowner or the eventual developer the best deal possible for the community, but it is another thing to accept that no developer has a bottomless pit of money to satisfy the unrealistic wish list of the Green extremists. At

the end of the day, any development has to demonstrate that it can make a return that can justify the capital investment, otherwise it will not proceed.

The message of the amended LES/Draft LEP could be interpreted to read, "Narui Kings Forest, we don't want you. Pack up and leave!"

The Issue of Bureaucratic Control

Now to focus on my original complaint which sent *the system* scurrying to call in help from big brother in the form of the inquiry we had to have - one in which the bureaucracy investigates the bureaucracy:

I had complained that the planning department had directed the consultant to say what the planning department wanted it to say. (See Appendix pp. 97 – 106)

This was not a new or one-off aberration. Having seen *the system* work over a period of years, I came to the conclusion that this was the expression of an entrenched culture within *the system*. The senior government Investigator now tries to justify this way of doing things. His government department obviously wants this *system* and this *culture* to continue.

Just a few months before the Kings Forest affair came to a head in an explosion of protest from the Kings Forest management and its team of consultants, the planning department had contracted another consultant to do a Retail Strategy for Kingscliff. In a Draft document, the consultant recommended that the next mega- shopping centre of the Tweed should be located at Kings Forest rather than West Kingscliff. But at the end of his Draft Retail Strategy, the consultant made this very significant comment to the planning Director,

*"**David, this is for your review to ensure that it says what you want it to say.**"* (See Appendix p. 143)

This says it all!

The Director did not want anybody to see this Draft for obvious reasons. But when he unguardedly quoted a portion of it, this prompted Dr. Segal to ask if he could sight the document. The Director refused to release it until the Mayor demanded that he release it.

When this consultant produced his next version of the Retail Strategy, surprise, surprise, he had done a complete back flip. The revised version of the Retail Strategy said that the mega-retail centre should be in West Kingscliff, not Kings Forest. These conclusions did not appear to be based on any objective criteria.

I have talked to other consultants who have done work for Tweed Shire Council who have said that they were placed under enormous pressure to change a document to say what the Council wanted them to say.

There was a consultant who did an economic study for the Murwillumbah region. His Draft Report was very critical of the planning department for the part it played in

discouraging business enterprise, especially small business ventures in the region. This consultant told me personally that he was placed under enormous pressure to change this part of his Report, and was not happy that he had changed it. (See Appendix pp. 140 - 141)

I talked to another consultant who did another LES for Tweed Shire Council. He was fully aware that his study did not say what the Council planning department wanted him to say. But he said, "I have to call things the way I see them." His LES for Chinderah was never accepted by the planning department because it did not say what they wanted it to say. This consultant told me he never received any more work from Tweed Shire Council. Others have told me the same story.

So it was in this context that I voiced my protest in a paper that up until now has remained confidential. This is what I said to those in authority:

> ***It is my belief that Tweed Shire Council's Planning bureaucracy orchestrates and manipulates the system (process) to achieve pre-determined outcomes. This includes orchestrating and manipulating the consultancy processes - community consultancies, stakeholder consultancies, Workshops with Councillors, Business Papers, Planning consultancies and Legal consultancies - to arrive at desired ends.***
>
> ***What has happened in respect to the Kings Forest LES should not be seen in isolation as if the manipulation of the planning process in this case was some kind of lapse. It has rather been an expression of a deeply entrenched culture - so deeply entrenched that the officers who have manipulated the process to reach their pre-determined end are probably surprised and aggrieved that their entrenched modus operandi is now being called into such radical question.***
>
> ***I want it to be understood that this critique does not spring from the least personal ill will toward the officers themselves. The problem is largely in the nature of the bureaucratic beast and the culture that has been allowed to develop over time.***
>
> ***I am not naïve enough to think that this is something peculiar to Tweed Shire Council. "Yes Minister" came into being as a television hit only because it was able to resonate with an audience that knew that all bureaucracies tend to operate this way unless they are subjected to constant scrutiny, reform and change.***
> ***If required, I can furnish many documented examples to support the above observations - in the Tagget Case, the Karlos Case, the Chinderah LES, the East Cudgen Land Case, the Roy Rudman Case, the Bob Abnett Consultancy Case, the Mike Cullen Case, the Fred Lizzio Case and many others.****[*See documents in the Appendix]

Sadly, Mr Bulford, a bureaucrat himself, does not believe that the bureaucracy needs to be subjected to any scrutiny, reform or change. His Report wants everyone to believe that the planning division never put a foot wrong on anything

The Bulford Report makes a Herculean effort to justify this manipulative culture and to cover-up the blundering mistakes of the Kings Forest affair. But all attempts to hide these things are like trying to hide a gravel truck, bogey and all, in a pothole.

Distracting Attention from the Real Issue

The Bulford Report has tried hard to pull off the ultimate distraction from the real issue by launching an audacious, attention-getting attack on the majority Councillors in general and myself, the whistleblower, in particular. It is obvious that some big brother authorities asked the Investigator to "shoot" the messenger.

Let me now tear away Mr. Bulford's *cover-up by distraction* in one stroke.

He blames the majority Councillors in general and myself in particular for causing all the problems by being "too close to developers" and by "putting staff under pressure" through getting involved in meetings between developers and staff. This is the essence of all his complaints.

This Bulford complaint has no substance at all in the matter of Kings Forest. The only time I was ever present at a meeting, supposedly to put staff under pressure," was when I was present at a preliminary meeting in which I urged the Kings Forest management to accept the staff advice to jointly fund the LES. Hardly putting staff under pressure! Except for this, I was not involved in any of the meetings or proceedings, and neither were any of the other majority Councillors to my knowledge.

The only Councillor who was involved in the process was Henry James. He had the Kings Forest property under constant surveillance (just as he put Neil Tagget's property and others under constant surveillance). The Kings Forest management made allegations about his repeated, unauthorized trespassing on its property, apparently to gather incriminating evidence against it. On one occasion he organized a protest march that resulted in a police presence. I was there, and I heard the police Sergeant warn Mr. James, "Henry, if you put foot on this private property, I will throw you in this paddy wagon." In Council, Councillor James kept urging that Kings Forest be prosecuted for "illegal clearing," and he argued for setting aside much more of the estate for environmental protection. As for the amendments that were put into the LES, it is clear that its criticism of James Warren's SIS and its inclusion of more Kings Forest land for environmental protection reflected the views of Henry James. This does raise the question, If the planning department was telling the LES consultant what to do, was anyone telling the planning department what to do?

I only learned about the fiasco of the road through the Small property, the new land grab and the sidelining of the Warren SIS after the LES ball game was over. I only poked my head in after I heard loud cries of "Foul!" coming from the Kings Forest people. It was only then that I began to enquire what the noise was all about.

So Mr. Bulford accuses me of getting involved in meetings to put the staff under pressure. I am almost too embarrassed to say that I did not attend a single meeting in the entire planning process for Kings Forest – yet this is what Mr. Bulford is supposed to be investigating. Why does he run off and start investigating me when I was not

involved in one bit of the Kings Forest planning process? How could it be my fault when I wasn't there! I was not involved!

So Mr. Bulford investigates the involvement of Councillors in the Kings Forest process, and passes right over the *only* Councillor that had any real involvement.

Mr. Bulford says that I am too close to developers. I am sorry to say that here was one landowner (not a developer) who was bludgeoned to his knees and was almost bleeding to death before I spoke up for him.

Mr. Bulford has concluded that I must be in some kind of "collusion" with the Kings Forest developer (read *landowner*), just because I happen to agree with its complaint. As if mere agreement with any party proves I am "too close" or in "collusion" with that party! This kind of reasoning is ridiculous.

Let me re-focus again on the Bulford Report's cover-up by way of a grand distraction.

I made a protest about the Kings Forest planning process. I was not involved in the process. I attended no Kings Forest planning meetings with anyone in any place. When Mr. Bulford is called in to Investigate or, should I say cover-up this Kings Forest planning process, he goes off in hot pursuit of Councillors who had no involvement in the process at all. Accusing them has nothing to do with investigating my complaint, but it has everything to do with distracting the attention of the press and the public from the real issue.

Late Addendum: Since the writing of the above account, Narui Kings Forest company chief has acted to replace his Australian project manager. His reasons for doing this have nothing to do with the matters covered in the above report and has nothing to do with the Council or the Councillors. It has solely to do with an employer/employee dispute in which Mr. Narui Senior alleges he was misled by reports of satisfactory progress in the approval process that was not happening as reported. The landowner has put all these matters in the hands of his Australian lawyers. This is a management problem for the Kings Forest landowner to sort out. It is an internal company matter that is completely separate to the LES issues that are discussed above.

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Chapter 13
THE STORY OF SEASIDE CITY

Seaside City is a 30-hectare estate with a 900-metre ocean frontage immediately to the north of Casuarina. It was given this name when it became a paper subdivision of 204 lots way back in 1927. In 1990 the Barclay group, acting as Richtech Pty Ltd, acquired 85% of the land, leaving 15% in the hands of an assortment of owners and heirs who now number about 40 people.

Like the adjoining Casuarina estate, this land was also denuded of vegetation and sand mined several times between 1940 and 1970. It is also dominated by a monoculture of bitou bush and some scrappy vegetation that does nothing at all to enhance the image of the Tweed Coast.

Seaside City is currently zoned 2(f). This is an exclusive tourism zone for hotels and other tourism accommodation. The equally derelict land to the north of Seaside City – first the Kings Heath Estate(73 hectares and 1.2km ocean frontage) and then the Crown Land tourism site (Lot 490 - 24 hectares and 900 metres ocean frontage) are also zoned 2(f). On the other hand, Casuarina to the south of Seaside City is zoned 2(e), permitting a mixture of residential, hotels, apartments and other tourism facilities.

Problems of the 2(f) Zone

Even in ideal circumstances, an exclusive 2(f) tourism zone makes development very difficult. For instance, when Lot 490 was under the control of Tourism NSW, the government tried for many years to flog it off as a prime hotel site without any

success. So far all efforts to establish a hotel/resort development on the Kings Heath site adjoining Seaside City have not been successful either.

There are economic reasons that make exclusive tourism zones difficult to develop. It has been demonstrated over the last 50 years, for instance, that it is next to impossible to build a hotel anywhere in Australia without incurring an enormous loss of somewhere between 30 to 50% on capital investment. As a general rule, no hotel/resort complex can make a profitable return on capital investment unless it has a substantial residential component associated with the hotel to supplement cash flow and return on investment. Stand-alone hotel/resort developments in Australia generally fail to make anywhere near an adequate return on investment.

This is the basic reason why several efforts to get a hotel/resort at the Kings Heath site have failed despite having two different development approvals over the last 13 years.

A hotel/resort development will never work unless Council relaxes the rules sufficiently to permit a sustainable mix of tourism and residential facilities. And besides these economic realities, hotel investors are inclined to resist building hotels in zones that are sterilized from a dynamic mix of tourism and residential components.

For socio/economic reasons, therefore, the ideal zone to encourage tourism development happens to be on 2(e) land such as Casuarina. This developer has reserved three sites for international standard hotel/resorts, and already has expressions of interest in all three. The first one is expected to start building within months.

A hotel complex will probably be up and running at Casuarina before any hotel/resort complex can gets its boots on in the 2(f) sites to the north.

As if the foregoing is not enough to demonstrate the superior tourism-generating power of 2(e) over 2(f) zoning, **it is estimated that 60% of Casuarina's population at any one time will be tourists**.

This all goes to prove that it is very difficult, if not impossible, to dictate tourism facilities into existence. This kind of social engineering on the part of bureaucrats is as futile as trying to make water run up hill.

On the other hand, as Casuarina and other sites like it all over the world keep proving, a tourism infrastructure will develop naturally when the conditions for it are right, even pulling down and replacing first-generation residential facilities when an area is commercially ready for it. In most cases, the only thing that the planning instruments should do is to make provision for a tourism infrastructure to evolve. They will evolve much more quickly and naturally in a 2(e) zone where residential/tourism facilities are allowed to co-exist.

In principle at least, this is what the movement called "new urbanism" now preaches all over the world. As the guru of the new urbanism, Peter Katz, keeps emphasizing in his widely read publications, strictly quarantined zones are bad planning instruments. They don't work because they are sterile and boring. They do not foster the more

dynamic socio/economic mix that comes with permitting a wider variety of uses in the same zone.

This is why the 2(e) zoning is far more appropriate for a site like Seaside City.

Besides all these powerful socio/economic reasons, the 2(f) zoning is totally unsuitable for Seaside City for another very obvious reason. The land is already subdivided into 204 small allotments, 15% of which are in the hands of about 40 different people. The amalgamation of these separate parcels into larger parcels of land suitable for tourism development presents an insurmountable obstacle - apart from the compulsory acquisition of fragmented land, which is also impossible under these circumstances.

Manipulation of the Planning Process Again

It was in view of the foregoing reasons that Richtech Pty Ltd applied to Council to have Seaside City land rezoned from 2(f) to 2(e) land. This landowner (who should not be called a developer) did not need to lobby Councillors for any support in this matter, and for that matter, I can't recall any lobbying on the part of the landowner for a rezoning. Councillors were only too aware that whilst the Kings Heath tourism project to the north of Seaside City was not able to get off the ground due to a failure to get financial backers (for the reasons cited above), the resort town of Casuarina to the south of Seaside City was already progressing brilliantly, with the promise of hotels soon to be built.

The majority Councillors therefore wholeheartedly supported rezoning Seaside City to 2(e). Some of these Councillors are experienced business people who understand these economic realities that I have just reviewed. Two of these Councillors have had a long and successful involvement in the tourism industry on a national and international level.

The Director of Development Services, however, recommended refusal of the rezoning application. In this he was vigorously supported by the Boyd/James faction – although the question might fairly be raised whether this was a matter of the planning department supporting the Boyd/James faction. Anyhow, their anti-rezoning argument went something like this: *What the Tweed needs is not more residential development, but more employment generating industries such as tourism.*[No argument here] *Therefore Seaside City must be reserved for employment generating tourist developments only.*

My disagreement with this argument is not about the aims of generating more industry in the Tweed, but the *methodology.* These people – and Henry James most of all – have not given us any indication that they understand the dynamics and the commercial realities of the tourism industry. They have never run a tourism business as some of the majority Councillors have done. For that matter, the bureaucrats in the planning department have never given us any reason to believe that they really understand the dynamics of the tourism industry either.

Under the guise of helping the tourism industry burn more brightly, the planning department is carrying a bucket of water to put it out. Worse, it is using a bucket of ice-water to cool down the enthusiasm of investors.

The resolution of the Council to rezone Seaside City to 2(e) did not please Council's planning department, so it set about, in its characteristic way, to put things afoot that would frustrate and undo what Council had determined should be done.

At first the planning department told a meeting comprising Council staff, the Seaside City landowners and Councillors that a Local Environmental Study(LES) was mandatory. This advice was wrong. Many rezoning applications are not accompanied by an LES.

In this debate about an LES, legal and professional advices were tabled to prove that an LES was not legally required. Further than this, these advices argued quite convincingly that any further environmental study of the land was unnecessary – on two grounds:

- Over a period of many years all this ocean-front land had been studied to death. There was no point in doing further studies of vegetation that was highly disturbed and of little environmental value.
- From an environmental point of view, it would make no difference at all whether the land was zoned 2(e) or 2(f). The mere rezoning from 2(f) to 2(e) would not lead to a more intensive use of the land.

Apparently the planning department felt that the force of the above arguments were too strong to resist. It therefore took another tack to justify its push for an LES. Accordingly, it wrote to the DUAP office in Grafton admitting that Seaside City did not warrant an LES on account of the environment.

The Bulford Report seizes upon this letter to prove that it was not the planning department's wish to impose an LES on the landowner, but that the directive to do an LES came from the DUAP office. Mr. Bulford thinks that this proves I am totally mistaken in this matter.

One of the first laws of literary research says: **text without context is pretext**! Mr. Bulford cites only a portion of the planning department's letter, stopping short of the very lines that destroy his argument. For after conceding that Seaside City did not need a further study of the environment as such, the Council letter went on to say that the land would

"require an assessment of the economic impact of the draft Amendment in terms of the short and long term economic development and employment potential, and the related public benefits and disbenefits."

The only way this economic study into the relative benefits of 2(e) and 2(f) land could be imposed is under Section 57 of the EPA Act. In essence, therefore, the planning department's letter was really pressing its case for an LES **on the grounds of economic considerations.**

Apparently the DUAP office was willing to support an LES on the grounds suggested by Council's planning department. Accordingly, the DUAP office formally directed Council to prepare an LES under Section 57 of the EPA Act.

There, says Mr. Bulford, this proves that the requirement of an LES did not originate in the Council' planning department as I had stated, but from the determination of the DUAP office. Government orders! End of argument!

The ultimate weapon for the Council bureaucracy is to solicit the aid of the big brother bureaucrats in the various State government departments. When they wave the big stick of government authority, the officers solemnly tell the Councillors, "We have no choice but to obey this DUAP [or DLAWC or NPWS] directive. It just happens that sometimes the directive has been prompted by a source from within our own Council chambers.

Local government happens to be so much a creature of the State government, and so completely under its authority and control, that democracy does not really exist at a local level, except at the pleasure and to the measure allowed by the State government. It is destined to remain this way until local government is recognized and respected under the Constitution, and some brakes are put on the State government, especially one bent on playing politics at a local level.

This imposition of an LES, originating in entrenched attitudes in the Council chambers, was an unnecessary, bureaucratic humbug. Much worse than its $90,000 cost to the landowner is the years it will add to the approval process.

At the rate things are now progressing, it will also take 27 years to get Seaside City up and running. Some people could be excused for thinking that this slow water torture of the landowner will never end until he walks away with nothing but a big hole in his pocket. Yet Mr. Bulford tells us that nothing in the planning department is amiss and no one in this department has ever put a foot wrong on anything. Amazing!

When the DUAP office sent the specifications for the LES Brief to the Council, the planning department shaped the document into a form that was clearly biased toward getting the answers it wanted to keep the land zoned 2(f). The manipulation of consultants to say what the planning departments wants them to say is just part of the culture of this local government system.

When the landowner complained to David Papps (the 2IC of DUAP) about the biased nature of the Brief, he decided that the parties should sort the matter out with the Grafton DUAP office. In a telephone hook-up between Peter McGregor (the solicitor/town planner acting for the landowner) and Malcolm Imrie at the Grafton DUAP office, a meeting was arranged to take place at Council Chambers in Murwillumbah between Council's planning department, the DUAP officers from Grafton, and the parties acting for the landowner. According to Peter McGregor's diarised account of the telephone conversation, he expressed the landowner's wish that the Mayor and Deputy Mayor should attend the meeting. Mr. Imrie did not object to this suggestion, but agreed to this meeting arrangement.

Due to flooding, the meeting did not take place at Murwillumbah Council chambers as first arranged, but was re-scheduled to take place at DUAP's Grafton office on March 21, 200l.

This was already more than 12 months after Council had resolved to rezone Seaside City to 2(e). The whole process was clearly on a slow boat to China. Or to change the metaphor, the slow water torture had only just begun.

March 21 happened to fall on the day of the regular Council Meeting starting at 3 pm. The Richtech men (Messrs. Frank Wilson and Peter McGregor) had hired a small plane to fly to Grafton for the meeting. They offered seats on the flight to David Broyd, Lynn Beck and myself.

Several days prior to the Grafton meeting, Mayor Beck asked the General Manager if accepting this offer of a ride to Grafton met his approval, especially in view of the fact that this was the only way the Mayor could attend the meeting in Grafton, then get back to Murwillumbah on time to chair the Council Meeting. I too had specifically conveyed my view to Mayor Beck that I would not go to Grafton unless this flight arrangement had been cleared with the General Manager. The General Manager quite readily consented to the arrangement, especially since it appeared to be a convenient resolution to the logistical problem of getting the Mayor back in time for the Council Meeting.

That the GM gave his verbal consent to this flight arrangement is also confirmed in the Bulford Report.

It is also clear that both the General Manager and the DDS knew well in advance of the Grafton meeting that the Mayor and Deputy were going to be there. Apparently neither of these executive officers recorded any objection to the arrangement

Mr. Bulford's claim that the two Councillors gatecrashed the meeting without prior notice to the parties is an amazing fabrication – and a stupid one at that. He could only support this false account of things by ignoring the diarised testimony of Peter McGregor, by overlooking the very obvious point that both the GM and the DDS knew some days prior to the meeting that we were going, and then by finding one person in the DUAP office to say that he did not know that the Mayor and Deputy were coming to the meeting. Of course it is possible that one person in the DUAP office might not have been told of the arrangement, but this person was not Malcolm Imrie. He agreed to the arrangement when it was first put to him by Peter McGregor. To suggest that he did not know the Councillors were coming to the meeting is as credible as saying that he did not know that Christmas was coming. The evidence is that clear and simple.

Recently, on hearing this kafuffle about the two Councillors riding in a plane to Grafton with "developers," Harry Ellis, the former project manager for the giant Cobaki Lakes project, told the Daily News (26/6/02) that during the Boyd Council, he too hired a plane just as Frank Wilson did. With Council officers aboard the developer's chartered plane, they all flew to Grafton to sort things out at the DUAP office just as Frank Wilson had done. Strange how some people had conveniently forgotten this little episode (which I might add, never raised one eye-brow) while they

now beat their breasts in horror about doing the same thing during the Beck Council. Mr. Bulford has ignored this information just as he has ignored any information that does not suit his purposes.

Choosing a Consultant

When the meeting at Grafton on March 21 finally got under way, the DUAP officers readily agreed with the Richtech objection to the way the Brief for the LES was written. In the words of Malcolm Imrie, parts of the Brief were "leading the consultant" and should be removed from the document. The changes were quickly agreed to by all parties. They were significant enough to justify inviting the preferred list of tenders to tender again.

The meeting then discussed the six tenders for the LES contract. By consensus the highest tender and the lowest tender were quickly ruled out of contention. Around the table only three tenders remained in contention – Victor Ferros, Gary Shields and McInnes International. The Richtech men – Frank Wilson and Peter McGregor - favoured Victor Ferros, whilst the Director of Development Services(DDS) said he preferred either McInnes International or the Tweed's own Gary Shields. I asked why the only remaining tender, ERM, could not be included in the short list of preferred tenders. The DDS said that he did not think that this consultant was suitable. The DUAP men made a low-key comment that ERM were stationed at Port Macquarie, and their work was satisfactory. No one present, however, pushed ERM's claims for serious consideration. Shields, Ferros and McInnes had all done work along the Tweed Coast for either Council or the landowners - or both. They had the advantage of being known to the parties present and were familiar with the Seaside City site. The DUAP men said all four consultants were acceptable and had the qualifications to do the LES, but that the decision should be left with the Council.

(It was an irony that ERM was kept on the short list at my suggestion, for I was not comfortable leaving them off for no convincing reason.)

That is the way I clearly remember the main points of the meeting, and in reality, it differs very little in substance from the way any of the participants seem to have remembered the main points.

Mr. Bulford constructs his questionable version of things using testimony from people who were not even at the meeting – like Councillors Boyd, James and Luff. He prefers their testimony to the diarised testimony of Peter McGregor who both arranged and attended the meeting.

When the matter was raised for confidential discussion at Council, Henry James weighed in with strong support for ERM. In the light of how little was said in favour of ERM between any of the parties at the Grafton meeting, I was surprised that in a subsequent Council meeting, the planning department came out with a back-flip on its earlier support for either Shields or McInnes. The planning department now favoured ERM.

When the matter finally came before Council for determination, the four preferred tenders were set before the Council in the Business Paper. On this basis it was open to

the Council to choose any of the four consultants to do the LES. If it was improper for Council to choose any of those four consultants, that consultant's tender should not have been cited in the Business Paper to start with. Council chose McInness by a 7/4 majority. His familiarity with the area (having previously done work for both Council and Lenen Pty Ltd) and his reputation for doing excellent work in projects like the Rocks in Sydney were the points that appeared to sway the Councillors in favour of McInnes.

The second instalment of the Bulford Report spends nearly 200 pages trying to prove that the Councillors should have accepted the recommendation of its planning department rather than award the contract to McInnes.

Mr. Bulford's complaint centres on the issue that Council chose a consultant who had links with the "developer." (Richtech is a landowner, not a developer)

It is true that McInnes had done work for a related company, Lenen Pty Ltd in 1998. The officers at Grafton knew this, and the DDS was well aware of this all along. Yet this knowledge did not stop them putting McInnes on the tender list, nor even from putting him on the short list of preferred tenderers. It did not stop the DDS putting McInnes name forward in Council's Business Paper as a possible choice. Yet no sooner had Council chosen this consultant who was not the planning department's preferred consultant, than a chorus of protest started up about the consultant's improper links with the developer.

The Council is under no legal or moral obligation to accept the recommendation of its officers. A recommendation is just that – a recommendation. It is not a directive. The professional staff may *propose*; the Councillors *dispose*. Councillors are under no obligation to accept the advice of a Director, but the Director is under the obligation to carry out the lawful resolutions of the elected Council as expeditiously as possible.

It was the same planning department that recently recommended that Council approve a mega-brothel in Tweed Heads. Didn't the same Councillors also have the right not to follow that recommendation?

Anyone, including Mr. Bulford, is at liberty to disagree with a determination of the elected Council just as anybody is free to disagree with a decision of an elected government at any level. But as Graham Richardson said recently, in a democracy an elected government has the right to make a wrong decision.

At this point of the debate, the Bulford Report argues that the Council has no right to make a decision that is illegal, corrupt or tainted – which is true enough. He then goes on to infer that Council's selection of McInnes *might* be tainted on the basis of the consultant's links with the developer [read *landowner*]- or there may have been some leaked information that prompted McInnes to lower his quote sufficiently to get the contract. But at this crucial point, Mr. Bulford is constrained to acknowledge

> ***I have...not been able to find any direct evidence that might prove that there had been corruption, collusion or other such inappropriate conduct or practice .*** (p,152 Report, Part 2)

That should add up to a clean bill of health for the consultant, the landowner and the Councillors. Justice demands that everyone is entitled to the presumption of innocence until proven guilty. Mr. Bulford's Report shows no respect for the rules of evidence and does not accept the principle of the presumption of innocence. Having stated that he cannot prove wrongdoing, he goes on to accuse people of wrongdoing without a skerrick of admissible evidence.

Mr. Bulford has the temerity to publicly suggest that certain people *might* be guilty of wrongdoing, and indicates that he intends to keep them under suspicion until they can come forward with proof of their innocence – as in the instance of his not being able to find anything illegal or improper in the election funding of the majority Councillors.

So not being able to prove any wrongdoing, Mr. Bulford announces that he is asking ICAC or the Electoral Funding Authority to find what he confessedly is not able to find. In effect, he is saying these authorities, "I can't make any mud stick – please help me find some." One can be forgiven for believing there is a brief to discredit certain people. Everyone knows that the publicity surrounding the mere referral of matters to ICAC or the Electoral Funding Authority will serve his purposes of smearing and discrediting the people he is determined to smear and discredit without any proof of wrongdoing.

There is one more point that needs to be clarified in this Seaside City debate. In his report, Mr Bulford complains about the way the developer[read *landowner*] lobbied the Councillors and how the Councillors chose the consultant preferred by the "developer."

The first thing that needs to be said in response to this is that Councillors should be willing to listen to anyone's point of view. To suggest, as Mr. Bulford does, that agreement with a developer's point of view indicates collusion with the developer is ridiculous logic. But Mr. Bulford seems to go further than this by suggesting that any preference that the landowner might have had should not have been considered.

In answer to this, I simply point out that this was not the way the planning department did things when a consultant was selected to do the LES for Kings Forest, nor when a consultant was selected to do the LES for the Seabreeze estate at Pottsville – as I will now explain.

The preparation of an LES is the Council's responsibility, and no landowner or developer is legally required to pay for an LES either in whole or in part. But Council nowadays often asks the landowner or developer to jointly fund an LES or even to wholly fund an LES on the grounds that it will speed up the approval process. Although questionable, this is becoming an accepted way of conducting Council business.

When Kings Forest and Seabreeze agreed to jointly fund the LES with Council, in each case the landowner jointly participated with Council in choosing the consultant. In each case the consultant was chosen by consensus of the two parties – the Council and the landowner. But the planning department was not willing to extend the same courtesy to the Seaside City landowner, even though this landowner went further than

Kings Forest and Seabreeze in that Richtech Pty Ltd agreed to fund the entire cost of the LES.

Why did the planning department insist on treating the Seaside City landowner differently? Could it be due to the bad blood that has existed for many years in the Council chambers in relation to Mr. Frank Wilson, the Seaside City manager? For years I have sat in Council to repeatedly witness jeers, mockery and wisecracks at the expense of Mr. Wilson – with the former Mayor, staff members and certain Councillors all joining in the dart throwing fun. This is why I sometimes commented, "Council's relationship to the Lenen people is poisoned by an adversarial attitude."

The system in Murwillumbah is well known for its long memories and even longer knives.

The Bulford Report spills about 200 pages of ink over this issue of selecting a consultant to do the LES for Seaside City. It is arguable that the LES was an unnecessary bit of bureaucratic humbug anyway. There are grounds to suspect that it was an imposed arrangement to frustrate the rezoning process. Whether that is true or not, the fact remains that the time and effort spent over this issue is just another pathetic waste of time over a small step in the approval process. At the rate things are moving forward it will take more than 27 years to get the first sod turned at Seaside City. With bureaucrats like Mr. Bulford, this slow water torture appears to be of no concern. **Protecting government of the bureaucracy, for the bureaucracy and by the bureaucracy is what it is all about.**

DEMOCRACY SUBVERTED
A Case Study of a Local Government System

Chapter 14
THE BULFORD AFFAIR

The Bulford Affair powerfully illustrates how the state government authority intervenes in the affairs of a local Council. The whole point of the exercise has been to shore up the power of the bureaucratic system of local government on the one hand, and on the other hand to put down the "rebellion" of elected members who think

- that Council should be a democratic institution like the State or Federal Parliaments,
- that the elected representatives of the people should fulfil their responsibility of making decisions for the people whilst Council's public servants should do just that –serve and advise.

It cannot be emphasised too strongly that local government has no rights under the Constitution. As things stand at present, the Council happen is a creature of the State government and totally at its mercy.

The state authorities are willing that the Councillors should go through the motions of presiding over Council and making democratic decisions. When it comes to the really big and important decisions that will affect the destiny of the region, however, it is pretty clear that the state authorities are biased toward having the bureaucrats in control. Things are more manageable that way.

The bureaucrats in the Council feel that they can work most effectively with the bureaucrats in the State government departments (DUAP, DLAWC, NPWS, PW, LGD) if Councillors are kept out of it as much as possible. That way, those who

"know what they are doing and know what is best for everybody" can get on with running the important business of Council. At least that is the rationale for the system in vogue.

The bureaucrats in Council and in the State government departments tend to function as a network wherein the parties understand each other and help each other achieve their ends. The bureaucrats involved in this Council/State Department interface may have gone through University together, they belong to the same union, and they are members of the same professional associations. These links can produce the camaraderie of an Old Boys Club.

Thus, as we have seen in the Blundell Case, a senior officer of Council's planning department only had to get on the telephone to a colleague in the DUAP office in Grafton to start the wheels turning to overthrow a Council decision. No questions asked! But for the subsequent Court case that subpoenaed the Council files, the Councillors would have had no idea that the refusal of their rezoning application had actually been initiated by one of their own officers – one who was legally obliged to carry out Council resolutions as promptly as possible. This incident stands as an example of the games the *system* can play to keep the control of Council out of the hands of its elected members. The trick is to let them think that they are in control!

When it comes to the Bulford Investigation, there are those who will say that this happened wholly at the initiative of the Local Government Department. That is possible, but it is just not believable. Then there are those who say that the Bulford Investigation was initiated at the request of the Councillors themselves. This is about as convincing as saying that the Councillors asked for a hole in the head. Anything is being said except the unspeakable, namely, that the Bulford Investigation was in response to a call for assistance from the Council's own bureaucracy. It was simply a case of the bureaucratic "troops" on the ground at local government level calling in some "air cover defence" from the State government.

The Bulford Affair was an ambush.

It was set in train by *the Murwillumbah system* working hand in glove with the State government authorities. It has followed the classical pattern of the two bureaucracies working together to ensure that Council is essentially a government of the bureaucracy and by the bureaucracy.

The Background to the Bulford Affair

The Bulford Affair needs to be seen against the background of the kind of culture that has prevailed in the local government system for a long time.

When it came to things like appointing consultants to prepare documents like LES's, Draft LEP's and DCP's, Councillors did not get to see the Briefs. Sometimes advices were being solicited from consultants on the basis of a wink and a nod.

Here was a culture in which the bureaucracy controlled the Council by controlling the content of the Business Paper (and hence the information that was given to Council) and by controlling the consultants who supplied information and advices to Council.

Those consultants who did not supply the kind of answers that the planning department were looking for were sidelined and got no more work. Documents that were prepared by consultants were changed under pressure from the planning department, as in the notorious case of the *Murwillumbah District Economic Action Plan* by Abnett Consulting.

Then there were a great variety of community groups and people who had been complaining for years that the planning department was not responsive to the consultative process, but pressed ahead with its own pre-determined agenda regardless.

A case in point was the Integrated Local Area Planning (ILAP) consultative committee process that went on for over a year. It included professional planners and community representatives who were supposedly providing input into the Strategic Plan and Draft LEP for the year 2000. At the end of the process, however, the planning department ignored the input of the ILAP committee. It also ignored hundreds of submissions from landowner groups plus petitions of more than 1000 people, and drafted the documents as it had pre-determined. Some of these very serious complaints about the conduct of the planning department appear in the Appendix.

Only a few weeks before I lodged my formal complaint about the way the consultant for Kings Forest was being used, that other consultant's comment to the planning department had come to light: "David, this[draft paper] is for your review to ensure that it says what you want it to say."

After the LES for Kings Forest was put on public exhibition on April 4, 200l, several parties, including Kings Forest's project manager and its planning consultant, drew my attention to some very serious problems in the document. When I researched the planning department's file on the matter, I found the clearest evidence that the planning department had also directed this consultant to have the LES say what the planning department wanted it to say. As simple as that!

In the company of Councillor Polglase, I took my document of complaint to the General Manager. He immediately concluded that the matter should be investigated by someone other than himself, and went on to say that we would have to leave the matter with him to find an independent, out-of-house party to investigate the matter. I was not happy that the General Manager had declined to deal with the matter himself, and I was not happy that he would not involve the Councillors in selecting an independent investigator. But my fellow Councillors thought that we had no other option but to support the GM's initiative for an inquiry. That support was formally given by way of a Council resolution.

Shortly after this the Director-General of the Local Government Department announced that he had appointed an Investigator under Section 430 of the Local Government Act. A bureaucrat had been appointed to investigate the bureaucrats. The Old Boys Club would investigate it own.

My documents of complaint that sparked this departmental investigation are based on the clear evidence of letters, notes and papers drawn from the Council Files on Kings Forest. They are reproduced in the Appendix.

The findings of the Senior Investigator, Mr. Robert Bulford, have now been published in two parts under the title of *Report of an Investigation Under Section 430 of the Local Government Acts 1993. Re: Tweed Shire Council.* Its Terms of Reference were the investigation of the planning process for Kings Forest and Seaside City. I have covered the main points at issue in these proposed developments in the two previous chapters on Kings Forest and Seaside City.

Hereunder I review the general principles of the Bulford Report:

Prejudice:

From the time that Mr Bulford arrived on the Tweed, it became apparent that he had no interest in properly investigating the performance of the Council bureaucracy and the integrity of the planning department. In my personal interviews with him, he again and again ruled out looking at unwelcome facts on the grounds that they were outside his terms of reference – which were to investigate the planning process for the Kings Forest LES and the Seaside City LES. Yet it is clear from the Report that the Investigator did not hesitate to stretch his terms of reference to cover other matters that had nothing or very little to do with the planning process at Kings Forest and Seaside City.

He especially declined to look at any documents showing that the planning department had a culture and a history of controlling consultants and having reports altered to its liking

When he challenged me for hard evidence that the planning department had directed the LES consultant to say what the planning department wanted it to say, I referred him to the way the access road to Kings Forest was plotted through Ken Small's Cudgen farm, adding this appeal: "Interview Ken and Lyndell Small…they can provide you with the proof that this happened." (See appendix pp. 106 – 112)

Mr. Bulford did not even grant the Smalls an interview. He just did not want to look at unwelcome facts. Yet the issue of how the road was plotted through the Small's property was central to the investigation.

Bias:

The Report judges the performance of the officers in the planning department by one standard and then uses an entirely different standard to judge the Councillors. The Report is biased to the point of high farce.

For instance, the Investigator excuses or passes lightly over the planning department's

- failure to involve the Smalls in the consultancy process about a four-lane access road through the middle of their organic farm,

- failure to do a site inspection of their preferred access route, much less an assessment of its environmental, agricultural and engineering impacts,
- failure to hand on James Warren's 900 page *Species Impact Statement* to the LES consultant as they were obligated to do,
- failure to give a written Brief to another consultant hastily conscripted (with a wink and a nod?) to prepare a little paper to substitute for the 900-page SIS.

Having whitewashed all this Faulty Towers stuff by fancy footwork and a mountain of obfuscating technical waffle, the Investigator sets out on a flea hunt to accuse the Councillors for the most trivial things, such as

- Lynne Beck's "pillow talk" (totally imaginary),
- my failure to see the Investigator until I was invited and then not leaving him alone after I was invited, .
- Councillors not sending him copies of all the Richtech's letters upon demand. (No Councillor keeps all this sort of thing on file),
- and Councillor Beck allowing her name to be put forward as a referee (when she didn't know a thing about it).

The Report has quite obviously set out to prove that the bureaucrats could not possibly put a foot wrong in a single matter (even if their approval process can last longer than two decades). On the other hand, the seven Councillors or anyone else who has dared to question the unblemished righteousness of the planning department are painted as villains who are unable to do anything right.

The bias of the Report is also starkly evident in that it relies on the testimony of opponents of the majority Councillors, even when it is only hear-say testimony. Whatever is said by Councillors Boyd, James, Luff, and Carrol is cited as fact without making any allowance for their possible bias as opponents of the majority Councillors. No matter that they were not at the Grafton meeting of March 21/01, their testimony is still preferred to the diarised notes of a solicitor/town planner who was at the meeting. By this methodology the Investigator can justify anything he sets out to justify and discredit anyone he is determined to discredit.

Evidence:

It is ironic that the State Labor government's own special Investigator, Robert Bulford, despite some 250 pages of assumptions and innuendo, in the end had to record a finding of "not guilty." He says,

"I have…not been able to find any direct evidence that might prove that there had been corruption, collusion or other such inappropriate conduct or practices." (p.152, Report, Part 2)

The Investigator's agenda imploded on these 25 words he was forced to record, admittedly well hidden from public view in the middle of a long Report.

Yet this very crucial admission did not stop the Report making accusations that are not based on the rules of evidence. The investigator alleges wrongdoing or puts

people under suspicion of wrongdoing on the basis of conjecture, insinuation, innuendo or hear-say.

For example, the Report draws the ridiculous conclusion that a Councillor's agreement with a landowner's point of view or vice versa is an indication of a conspiratorial "collusion" between them.

In response to this accusation of "collusion," one only has to point out that the same basic concerns about Council's planning department have been shared by the business community, the professional consultancy community, the Combined Tweed Rural Industries, other landowner groups, ordinary ratepayer groups such as the Chinderah District Residents Association and an extraordinary wide range of people over a period of many years.(See Appendix) In the light of such a broadly based consensus stretching back over many years, the Report's conspiracy theory loses all credibility.

The Report accuses the Mayor and/or Councillors of putting staff under pressure by engaging in three-way talks with developers and staff. Such talks have always happened. They are permitted under the terms of the Local Government Act. They happened frequently under the Boyd Council. There are circumstances when it will always happen as long as there is a Council. Indeed, it could be argued that it is an elected Councillor's responsibility to know what is being proposed. How else do Councillor's evaluate Council's delivery of services as they are required to do under the Act? When I read the Investigator's Draft Report, I asked him to provide me with the following evidence:

- **date of any meeting <u>when</u> staff were put under pressure,**
- **place of any meeting <u>where</u> staff were put under pressure,**
- **circumstances of any meeting to show <u>how</u> the staff were put under pressure,**
- **<u>who lodged</u> the complaint that the staff were put under pressure,**
- **and <u>who received</u> the complaint that the staff were put under pressure.**

I received no response.

This is like receiving a fine for a traffic offence without being told <u>when</u> the offence took place, <u>where</u> the offence took place, or <u>how</u> the offence was recorded. Some justice!

When I asked the General Manager about this matter, he said that he had neither made any complaints in this matter nor had he received any complaints from the staff.

The Investigator's complaint about Councillors putting staff under pressure echoes what the former Mayor Max Boyd has often said in Council and to the press. The Report's finding that some Councillors are "too close to developers" is simply based on a vintage Boyd statement tendered by the Investigator.

In a great number of instances the Report places people under <u>suspicion</u> that they *<u>might</u>* have done something wrong. For example, the Report suggests that

- I *might* have orchestrated or even written Ken and Lyndell Small's letter of protest to his department. [I didn't. See the Appendix, pp.109-112]
- I *might* have passed on confidential information to a consultant. [I didn't]
- I *might* have leaked information from a confidential session of Council to a developer. [I didn't]
- Councillor Beck *might* have had a conflict of interest because she *might* have had some knowledge of being nominated as a referee for Victor Ferros. [She didn't]
- One or all of the seven Councillors *might* have lodged election returns not in accordance with the Election Funding Act.[They didn't]

The Presumption of Guilt:

The most outrageous thing that the Report does is to turn the principle of "the presumption of innocence" on its head. Even when the Investigator admits he has no evidence of wrongdoing, he insists on his right to suspect certain people of wrongdoing – at least until they can prove to his satisfaction that they are innocent.

A prime example of this in the section of the Report dealing with the Councillors election funding. The grand Inquisitor thinks he finds something "seemingly suspicious" (these words are his), although he admits he cannot prove a thing. So he announces that he is referring the matter to the *Electoral Funding Authority* for investigation. That at least is guaranteed to make good Press and may help tarnish the reputation of the majority Councillors.

After months of investigation, an official of the Authority has reported to Mr. Bulford,

"I can see no breach of the Election Funding Act 198l." (Ibid. p.238)

Is that the end of the matter? No, for Mr. Bulford tells the Authority after it has already investigated the matter for 6 months and found nothing wrong, "I believe that the matter may need to be re-examined and re-assessed by the Authority."

This looks like an effort to keep this issue simmering until the next election.

Then Mr. Bulford goes on to say, "Not one of the Councillors, including Clr Brinsmead, sought to provide an explanation as to why the seemingly suspicious figures were merely, for example, coincidentally so." So we are all going to remain under his cloud of suspicion until we prove to his satisfaction that we are innocent! No matter that the Electoral Funding Authority was satisfied that all the accounts were in order. No matter that an officer of the Authority now says that he can see no breach of the Act. No matter that Mr. Bulford can find no proof of wrongdoing.

I could give this Investigator a very simple explanation as to why the figures are as they are, but I am under no obligation to prove a thing. At the end of the day, the only thing that Mr.Bulford is going to prove in all this is that he has no respect for the rules of evidence and "the presumption of innocence."

Some Concluding Observations

It is clear enough that the State government authorities have a long history of doing things to assist the Council bureaucracy maintain its power in the local government system. It is also clear that the Bulford Report represents an intervention of a State government authority to shore up the authority of the Council bureaucracy viz a viz the majority Councillors. But does this intervention go further than assistance to the planning department? Of course it does.

The same government that went to such lengths to shore up the Boyd regime in 1999 is now saying through the Bulford Report, “Max is the Man.” He may be the godfather in exile, but he still has the sympathy of the government and the loyal support of the Council bureaucracy. He still has some levers to pull at both levels of government.

What this means is that the new Council’s victory in the 1999 election wounded the Murwillumbah *system* but never put it right out of business. The job of transforming the local government system and changing its culture will require another smashing victory in the 2003 Council elections. This alone will put the Tweed’s elected representatives in a position to choose a senior management team that no longer responds as if to old voices echoing in bicameral minds.

In the meantime, the new Council must lend vigorous support for the move toward the kind of Constitutional reform that will recognize the democratic rights of the local government.

DEMOCRACY SUBVERTED
A Case Study of a Local Government System

CONCLUSION

"Council's Planning Division…have been a law unto themselves."

These words were crafted by a professional planning consultant of long experience with Tweed Shire Council. (See the *Terranora Landowners Group's* letter of complaint to the Local Government Department in the Appendix, p.131)

This verdict – "a law unto themselves" - very aptly sums up what this *Case Study of a Local Government System* has found.

- As in the Rudman Case, the *system* refused to accept Justice Bignold's verdict that the Turf Farm proposal was an "offensive and hazardous industry" and on a "site not suitable for the proposed development."

- As in the Tagget Case, the planning department refused to accept the advise of its own solicitor, in the face of overwhelming eye-witness testimony, that the drains were in existence before Neil Tagget began his drain cleaning operation. The planning department stubbornly replied, "Council does not concede."

- As in the Karlos Case, the planning department refused to accept the advice of its own barrister that it could not win in court and that "council has no option other than to approve the subdivision application."

- As in the Chinderah Case, the planning department refused to accept the Chinderah District Residents Association's choice of a consultant to do an LES for Chinderah, but chose one that the Director said would be truly "independent." When neither this consultant's Draft LES or his final LES pleased the planning department, it set this LES aside and has done nothing in the last 5 years to move the process of development at Chinderah forward.(See Appendix, p.133)

- As in the East Cudgen Land Case, the planning department hand-picked Commissioner Peter Walsh to conduct a public Inquiry into the East Cudgen land. When Peter Walsh brought down his findings that none of the land should be rezoned to Agriculture Protection [1(b)], the planning department did the opposite. It issued a very contrived and misleading Business Paper recommending that half of the land should be rezoned to l(b) as if this was essentially in harmony with the findings of the public Inquiry. In this way the planning department not only misled the Council, but it mislead DUAP and the Minister into thinking that rezoning the land to 1(b) was acting on the findings of the Peter Walsh Inquiry. (See Appendix, p.138)

- As in the *system* setting out to frustrate, circumvent, thwart or overturn lawful determinations by Council. In the Lizzio Case, the planning department pulled every lever available to prevent the Condong housing development proceeding for about 8 years after Council had approved it. It did not give up until it was defeated in the Land and Environment Court. In the Blundell Case, Council's bureaucracy surreptitiously enlisted the aid of the State government bureaucracy (DUAP) to overturn Council's determination to rezone Expo Park. The same thing has happened recently in the Seaside City rezoning process. In the case of the Dune Management Plan for Lot 500 at Casuarina, the planning department refused to accept the revised Cardno MBK Dune Management Plan that was approved by Council. The planning department enlisted support from the State government bureaucracy to oppose it..

- As in directing "independent" consultants to change their reports to say what the planning department wanted them to say. The final straw in this culture of controlling the reports of "independent" consultants was the LES process for Kings Forest. (See Appendix, pp.97-100)

When some Councillors took the matter to the General Manager, requesting him to take action, he certainly did, not to bring the bureaucratic system into line, but to enlist the aid of the State government authorities to bring the Councillors into line.

In the Bulford Affair, the State government has stepped in to declare that the planning department does not need to be reformed. The Bulford Report has found that the bureaucracy has never put a foot wrong in a single thing. It all sounds like a new dogma of Bureaucratic Infallibility.

So this "out of control" bureaucracy is exactly what the State government wants it to be according to the State government's own bureaucratic Investigator. His Report "recommends" (with threats of having the Council dismissed if it fails to act on its recommendations) that Council even change lawful meeting policies with a view to prevent the Councillors from "putting staff under pressure," that is to say, from exercising any control over its bureaucracy.

Is there a State government's agenda here?

The new business-friendly Council that was elected by a landslide victory in 1999 is not the Council that the NSW government wanted in Murwillumbah. Neither the local Member for Tweed Neville Newell or some of his government colleagues in Sydney have graciously accepted the verdict of the Tweed people.

From the time this new Council took office, it seems that the only memorable thing that the Member for Tweed has done in Parliament is to use its floor to attack the elected Council. There is every indication that he has done everything he can, including working with Council's minority faction, to persuade the government to intervene in the affairs of the Council – as for instance in the Club of Clubs affair, in the Management Plan of Lot 500 at Casuarina and in planning a future of the Crown Land tourism site (Lot 490) at South Kingscliff.

Through the Bulford Affair, the State government has made an extraordinary attack, howbeit a very clumsy and inept one, on an elected Council. Judging by the way the release of the Bulford Report was orchestrated in the State Parliament by Minister Harry Woods, and judging by his follow up Media Release, the government is making some not too subtle threats about sacking the Tweed Shire Council after the manner of the Bega Council's sacking in 1999. Or perhaps it aims to discredit the present Council for the purposes of getting the desired results in the State and Council elections in 2003.

In considering what is at stake here we first look at the short term political stakes. These are not of any ultimate importance, but we will look at them anyway before we focus on the big picture issue of ultimate importance.

The Short Term Political Stakes

From the State Labor government's point of view, its short term political priority for the Tweed is to retain Neville Newell's seat in March 2003 and then in September to return the control of Council to the Green/Labor faction that was tossed out of office in 1999.

This of course will have some immediate consequences for the Tweed region. It would be like turning the clock back to the days when Council chased business investment from the region and turned the Tweed into an economic disaster zone.

I doubt that the Carr government would dare to shut down the burgeoning economy of the Tweed with its resurgence of investment, rising property values and unprecedented business confidence. At the end of the day, they would have to convince the electorate to re-install the Green/Labor faction. That would not carry the

support of the people, as their memory is not that short. Besides, there is no popular ground swell on the Tweed to return to those days when economic growth and development – and that means jobs – were virtually banished to surrounding Shires.

If the government insists on getting rid of the present Council, therefore, it will have to convince the people how bad the present Council is. The Bulford Report has started down that road. It accuses the majority Councillors of being too close to developers, with some subtle hints, insinuations and suggestions that these Councillors might be suspected of improperly favouring developers in some vague way. Mr. Bulford can only go this way as he has been forced to admit that he cannot prove that any offence against the law has been committed.

If the State Labor government takes this tack, it will encounter the widespread feeling on the Tweed that whatever it is that the Councillors have done, many would like to see them do more of the same because of its positive impact on the region.

As for the Report's talk about referring some matters to the Electoral Funding Authority or ICAC, this is an admission that the government Investigation has not been able to find any evidence of wrongdoing. These agencies are not going to find anything either for the simple reason there is nothing to find.

Thoughtful residents are starting to ask the critics of the majority Councillors to point out one inappropriate development that they have sponsored.

What is wrong with Casuarina for starters? Or Koala Beach? Or Seabreeze at Pottsville?

- Is the Council sponsoring a residential sprawl on prime agricultural land ? No!
- Is the 48% tree cover of the Tweed being diminished by development? No! Actually, Council's *Vegetation Management Plan* shows that the tree cover is growing and will soon be more than 50% despite the pace of development.
- Is Ron Cooper's pre-election post-card prophecy about Gold Coast high-rise along the Tweed Coast being fulfilled? No!
- Has the new Council lowered the infrastructure contributions required of developers? Not at all! The reality is that this Council has raised these Section 94 charges, and is levying more contributions from developers than ever. The Boyd/James faction never learned that extracting contributions from developers is more effective in an investment friendly environment.

What about the environment?

Perhaps this is where the critics think they can find the soft under-belly of the new Council.

According to the ranting propaganda of the *Total Environment Centre*, the Council has been taken over by pro-development Councillors who are dedicated to creating environmental havoc on the Tweed. What are the facts?

Here is the a table of **Expenses Related to Environmental Protection Funds Allocated in the 2002/2003 Budget –** all supported by the majority Council:

Dune Stabilization	$ 31,800
Recycling	$ 810,552
Water Quality	$ 42,700
Cudgen Lake Acid Management	$ 10,400
Acid Soil	$ 23,200
Septic Safe Project	$ 2,600
Noxious Weeds	$ 99,000
Emergency Pollution Management	$ 4,600
Pollution Legal Expenses	$ 2,000
Koala Beach	$ 10,800
Reafforestation	$ 2,400
Significant Tree Identification	$ 2,800
Agenda 21	$ 95,327
Smart House	$ 39,483
State of Environment Report	$ 12,471
Coastal Planning Management	$ 10,800
Foreshore Protection	$ 12,500
Coastline Management Plan	$ 150,000
Lower Tweed Management Plan	$ 200,000
River Co-ordinator	$ 30,000
Tweed Coast Estuary Management	$ 80,000
Open Space Purchase	$ 100,000
	$1,773,433

This "pro-development" Council is spending more money in real terms to care for the environment than any previous Council has done.

Under this Council the Tweed is green and getting greener.

There are statistics to prove it. Factoring in the growth expected over the next thirty years (the land is already set aside to accommodate another 50,000 people) the Tweed is 94% green with a 48% total tree cover. The most crowded part of the Tweed- a 10 km strip along the total Tweed Coast that takes in Tweed Head/Banora Point - is 82% green and 18% urban. Let the critics come to term with these statistics.

So which ever way the State Labor government wants to look at it, its case against this present Council is very weak. Anyone who goes down that road is only playing politics for short term political gain.

The Long Term Political Stakes

Mr. Bulford says that I showed a "cavalier" approach in the matter of supporting some proposals. That remains to be proved, but I will admit to a somewhat cavalier attitude to what I have just called "the short term political stakes." In other words, what happens with Neville Newell's seat in Parliament or with my seat in the Council is short term stuff of no great consequence when seen in the context of the long range view of things. Politicians like Mr. Newell and Councillors like myself will come and go like governments which rule for a couple of terms, or three if they are very lucky.

Of far greater consequence is the system, the culture and the Constitutional framework under which all our institutions and levels of government must operate. It is not worth dying in the trenches for the short term political stakes, but the long term political stakes arising from the fundamental structures of our society are worth our very serious attention.

This brings me to the only reason I have gone to the trouble of doing this Case Study *of a Local Government System.*

Two people, in fact, have gone to the considerable trouble of writing about the Tweed Shire Council. Mr. Bulford's government department has obviously invested a very large sum of public money in the exercise, and it has consumed the best part of l2 months of the Senior Investigator's time. My investment in writing about the Tweed Shire Council is personal and therefore much more modest in that respect, but I think I have put as much thought into the matter as Mr. Bulford has done.

At the end of the day, what is the core issue between our two very different accounts of the situation in Tweed Shire Council?

Leaving aside all the debate about what the planning department did and what the Councillors did, leaving aside all the accusations against this one and that, and even leaving aside the various recommendations put forward, what is the Bulford Report really getting at? Why has this senior bureaucrat of the NSW government gone all out to vindicate the Council bureaucrats in every respect and to discredit a group of elected Councillors in every respect?

I come back to this matter of the Council having no recognition under the Constitution, of its being a creature of the State government and under its authority and control. Given the State Labor government's addiction to more and more centralized control of local government affairs, it can achieve that objective only if the bureaucracy rather than the elected members are in control of Council. A centralized government can exercise control through a bureaucratic system at a local government level, but it cannot exercise the same kind of control through the far more uncertain outcomes of the democratic process at a local government level.

This is the issue in a nut-shell. It is all about control. It is all about power.

The new Council went to the electorate and won a mandate on the platform of reforming the Council organization, and that includes reforming its culture. As soon as the elected members of the local government took their democratic authority seriously enough to challenge the bureaucratic stranglehold on the local government system, the State Labor government stepped in to restore the ascendency of the bureaucracy over the elected members. That is the bottom line of the Bulford Report.

There are two arms to government – the political and the bureaucratic. In a democratic system, the elected members are over the non-elected bureaucracy. This is how it is in the Federal and State governments. An elected member of the Parliament is appointed to be a Minister to preside over a government department. There is no

question as to who is boss. Since an elected representative of the people is in control of the bureaucracy, this means that ultimately the people are the boss and the bureaucrats are their servants - public servants!

According to Section 232 of the Local Government Act, the role of the Councillor is defined in the these terms:

As a member of the governing body of Council

- *To direct and control the affairs of Council in accordance with the Act.*
- *To participate in the optimum allocation of Council resources for the benefit of the area.*
- *To play a key role in the creation and review of the Council's policies and objectives in criteria relating to the exercise of the Council's regulatory functions.*
- *To review the performance of the Council and its delivery of services and the management plans and revenue policies of the Council.*

At first blush, this looks as if the local government is a democracy along the same lines as the first two levels of government. In the case of the Council, however, these powers are only exercised to the extent that the State government will allow. The Council exists at the mercy, whim and pleasure of the State government. The State government has the power to take over in any matter that it considers too important to be left in the hands of the Councillors.

People at a regional level have very little control over their own destiny. Their elected representatives are allowed to go through the motions of democracy by making very circumscribed decisions on things not of the highest level of importance. The government wants all the really important decisions that affect the destiny of the local region to be where the government can get a better handle on their control, and that means putting them in the hands of the bureaucracy system.

My experiences over recent years have shown that democracy at a regional level is so emasculated that it does not exist except in the limited measure that the State government is prepared to allow.

I am not contending that a local government should operate without reference to State and Federal law, for all levels of government must do that. It is the prerogative of the State and Federal government to pass laws for the governance of either the whole of State or the whole of Australia respectively. In NSW there is a Local Government Act, there is an Environmental Planning and Assessment Act, there is a Coastal Protection Act, there is the Health and Safety Act, and so on. That Council should be subject to these State laws is not in question.

This kind of subjection to State authority, therefore, <u>is not at issue</u>. It is not at issue in the Bulford Report either because the Report cannot show that the majority Councillors have acted contrary to any Local Government Act nor that they have broken any other State or Federal law. The Bulford Report is putting pressure on the Council to do certain things that are not required under the Act – things that should be left at the discretion of Council.

<u>What is at issue</u> is the arbitrary, vexatious, politically motivated and blatant bureaucratic interference by State government authorities in the legitimate processes of democracy at a local government level.

As this country heads toward forming an inevitable republic, the revision of our Constitution will be part of the process. A Constitution formed over a century ago is obviously not adequate for the 21st Century.

The place of local government under the Constitution has to be considered, especially **<u>to protect it from arbitrary political interference of the State government.</u>**

A strong sentiment in favour of by-passing the second tier of government more and more is gathering momentum.

If the Bulford Report and my *Study*, being a lively exchange between a bureaucrat and a Councillor, can stimulate more people to join this Constitutional debate, it will be a worthwhile exercise.

<u>DEMOCRACY SUBVERTED</u>
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APPENDIX

APPENDIX

Explanatory Note:

The first document in this Appendix (*An Investigation*) is the one I presented to the General Manager and the one that led to the Bulford Investigation. The second document (A Further Statement) is a follow up paper sent to the Local Government Department after the Bulford Investigation was commissioned.

There is some very slight editing of the above documents, but nothing in the matter of substance. In most places where the original documents used the expression "Council officers," the version in the Appendix generally reads "planning department." This has been done to make it clear that the comments were always intended as a critique of the bureaucratic system, and not the individuals. In the original documents, the expression "Council officers" was used in a generic rather than in a personal way. These documents are clear, concise and speak for themselves. They will help the reader judge for him/herself as to whether Mr. Bulford addressed these concerns or tried to cover them over.

The protest letter of Ken and Lyndell Small to the Local Government Department is a very important document because it was central to the concerns raised about the Kings Forest LES process. The Smalls' Diary of Events provides further valuable information, proving that Mr. Bulford's comments about this area of his investigation have been crafted to mislead the reader.

Several letters from community groups protesting their treatment at the hands of Council's bureaucracy are also included in this Appendix. These are not the only letters of this kind that could have been exhibited here, but they are put here as a sample of a widespread community concern.

Included in the Appendix is also a copy of part of the consultant's Draft Comments sent to Council's Planning Department wherein, at the end of the paper, the consultant asked if his outline was saying what the department wanted it to say Finally, the Appendix contains a copy of my statement to Council concerning my response to the recommendations of the Bulford Report.

AN INVESTIGATION

THE LOCAL ENVIRONMENTAL STUDY (LES) FOR KINGS FOREST

By Bob Brinsmead, Acting Mayor, Tweed Shire Council. 8/5/01

Introduction:

The Local Environmental Study (LES) and Draft LEP for Kings Forest is now on public exhibition. This LES purports to be the work of an independent consultant (GHD). The facts are that another **finalised** LES for Kings Forest was presented to Council's planning department in October 2000. It was unacceptable to the planning department, and it insisted that it be significantly revised in a number of areas. At considerable extra cost to Council, GHD complied. The LES on public exhibition now is actually the revised LES. It is a document that has been manipulated into existence by Council's planning department. It cannot be said that this LES represents the work of an independent consultant.

Hereunder is a precis of the documented evidence drawn from Council's own files on Kings Forest.

Council appointed GHD to prepare an LES and Draft LEP for Kings Forest in June 1999. (The brief has not been cited at this stage)

- Graham Judge notes in letter cited below that GHD provided Council(officers) with a
  preliminary draft document on 17/3/2000

- On 20/7/ 2000 Graham Judge wrote to the Manager of Strategic Planning (presumably Douglas Jardine) saying that he has seen a preliminary Draft of the LES prepared by GHD. Judge says that the staff needs to resolve any issues in the LES before government authorities or Narui (the Kings Forest developer) sees it. Then he adds, **"Once the LES and Draft LEP has been finalised to our satisfaction I suggest that Council organise a meeting with Narui and relevant government agencies."**

  Apparently in the brief to GHD provision was made in the costing for a workshop with the stakeholders of the Kings Forest project. Judge suggests that while there is not much danger that this workshop could influence any changes in the LES, he says that it could influence some changes in the Draft LEP. (Judge apparently favored a very managed kind of workshop!)

* GHD's Shaun Lawer wrote to GM 5/9/2000 saying, "the final draft of the LES will be completed by 20/9/2000." Apparently Council officers had requested a meeting with GHD (Jock Palmer and Shaun Lawer) on 25/9/2000 to discuss concerns about the LES.
Lawer says this extra meeting will cost Council $1400.

- Graham Judge wrote to D. Jardine 25/9/2000: "**I have been informed…that GHD will be presenting their final report on the KF LES and Draft LEP review to Council officers at the Canvass and Kettle Kitchen on 28/9/ 2000."**

- G. Judge wrote to Jock Palmer(GHD) on 4/10/2000 saying he received **GHD's final invoice for LES.** He asks why the account (costing) should include an extra charge for the Workshop which had been agreed to earlier and was in the original costing. (The answer to this question appears to be that the workshop was scheduled by Council officers after the August 2000 LES was delivered to Council.)

- On 26/9/2000 Judge forwarded to GHD (via Lawer) a 3 page critique of GHD's LES and asked for amendments to the document. As we will see, this 3 page critique of the LES was later expanded to 11 pages by Council officers.

- 40 copies of what Lawer calls **"the finalised Kings Forest LES" was supplied to the GM on 19/10/2000.** It was after this that a series of meetings with Council officers, DUAP and Stakeholders was set in place. Council officers requested a revised LES with a lot of changes - as we will see by evidence below. In this correspondence by Lawer, it also mentions that **an early draft of the LES was sent to G. Judge on 15/3/2000,** with the observation that GHD was still awaiting the Species Impact Statement(SIS) by James Warren and a reply from NPWS. (**It happens that Council officers never gave GHD Warren's final SIS document. Why not?)**

- **On 24/11/2000 the Director of Development Services wrote a note to the Director of Engineering Services raising objection to the Depot Road/Old**

Bogangar Road connection (which was favoured in GHD's August 2000 LES).

- GHD (JP) wrote to GM 11/12/2000, mentions meeting with DUAP at Grafton on 7/12/2000, and has this comment: **"hopefully GHD will now be in a position to finalise the LES/LEP to Council's satisfaction"** and "will provide more justification for the proposed zonings identified in the draft LEP." And further**, "In this regard, GHD awaits Council's written summary of the deficiencies in the LES document."** Palmer concludes by saying that since this DUAP meeting at Grafton was requested by Council, GHD would cost it to Council. (The rates appeared to be from $1200 to $1400 per day from information gathered from a number of letters and accounts).

- Douglas Jardine wrote GHD on 10/1/01 detailing what changes would be needed in the LES. The letter says, **"…find enclosed detail of the matters to be addressed in the Kings Forest LES prior to exhibition." "You are requested to review and amend the LES in the light of this material."** The enclosed instructions to GHD was an 11 page document outlining all the changes required in the LES before it could be publicly exhibited. Here are some of the changes called for:

- *The LES needs to be more critical of the Kings Forest DA. *The Jardine document says that there are many aspects of the LES that call for improvements. *It requires the LES to point out the inadequacies of the Gilbert and Sutherland report (which Jardine says that Council officers have not reviewed themselves). GHD's August 2000 LES had said that Gilbert and Sutherland's "assessment is still considered satisfactory." But Jardine asks that this favourable judgment of these consultants should be reversed.

- *The Jardine documents outlines many points and conclusions in the August 2000 LES which are not acceptable to Council officers. *It says that the Draft SIS of James Warren was forwarded to Council on 29/5/2000, that **Council did not review this Draft,** but nevertheless Jardine asks that the Warren be refuted. "For example it should explicitly state in the LES that the Draft SIS is significantly deficient…GHD indicated in p.61[of the LES] that they have reviewed the draft SIS," but Jardine goes on to say, "but there are no comments on the deficiencies of the SIS." Jardine asks GHD to delete from the LES comments by James Warren**. (It should be pointed out that Council officers withheld Warren's final SIS from GHD! On what basis could GHD refute it if it had not reviewed it?)**

- ***The Jardine document asks GHD to revise the LES to include alternative (preferred) access from Kings Forest to the Old Bogangar Road.** The above points are just samples of the kind of changes that Council officers required.

- **At the very least, the planning department tried to lead the independent Consultant. At worst, it directed or tried to influence the Consultant's independent report. It appears that all the changes sought by Council officers found their way into the revised LES.**

- GHD letter to J. Jardine arranging meeting of Jock Palmer, D.J. and David Broyd l PM 26/2/01 to discuss Kings Forest LES. Palmer advised that this would be at an additional cost to Council. Given what the planning department put in writing to the Consultant, we are only left to wonder what it might have said to influence the Consultant face to face.

- GHD letter to GM 28/2/01 says, **"GHD are now amending the LES to satisfy Council requirements."** The context shows this means the planning department. The revised LES would provide documentation to support Kings Forest road connection to the North rather than by Depot Road. GHD says this additional work will cost $2900.

- Letter by David Broyd to Jock Palmer (GHD) on 2/3/01 says that road access from Kings Forest to Old Bogangar Road should be to the north, and wants GHD to address these issues for the additional fee of $2900. Broyd suggests a telephone line to discuss(finalise) further work on the revised LES.

- The new (January 2001) LES was released to Council on 7/3/01. See report to Council on 21/3/0l**.**

Some Concluding Observations:

The above exchanges, drawn from the Council file on Kings Forest, confirm in the most explicit way what some of us Councillors have had reason to suspect for some time, namely, that there is an all too cozy relationship that has developed between some consultants and the planning department. It is an outrage for the planning department to pretend that the documents that they secure from "independent consultants" are "independent reports."

This LES now on public exhibition is a document that has been manipulated in existence by the planning department from beginning to end. It is a corruption of process. Documents purportedly secured from outside consultants are made to reflect the views of the planning department.. Council's planning department has in this way corruptly conspired to keep Councillors in the dark about its manipulations, and it has conspired to keep the public in the dark. The LES prepared by GHD at great cost to Council is worthless because it has the manipulative hands of the planning department all over it.

A FURTHER STATEMENT TO THE LOCAL GOVERNMENT INVESTIGATION INTO TWEED SHIRE COUNCIL

Councillor Bob Brinsmead (29/6.01)

New Evidence About the Kings Forest LES PROCESS

After re-examining the matter of the Kings Forest LES, I find compelling evidence of a conspiracy to pervert the course of justice. It concerns the devious way in which James Warren's Species Impact Statement (SIS) was prevented from being duly considered in the LES process. It also concerns how some Cudgen farmers were unjustly excluded from due process as stakeholders. As a result also of the flawed process, very basic literary and professional standards were compromised.

I am compelled to come to these conclusions on the basis of the following evidence:

(1) 40 copies of an LES of Kings Forest, bearing the date of August 2000, was delivered to Council in October 2000.

(There was nothing printed on the document or within the body of the document that would indicate that this LES was a draft. It was both billed to Council by GHD and paid for by Council as "the final LES." But questions about the exact status of this August 2000 LES are really of minor consequence in that this does not effect the main issue at all. Neither do questions about who was given or got to see the August 2000 LES.)

(2) It is clear that Council's Planning department wanted the August 2000 LES changed, or as it said "amended." I have no problem with the fact that the LES was amended. At issue is the process by which the LES was amended a number of times.

(3) The January 200l LES and Draft LEP represents a substantial revision of the August 2000 LES in two respects: the 2nd edition proposed another preferred entrance from the Old Bogangar Road into Kings Forest, and it proposed additional areas of the estate for environmental protection.

(4) The Stakeholders' Workshop of 23/11/2000 was supposed to give all stakeholders, including the developer and his consultants, an opportunity to make submissions in regard to matters to be considered in finalising the LES. **The Cudgen farmers whose land would be traversed by the alternative road access options were not invited to this meeting.**

(5) After this Workshop of 23/11/2000, the planning department acted through a number of exchanges with GHD to secure substantial changes to the LES. Among them were preferred road access options through Cudgen farmland. Proposals to fragment these small and intensive prime farmlands with a four lane road were being put forward without any consultation with these stakeholders. GHD complied to make the changes requested by the planning department, as GHD put it, "to the satisfaction of Council." (See my Documentation, pp. 8-77)

Not only was the Kings Forest landholder and the Cudgen landholders not given the same opportunity to follow up the Workshop with any material that might have made a contribution to the amendment process, but as we will now see **they were locked out of the process entirely. The process was utterly one-sided and unjust.**

(6) Not long after the Workshop, Kings Forest delivered to Council, as promised at the Workshop, the document that was crucially relevant to the two big issues - the road access to Kings Forest and the areas of environmental protection. This document was James
Warren and Associates' 900 page Species Impact Statement (SIS). The size of this document dwafted all other documentary contributions, and its importance was absolutely central to the whole LES process.

The following facts indicate a conspiratorial manipulation of process to sideline and disregard the SIS in the preparation of the 2001 LES.

(7) The planning department had entered into an arrangement with Kings Forest in 1999 to pass on all relevant King Forest studies to GHD. (See Bolster submission)

(8) The LES Brief given to GHD specified that all relevant studies done by the Kings Forest consultants, including the SIS, were to be used in the preparation of the LES.

(9) When GHD was preparing the LES early in 2000, it was very conscious that it needed to review the SIS by James Warren and Associates. GHD's Shaun Lawer asked Council officers for this document loud and clear. (See Letter to Graham Judge, 15/3/2000.) In May 2000 GHD received Warren's draft SIS. (See p, 100 Documentation) This draft was barely more than half the size of the final SIS because much of the work remained to be completed. Only this very incomplete draft edition was available at the time when GHD was finalising the August 2000 LES. This SIS

was clearly identified as a draft, and was always called a draft by GHD, NPWS and Council's own DDS. (See Documentation, p.111 and NPWS letter in the appendix of the January 2001 LES **)**

Everyone involved in the LES process knew that that the final SIS was pending.

(10) At the Stakeholders Workshop on 23/11/2000, GHD and Council officers were informed that James Warren's final SIS was imminent. The Workshop flagged the need of a Koala Management Plan, especially to deal with the issue of the road access to Kings Forrest. James Warren told the Workshop that a Koala Management Plan would be included in his imminent SIS. (See Peter Sippel's Notes of this Workshop)

(11) This SIS was given to Council on the 4th of January (2001). It contained nearly 400 pages of addition material -

- Koala Management Plan, including its relation to the Depot Road access;
- Management of rehabilitation areas and of buffer zones. Plan of buffer zones;
- Impacts of change in hydrology on SEPP 14 wetlands;
- Results of Koala faecal pellet analysis;
- Consideration of alternatives to the proposal;
- Ancillary Management - Training of workers on the site;
- Threatened species assessment under the Commonwealth EPBC Act Assessment;
- Updated Conservation Assessments (RFA's) (See Warren Letter 5/7/2001)

Although Council's planning department and GHD continued to work on making changes to the LES for 3 months after the final SIS was released, **Council officers did not forward this SIS to GHD, and GHD did not ask for it. GHD's silence on this matter is quite deafening!**

(12) Instead of sending this vital SIS to GHD, which they had in principle committed themselves to do in their original arrangement with Kings Forest, Council officers sent it to Steve Phillips of BioLink instead. Council officers did not even review the SIS themselves, but they contracted Steve Phillips to critique it. (I cannot find any Brief for the BioLink consultancy) Steve Phillips' critique of the SIS was then sent to GHD. Without seeing, much less reviewing the SIS for itself, GHD copied the BioLink comments into the LES without referencing the source.

From the standpoint of literary ethics, this was totally unacceptable. It is what could only called *collusive plagiarism*.- that is, plagiarism by mutual complicity.

(To illustrate the magnitude of this literary cheating, I would liken it to a candidate doing a degree paper on the Judeo-Wars with Rome between 66 AD and 135 AD without reviewing the only Jewish work available, namely the *The Wars of the Jews* by Josephus. Instead of reviewing Josephus, suppose the candidate simply copied what another author
had said about Josephus without even acknowledging the literary borrowing. A supervising professor would surely disqualify that candidate's entire thesis.)

(13) GHD must have known of its ethical obligation to read the most crucial document supplied by Kings Forest - the final SIS. On 23/11/2001 GHD was alerted

that the SIS, including a Koala Management Plan, was imminent. But for some months after this SIS
was put into the hands of the planning department, did GHD ever ask to see this SIS? Did it even want to see it? I cannot believe that this was an accidental oversight. There had to be a conspiracy not to review a document that was so central to the LES process.

(14) James Warren's SIS, more than any other document available to the planning department and GHD, had addressed the issue of the Kings Forest road access. It had supported the Depot
Road option with a Koala Management Plan. Far more than any other document, this SIS
addressed the issue of wetlands, land with conservation value, and flora and fauna analysis. **But Council officers did not even read it and GHD did not even ask to see it.**

(15) As a follow up to the Stakeholders' Workshop of 23/11/2001, the Warren SIS was meant to be Kings Forest's major contribution to finalising the LES. The size and thoroughness of this SIS document dwafted all other documentary information available. But apparently this SIS was not wanted and might as well not have been written as far as the planning department was concerned. It had another agenda. They set the SIS aside without reading it, and GHD finalised the LES "to Council's satisfaction" without even sighting it. Amazing!

(16) **It is incontestable that the main stakeholder, Kings Forest, was corruptly shut out from being heard when there was a legal and moral right to have its SIS properly reviewed and considered, especially because it addressed the most critical issues of the LES . Its $200,000 plus investment to provide the SIS for the LES process was treated with contempt.**

(17) The planning department apparently had eyes only for their pre-determined agenda, and as my previous documentation demonstrates. The planning department directed GHD to make statements critical of Warren's SIS which it had not even read. And GHD amended the LES to include perjorative statements about Warren's work without even seeing the final SIS. Gilbert and Sutherland's soils report was treated the same way.

(18) The planning department asked GHD to put into the LES three new road entrance options for Kings Forest. These road options affected a number of prime agricultural properties. This made these landowners valid stakeholders in the LES process**, but they were denied natural justice by not even being told about the proposal to fragment their small but intensive farms until after the LES was published.** Naturally, the LES did not report their determined refusal to provide an entrance to King's Forest through their lands.

These new road options were never subjected to a proper study process, nor any kind of consultative process with concerned stakeholders. They were hasty, surreptitious, half-baked proposals that never had any realistic hope of implementation. Yet GHD put into the LES these new road access options, and even identified one of them as the preferred option - all at the direction of the planning department.

Near the end of this process of making more and more amendments to the LES, GHD was quite obviously flying blind to instructions from the planning department, as this letter from Graham Judge to Jock Palmer of GHD illustrates:

"At a meeting today between council engineers, David Broyd and myself the engineers outlined another access option for Kings Forest that reduces the length of road acquisition and road works. David has requested that Figure 25A of the LES will need to be amended…the text of the LES will also need to be amended. The DDS accepts there will be an additional cost to GH for these amendments." (13/3/200l)

(19) And so this last minute amendment was rushed into the LES by GHD. Yet these amendments were of enormous significance to the whole viability of Kings Forest**. Also, the affected Cudgen farmers were outraged by the unjust stealth of an LES process that did not even have the courtesy to inform them how they would be radically impacted until after the LES was published.**

So much for the claim that GHD was an independent consultant! Was there anything that the planning department asked GHD to say in the LES that was not put into the LES - at a price? I can't find anything.

(20) This conspiracy to shut Kings Forest out of the LES process by side-lining Warren's SIS had the potential to massively damage Kings Forest's interests. After spending ten years and tens of millions of dollars in the planning process, Kings Forest faced the prospect of being rendered land-locked and non-viable - its project destroyed by this and further land grabs for environmental protection that the SIS showed could not be justified.

The LES process was unfair, unjust and corrupt.

The Big Picture

It is my view that one needs to look at the LES process for Kings Forest and Seaside City in the broader context of how the Planning bureaucracy operates.

It is my belief that Tweed Shire Council's Planning bureaucracy orchestrates and manipulates the system (process) to achieve pre-determined outcomes. This includes orchestrating and manipulating the consultancy processes - community consultancies, stakeholder consultancies, Workshops with Councillors, Business Papers, Planning consultancies and Legal consultancies - to arrive at desired ends.

What has happened in respect to the Kings Forest LES should not be seen in isolation as if the manipulation of the planning process in this case was some kind of lapse. It has rather been an expression of a deeply entrenched culture - so deeply entrenched that the department that has manipulated the process to reach its pre-determined end is probably surprised and aggrieved that its entrenched *modus operandi* is now being called into such radical question.

I want it to be understood that this critique does not spring from the least personal ill-will toward any person caught up in this system. The problem is largely in the nature of the bureaucratic beast and the culture that has been allowed to develop over time.

I am not naïve enough to think that this is something peculiar to Tweed Shire Council. "Yes Minister" came into being as a television hit only because it was able to resonate with an audience which knew that all bureaucracies tend to operate this way unless they are
subjected to constant scrutiny, reform and change.

If required, I can furnish many documented examples to support the above observations - in the Tagget Case, the Karlos Case, the Chinderah LES, the East Cudgen Land Case, the Roy Rudman Case, the Bob Abnett Consultancy Case, the Mike Cullen Case, the Fred Lizzio Case and many others.

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Mr. Gary Payne
Director General
Department of Local Government
Locked Bag 1500
BANKSTOWN NSW 2200

5th July, 2001

Re: Investigation of Local Environmental Study – Kings Forest, Kingscliff

Dear Sir,

We are landholders concerned in the above study. Tweed Shire Council's "Preferred Road Option 3 – 600 mts North of Depot Road" is proposed to run directly through our property at Lot 13, Old Bogangar Road in Cudgen.

Our first objection is about the unjust process by which we were advised of this road plan. We believe that we were denied natural justice to object to, or have any input into this matter at the appropriate time that other interested parties were allowed to do so. In fact we were not advised until after the LES was published.

The Local Environmental Study was published at the end of March 200l. Prior to this there was a "stakeholders workshop" apparently conducted on the 23rd November 2000 which we were not informed of either.

Our first knowledge of the road proposal affecting our farm was on receipt of a letter from Council on the 6th April at approximately 4.55pm our answering machine recorded a message from Mr. David Broyd requesting us to "Please ring me at the Council Chambers."

Mr. Broyds apparent attempt to divulge the substance of this letter, on the eve of its arrival, indicates the appalling and disgraceful lack of consideration accorded us by Council.

We repeatedly tried to contact Mr. Broyd, but he was "unavailable to speak to" for some days. And appointment was finally arranged with him for 3.30pm on 12th April 2001.

At this meeting Mr. Broyd told us that his and Council's preferred option for the road was through our property and we should lodge an objection if we wished to.

Mr. Broyd told us the LES would be on public display, where we could look at it in length at the Kingscliff and Tweed Heads Library the next day.

However we already aware of this, as were all residents of the Tweed Shire. A notification of its display had been published in the "Tweed Link", which is a council newsletter. This had arrived at our household earlier that week.

The newsletter also advised copies of the LES would be available for sale for $200. Not wanting to spend precious time studying the document at the library, and urgently needing to obtain the knowledge needed to respond to it, Mr. Broyd furnished us with a copy of the LES on our request.

The closing date for objections to the proposal was the 11th May 200l, we lodged ours on the 2nd May 200l. A letter from Council dated 10th May 2001 acknowledged recept of same.

Secondly we are extremely concerned by and object strongly to the manner in which the "Inquiry into the LES Planning Process" has been conducted. At no time did the Department's Senior Investigations Officer, Mr. Robert Bulford contact or consult with us on this matter.

Again we feel we were denied the opportunity to express our concerns regarding Council and it's Officers in relation to their inappropriate conduct of this matter toward us. We find Mr. Bulfords failure to communicate with us extraordinary, considering the road corridor proposed in the LES and the questions raised by Councils preferences directly affects our farm and livelihood.

Here is another point why the program seems unusually flawed to us. There was a rigorous investigation of Depot Road and included in the LE study with conclusions of its effects on all aspects of the road route.

However, our land was not even inspected until we invited Council Officers and the Koala Foundation representative to our property on the 3rd May. After their inspection they concluded that what had looked good to them on paper was not looking good in reality and that they should return to Council officers and "go back to the drawing board."

We list for your perusal our following concerns with the proposed roadway and possible ramifications regarding our land:

a) Our farm is zoned "Agricultural Protection 1(b1)" in the Tweed Local Environmental Plan 2000.

The written objectives of this being **"to protect identified prime agricultural land from <u>FRAGMENTATION</u> and the economic pressure of competing land uses"** as stated in the Tweed Shire Strategic Plan 2000.

We find ourselves in a state of disbelief that Council would contemplate the idea of a 40 metre wide, four-lane roadway cutting a swath through farming land that has been zoned Agricultural Protection 1(b).

Ken is a life long resident and a fourth generation farmer of Cudgen, with sons willing and able to proudly extend this heritage into the fifth generation. The ramifications of the proposed "Option 3" roadway would impact not just on us, but also our children's future prospects, as well as our many employees and their families. These people are all dependent on our farms viability for their livelihoods.

b) Our Certified status would be jeopardised by this proposal.

Lot 13 is possibly the most ecologically sustainable acreage in Cudgen.
This farm was registered in 1990 with the Biological Farmers of Australia and now holds the classification of a Certified "A" Organic farm.

To gain this certification we have had to work very hard to improve the quality and sustainability of this land. This in turn has led to increased viability and we now have a reputation as one of Australia's top organic vegetable producers, distributing our produce to Fresh Produce Markets in every state in Australia.
c) The fragmentation of prime cropping blocks will affectively reduce the income earning capacity of our farm as well as creating access problems which would make portions or our land immensely difficult to farm.

d) Resulting Pollution: Air, Noise and Water Runoff:

One of the main reasons were turned to Organic farming in the first place is that one our sons has a severe sensitivity to chemicals. A road carrying projected traffic volumes of thirty two thousand cars a day in such close proximity would jeopardise our son's health.

We have just been subjected to a "minor" upgrade of Old Bogangar Road which has already taken traffic from 500 cars per day to 10,000 which is affecting all our family's health now.

e) Old Bogangar Road does not have access to any Council water supply. Our house water is pumped from an underground spring, this would be threatened by any roadworks or polluted water runoff.

f) Our irrigation main lines are situated underground and any roadworks could severely disrupt the underground water flow which feeds our dam. Placing the dam in jeopardy would have a vital impact on crop irrigation and our farm operation.

g) We have planted over one thousand native trees in corridors around our farm. Native birdlife and other fauna thrive here as it provides them with a chemical and pollutant free habitat which the road would put in severe jeopardy.

h) We host to our farm each year horticultural students from the University of Sydney for a lecture on Organic Farming and Management techniques due to our farm being considered by the University to be one of the most ecologically sustainable and productive farms in NSW.

This land is protected and should remain untouched. We can help educate and show our farmers of the future the techniques of growing nutritionally rich crops for human consumption whilst looking after the environment.

If we can't protect fifth generation "Agriculturally Protected Farmland" what future have we got?

In conclusion we must state that we will continue to stress our objection against this proposed road option and in no way are we prepared or willing to give our permission for it to go ahead. My family's heritage and our life's work are being threatened and it makes us ill to think that this road option would even have the slightest chance of proceeding.

We implore you to give this matter your urgent attention.

Yours Faithfully

_____ _____

Kenneth J Small Lyndel L Small

KEN AND LYNDEL SMALL'S DIARY OF EVENTS

DATE & REFS:	COMMUNICATIONS: KEN & LYNDEL SMALL - CUDGEN
24th March 2000 3797:SL:ar Ref: 221\051680\00	**Letter from GHD** regarding the preparation of LES & LEP for Kings Forest Did not reply to that letter, as the study area did not encroach into or near our property.
30th March 2001 ref: 119r11&a.doc GT1/LEP/2000/20 Pt1	**Notice from Council** of the exhibition of Amendment to the Tweed Local Environmental Plan 2000 and accompanying ES in respect of Kings Forest, Duranbah. No hint in letter of road routes etc or that it would have any affect on our property or livelihood.
5TH April 2001 4.55 pm :	**Message** on answering machine from Mr David Broyd saying: "Please ring me at the Council Chambers"
6th April 2001 9.00 am: ref: 102a06.doc GT1/LEP/2000/20	**Letter received from Council** concluding that the most favourable road access option for Kings Forest would affect our property. A map was attached. Discussed also that negotiation of monetary compensation associated with the land take would be done in a highly respectful manner insofar as the property was concerned. **(Report states this letter was sent on 2nd April (several days before exhibition period))**
6th April 2001	**Rang Council** and were informed Mr Broyd was unavailable to speak to. This went on for some days. Finally we arranged an appointment time of 3.30pm on 12th April.
12th April 2001	**Met with David Broyd** at Council Chambers at which time he told us that it was his and Councils preferred option to go through our property. He told us that we could lodge an objection if we wished by the 11th May. Upon our request he furnished us with a copy of the published LES which was on display at the public Libraries and Council offices at that time.

27th April	**Spoke to Graham Judge** who is to organise a meeting at the farm with people concerned.
2nd May 2001	**Lodged our letter** of objection to Council
3rd May 2001	**Invited Council Officers** & Representative of Koala Foundation to farm to inspect the proposed route. Their conclusion after inspection was that they should return to the office and "go back to the drawing board", as it was plain to see that this route would not be viable. Graham Judge, Douglas Jardine, Steve Phillips of Biolink, Rang Steve Whitehead at Ag Dept; he could not attend.
10th May 2001 ref: 107r09&a.doc GT1/LEP/2000/20 Pt2	**Acknowledgment letter from Council** having received objection correspondence.
May 2001 …… …… …… …… May 2001 cont'd	**Contacted Councillors seeking support:** Spoke to Cr. Boyd, Rang but did not get to speak to Cr. Beck, Spoke to Cr. Brinsmead **Cr Brinsmead** spoke with us. We asked for help with regards to fighting the proposed road route through our property. We also asked him if it was proper practise for the LES to be printed with this option even though we had not been notified. He informed us that we had recourse through writing a formal complaint to both the Tweed Shire Council and the Department of Local Government if we wanted to. Lyndel drafted a letter and did get Cr Brinsmead to look it over, but it was written in her words. The only outside help with the letter was from the aid of a teacher friend who helped her edit it. I signed this letter and believe it was well written to this day. This was our letter of 5th July. Cr Brinsmead did not tell us what to put in that letter and it is an insult to my wife's intelligence to imply this. The insinuations in the Report that our contact with Cr Brinsmead before & after writing the letter had strongly influenced our complaint against Mr Bulfords conduct of the investigation is incorrect. We simply sought assistance from our local Councillor about our rights. We knew there was an investigation already going on at this point and we were unhappy that the investigator had not attempted to contact us.
Tweed Link Issue 224 May,2001	**Council Investigation Underway** article in Tweed Link
5th July 2001	**Letter to General Manager TSC – A formal complaint** regarding lack of consultation with us re: the Kings Forest preferred road route dissecting our property prior to LES being published. Also the failure of Mr Bulford to communicate with us during the time he was in Murwillumbah offices conducting an investigation of Council procedures or lack therof concerning the LES.
5th July 2001	**Letter to Director General, Department of Local Government, Mr Gary Payne.** Similar letter to the above, detailing our late knowledge of our farm and livelihood being put at risk with a road dissecting our farm being

	published as the preferred route from Kings Forest. Also that we were astounded that as an enquiry was already being conducted by Mr Robert Bulford about Tweed Shire Councils lack of correct procedures we found it extroordinary that he had not contacted us or consulted with us. We were of the opinion that the late inclusion of differing road routes was of major concern in this investigation.
11th July 2001	**Attended Community Access Session of Council** with our concerns regarding the road route and its repercussions on our livelihood and sustainability as an organic farm.
Friday 13th July 2001	**Gold Coast Bulletin article published** by Ken Sapwell who was in Council public gallery when we spoke, and also interviewed us Thursday 12th.
Friday 13th July 2001	**Phone interview with ABC radio 9.30am**
Friday 13th July 2001	**Interview with NBN News**
15th July 2001	**Tweed Business & Community News** published an article with extracts from our letter of 5th July, which came from the community access meeting we attended. They headlined it "Cudgen Farmer Slams Bulford Inquiry".
11th July 2001 FF01/0095 DTS 66003	**Letter from Department of Local Government signed by Mr Garry Payne** was **received Monday 16th**. This acknowledged receipt of our correspondence and informed us that our issues would be considered as part of the investigation currently being carried out by Mr Robert Bulford and had been referred to him accordingly.
16th July 2001 116jj2 GT1/LEP/2000/20 Pt 3 – 613993	**Letter from General Manager, TSC,** acknowledging receipt of our 5th July correspondence. Also that he had been advised that we addressed the Community Access Session of Council on 11th July. Advised that an investigation was currently underway by the Dept of Local Government and that he had forwarded copies of our letter to both Mr Garry Payne and Mr Robert Bulford the investigator.
11th Sept 2001 FF01/0095	**Strictly Confidential Letter from Department of Local Government, Mr Robert Bulford.** Advised it would only be appropriate to discuss the confidential extract of the Bulford report he had enclosed with a legal adviser and no one else. The extract was regarding our letter of 5th July. He quotes part of our letter which appeared in an article…"We find Mr Bulford's failure to communicate with us extraordinary" then states he finds this statement quite unfair and unfounded. He still did not admit that the investigation was well underway at the time of our complaint, nor concede that he had indeed not contacted us prior to the letter being sent to his Department. He extract also stated our letter of complaint was published in the 15th and 21st July edition of the Tweed Business and Community News.

September 2001	**Phoned Mr Bulford to discuss what was in the draft report** as it appeared that Mr Bulford was upset with us about the headline of the article that had appeared in the Tweed Business and Community News. Ken rang him to clear the air telling him that we had nothing to do with the article headline and that we were not attacking him personally. Ken told him that he was just a farmer trying to protect his livelihood. Ken did not distance himself as Mr Bulford puts it, but reiterated, that we did not believe Council had followed correct protocol and had put us and our farm in jeopardy without consulting us or doing any investigations on the impact of a major road going through our property prior to the release of the LES of Kings Forest. He also told him that he still found it extraordinary that he (Mr Bulford) had not consulted with us while he was in Murwillumbah, and that if he had, a lot of matters may well have been cleared by him doing so. Mr Bulford arrogantly told Ken during this phone call that he thought he was just an ignorant farmer who had shot his mouth off, and that Councillor's were using him. Mr Bulford states in his report that he believed that the tone of this conversation was "conciliatory, excusing and apologetic" when by the end of it, it was actually anything but. These insults were why we sought a solicitor advice. Mr Bulford put his one-sided version of this conversation in the Report much to our disgust.
4th October 2001	It took a week to get an appointment with a solicitor, who then unfortunately got sick and went on leave for one week. The solicitor completed a draft reply for us 1 day after the deadline. We faxed this through on the 4th October. **Letter to Mr Bulford** addressing his draft of section 4.7 of the Report into Tweed Shire Council. Addressed matters in the draft regarding our letter of complaint and the article in the Tweed Business and Community News. Mr Bulford infers in this draft that our letter of 5th July to his Department in which we complained about his lack of communication as well as Tweed Shire Councils was unjustified. a) The letter Mr Bulford refers to, as his reply in this draft was in fact the letter we received under the signature of Garry Payne of 11th July, saying that our letter had been referred to Mr Bulford who was conducting an investigation and that our issues would be dealt with under section 430. The letter of 11th July was not a reply to our complaint. b) Secondly he misreported that our letter was published twice in the Tweed Business and Community News. We informed him that this was incorrect as it only appeared once. Hence, it still stands true, when we wrote our letter of complaint on the 5th July, he had not contacted us, moreover, the investigation of Council practices had been underway since May so he had had ample opportunity to do so. We asked him to remove the material from the report. He did not.

TERRANORA LANDOWNERS GROUP
(Including BOLSTER and ABERNETHY)
c/o Mr Geoff Greber, 153 Mahers Lane, TERRANORA NSW 2486

10th August 2001

The Hon. Harry Woods
Minister for Local Government
Suite 2, 105 Pound Street
GRAFTON NSW 2460

Dear Mr Woods

Complaint re Lack of Departmental Action on Requested Investigation

We are writing to you as a last resort having tried to have our grievances investigated by your Department.

TLG is a group of twenty farmers with some 276 hectares in the Tweed Shire and we applied to your Director General to have our situation investigated along with the present investigation of Tweed Shire Council regarding Kings Forest and Seaside City projects. The Director General has forwarded our letter to his Investigator, but this gives us no confidence that our complaints will be attended to.

We thought the Department was there to help and protect the community, but this is apparently not the case. They are there to help and protect their mates in Local Government and choose to ignore evidence that clearly demonstrates a major problem with the Tweed Council planners.

We pointed out to your Director the consequences of the recent HIH insurance case, when the regulators did not do their job and the community suffered as a consequence. Our problem is not of the same magnitude, but the principle is the same. Tweed Council planners have failed to carry out their duties consistently and without bias. They misrepresented our projects and provided information to both Councillors and the TLG that was incorrect and misleading. They have cost the ratepayers and the community hundreds of thousands of dollars. Have you ever wondered why Tweed Council always asked for a rate increase well above the Government's cap?

The Department's Investigator seems intent on working in a vacuum. How can he judge the Council's performance (or lack of it) on only two projects? Our problems and the loss of some $200,000 are being ignored. The whole investigation process is shrouded in secrecy, with no transparency or public accountability. It will not surprise us and many others in the community if the Department tries to 'whitewash' the whole issue.

TLG provided a detailed letter to the Director General and undertook to make available all documentation supporting our claims. The key paragraph of our letter stated:

> *"As the Local Government regulator, TLG is sure that you wish to find the truth about the activities of Tweed Council Planners. We ask for reconsideration of our case being included in the current investigation or, given the $200,000 lost by us to date, a separate investigation be undertaken by your Department..*
>
> The information we have supplied is the " tip of the iceberg". TLG has been poorly serviced by senior officers paid by the ratepayers, and who supposedly have the community interest and public good at heart."

The response from your Director General does not address our complaint. He says he will not extend the Terms of Reference and that is his decision, although it is unfortunate that he does not deem it necessary to give us any reasons. But he makes no attempt to respond to our request for a separate investigation. This only deepens our concern that the Department has no desire to get to the truth of the matter.

So you can see Minister, that all attempts through official channels have met with zero result. All we get is refusal without reason. Originally from Council and now from State Government. It seems that in NSW, the only way to get action from the bureaucrats is to take the case to National TV.

As the Minister responsible, we ask that you look into our complaint and take action that will bring the activities of the Tweed Council planners to account. We await your early response.

Yours sincerely

Geoff Greber
On behalf of Terranora Landowners Group.

TERRANORA LANDOWNERS GROUP
(Including BOLSTER and ABERNETHY)
c/o Mr Geoff Greber, 153 Mahers Lane, TERRANORA NSW 2486

17th July 2001

Dr John Griffin
General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH 2484

Dear Dr Griffin

COMPLAINT – Rezoning of Area E, plus Bolster and Abernethy Properties

I write on behalf of the Terranora Landowners Group, which includes the Bolster and Abernethy properties. The land parcel is known as Area E in the Tweed Residential Development Strategy with a combined area of about 276 hectares, including the Bolster and Abernethy properties.

TLG lodges this formal complaint and request for action regarding:

1. Council's failure to act on the rezoning of Area E, Bolster and Abernethy properties as set out in the Tweed Residential Development Strategy, the Tweed Shire 2000+ Strategic Plan (prior to amendment on 17th May 2000 without consultation), and Council's resolution of 19th July 2000.

2. The conduct of Council's Development Services Division and Strategic Planning Unit for:

- not carrying out their duties consistently and without bias,
- providing information that was incorrect and misleading,
- breach of the Integrated Local Area Planning principles,
- failure to communicate with the landowners on important decisions that affect their future livelihood,

- instigating the expenditure of some $200,000 by the landowners for preparation of investigative reports that the Director now classifies as "no definitive studies have been undertaken", and
- actively working to frustrate, delay and ultimately quash the rezoning of Area E and associated properties without good and cogent reasons.

TLG asks Council to:

1. Immediately activate the rezoning of Area E. Bolster and Abernethy properties in accordance with Council's resolution of 19 July 2000.

2. Appoint a private town-planning consultancy to undertake the preparation of the Local Environmental Study, the LEP Amendment, and a draft DCP for the rezoning of Area E, Bolster and Abernethy properties exclusively. (Not involving Black Rocks or Chinderah.)

   TLG's investigations indicate the job can be done by a private firm for a fixed fee of around $37,000. TLG members will contribute this amount. Cost of over-runs, delays and variations to be met by Council as the Project Manager.

3. Advise TLG on the details on how Area E is impacted by decisions on north facing ramps at Kirkwood Road and the Tweed Bypass, and the construction of the Tugun Bypass and the Cobaki Parkway.

   We saw in the "Tweed Link" that Area E rezoning will be stopped because of these roads. TLG has had no advice or contact from Council on this matter. We do not understand why Council would want to channel the traffic to Queensland on the Pacific Highway, instead of directing the traffic to Tweed Mall, Tweed City or other shopping areas in Tweed Shire.

4. Investigate why the Strategic Planning unit negotiated a 50% fee of $36,375 towards a contract planner for Area E. Black Rocks and Chinderah, then without discussion, increased the contribution to a 62%

fee of $45,000 for doing the same planning work. Area E work should cost around $37,000.

5. Investigate why the Strategic Planning Unit stated that Area E was the only significant beneficiary of the proposed Broadwater Parkway (Neponyah Road to Fraser Drive through Area E). The road is part of Council's own Tweed Road Development Strategy to service Ocean View Estate, Terranora Village (including expansion area) and Area E, together with relieving the pressure on Terranora Road.

6. Investigate why the Strategic Planning Unit demanded that TLG pay for a Development Application for the Broadwater Parkway for its total length, prior to any further consideration of Area E rezoning, then pay for the total construction of the road.

   As part of our rezoning application, TLG agreed to meet the cost of Broadwater Parkway from Mahers Land to Fraser Drive, which services Area E, with adjustment to road contributions. Estimated cost (1997) is $2.865 million including intersections.

   The demand by Council Planners would mean a major cost in engineering design, survey and other works necessary to provide drawings to the required standard of a Development Application. No prudent business person would carry out these works, nor are they required, until rezoning was achieved. TLG has already supplied sufficient information to demonstrate the road can be built, and this led to its incorporation in the Tweed Road Development Strategy.

   The demand by Council Planners would add $1.892 million to the cost for the whole road, with a section that would be little used by future residents of Area E, but often used by Terranora Village. This seems to be a biased approach.

7. Investigate why the Development Services Division continues to promote Area E as prime agricultural land when they are aware that:

   - 79% of the land is Class 3, 4 and 5 which is <u>not</u> prime agricultural land.

   - NSW Agriculture has stated in writing that they do not oppose residential use of Area E.

   - Loss of the land to farming will not have a negative affect on Tweed's agricultural industry.

   - Land is susceptible to erosion and requires labour intensive farming because of topography.

   - An independent Accountant's assessment showed that only two farms are viable without off-farm income.

- The construction and expansion of Lindisfarne Anglican Secondary School was allowed, with potential farm/school operational conflicts, as the area is to be rezoned residential.

Council already has substantial documentation regarding Area E, Bolster and Abernethy properties. So we do not intend to reiterate the sad background to this complaint, other than to bring to the attention of Councillors, the following key points:

- Area E identified for residential purposes in 1974 Tweed Strategic Plan and in the 1984 Tweed Strategic Plan.

- Area E still included in present Tweed Residential Development Strategy.

- Council statement that Area E is the most cost effective for urban development in the Shire.

- In 1986 and 1993, TLG members provided an easement through their land for sewer and water mains to Terranora Village at NO COST TO COUNCIL. Council reneged on the agreement to rezone Area E as part of this arrangement.

- April 1994, Terranora Landowners Group formed at Council's suggestion to allow englobo rezoning of Area E.

- June 1994, Council resolved "in principle" that the rezoning proceed.

- April 1995, rezoning application lodged by TLG with substantial documentation requested by Council Planners.

- August 1995, Council resolves to prepare the required Draft LEP Amendment.

- November 1995, new Council resolves to tie Area E rezoning to the preparation of Tweed Shire 2000+ Strategic Plan.

- December 1996, Tweed Shire 2000+ Strategic Plan delays rezoning for three years on basis of Bilambil Heights proceeding first (Policy & Action No 114).

- December 1999, Council fails to honour commitment to proceed with rezoning Area E. Resolves to extend time for Bilambil Heights landowners to reach agreement on future development.

- May 2000, Council Planners successful in having Policy & Action No 114 changed to delete any reference in the Strategic Plan to rezoning of Area E. No consultation with TLG or the community.

- Approach by Cr. Warren Polglase and Douglas Jardine for TLG to fund a contract planner to assist Council in rezoning Area E, Black Rocks and Chinderah.

- TLG Agrees to contribute $36,375 towards cost of contract planner. Concerned at "open-ended" nature of agreement and potential conflicts over these projects.

- Council increases TLG contribution to $45,000 without proper consultation or good reasons. TLG holds contributions in trust until agreement is properly documented by Council and details agreed.

- July 2000, Council resolves to proceed with LEP Amendments for Area E, Black Rocks, and Chinderah.

- September 2000, Council Planners demand TLG pay for Development Application for whole of Broadwater Parkway before rezoning takes place. Also requires TLG to meet <u>total cost</u> of Broadwater Parkway, when the road will also service other estates and take vehicles from Terranora Road.

- June 2001, "Tweed Link" states that Council is not allocating road funds to Mahers Lane – Fraser Drive area. TLG assumes that rezoning of Area E is again on hold. No communication or advice to TLG from Council on the rezoning situation or the contract planner. We wonder what the case would have been if our contribution to the contract planner had been given to Council, instead of holding the money in Trust until the details of the Agreement were resolved and documented by Council Planners.

We want this formal complaint to Council to be taken seriously and be acted upon by Councillors. TLG has been reluctant to formally complain in the past, for fear of action or retribution being taken by Council Planners to further delay or stop the rezoning of Area E. TLG has documented evidence on the matters raised in this complaint.

The combined cost of the rezoning exercise in meeting Council's requirements for rezoning all properties is now some $200,000. No small amount by any measure. Yet those responsible continue on their merry way uncontrolled and unaccountable. The present investigation of the Planning Division sought by Council in two other projects has encouraged TLG to state its case and seek action. The management problems are obviously much wider than just two projects.

We ask Councillors to take appropriate action to implement the rezoning of Area E, Bolster and Abernethy properties.

If Council is unable to take the required action and address the unconscionable and misleading conduct of Planning Officers raised in this complaint, then we ask that the complaint be referred to the Department of Local Government for action. TLG requests that a copy of this letter be distributed to all Councillors.

Yours sincerely,

Geoff Greber
On behalf of Terranora Landowners Group

TERRANORA LANDOWNERS GROUP
(including BOLSTER and ABERNETHY)
c/o Mr Geoff Greber, 153 Mahers Lane, TERRANORA NSW 2486

17th July 2001

Mr Garry Payne
Director General
Department of Local Government
Locked Bag 1500
BANKSTOWN NSW 2200

Dear Mr Payne

Investigation into Tweed Shire Council's Planning Division
Second Request for the Inclusion of AREA E in the Investigation

Thank you for your response of 28th June, to our request to have the problems experienced with Council Planners in the rezoning of Area E included in the current investigation of Kings Forest and Seaside City. Obviously these are hot political issues, but we can assure you that some of the actions by Council in the Terranora Landowners Group (TLG) applications would equally stir the emotions of ratepayers if the truth were published.

TLG appreciates your action in forwarding our letter to the Department's Senior Investigator. But this gives us no confidence at all that the issues affecting our Group will be investigated. The Council Planners who perpetrated unprofessional and even dishonest conduct walk away with no admonition or disciplinary action. The loss to TLG, Bolster and Abernethy was some $200,000 and we would estimate the cost to the Tweed ratepayers to be at least three times that amount or more. The opportunity cost to the Shire would be in excess of $1.5 million in rates alone, without taking account of other economic factors.

We are motivated to seek your reconsideration of an investigation as a result of recent events in the Federal Government sphere. The failure of the regulatory bodies to act on advice and complaints from the public culminated in the collapse of a major enterprise with far reaching impacts on the public. Whilst our complaint and request for investigation is not of the same magnitude, the principles are clearly the same. Your Department is the regulatory body and the TLG are the victims of unconscionable, dishonest and misleading actions by Council Officers that resulted in substantial losses to-date, years of unnecessary delay, and additional costs in the future.

We understand the limitations placed on you by the current Terms of Reference. But we consider it more important that Council actions that may impinge on the current investigation be taken into account so that the public interest has been served and the Council's actions fully investigated. The problems with Council's Planning Division are wider than just two projects. The Division's ability to frustrate, obfuscate, and delay projects, on occasion with veiled threats to Applicants, is not just perception, but a reality. Headlines and articles in the local 'Daily News' newspaper can attest to this.

TLG is also concerned that current investigations are 'behind closed doors' and it seems, without transparency of process, accountability to the ratepayers, or any public scrutiny. How can the community have any confidence in a process carried out in secret? Without the opportunity for those who have experienced Council's unscrupulous ways to provide evidence, it is unlikely that your Investigator will be exposed to the wider problem. Council's Planning Division has been known to manipulate the facts to support their own predetermined outcomes. If they don't succeed the first time, the Planning Division will dredge up other (often irrelevant) information, dream up new requirements, or simply change the rules (move the goal posts).

The purpose of this letter is to set out some documented facts, to demonstrate to you as the regulator, that Council's Planning Division has a history of poor management and planning that is adversely and unfairly applied to some Applicants. Some reports put to the Councillors for consideration are biased rather than balanced, and sometimes just plain misleading.

The Terranora Landowners Group, including Bolster and Abernethy, own about 80% of the land designated as Area E in the Tweed Residential Development Strategy. The land has been identified for urban development for over 20 years and was considered by Council itself as the most logical area for urban expansion in the Shire. It is also the most cost effective to develop from an infrastructure point of view. Area E is

virtually surrounded by urban development and already includes Lindisfarne Anglican Secondary School (930 Students), which was approved by Council for the site in anticipation of the urban development of Area E.

ABERNETHY PROPERTY

The Abernethy property consists of eight Lots totaling 36 hectares located on Fraser Drive on the eastern boundary of Area E.

Mr Abernethy's efforts to develop his land commenced in 1991, with the preparation of a Development Application for 73 rural lots in accordance with the land's zoning. The Shire was experiencing high growth and a shortage of residential land at the time.

At a Pre-lodgement Meeting in June 1991 as part of the DA process, Council advised Mr Abernethy that he should consider rezoning the land for smaller Lots under 2(a) Residential Zone. This would recognise the shortage of small residential Lots and the proximity of the site to Tweed Heads.

Mr Abernethy proceeded to lodge a Rezoning Submission and a Development Application for smaller Lots in August 1993.

From that point forward, Mr Abernethy and his consultants became embroiled in a bureaucratic nightmare of vacillation, delay, and confusion. Council's Strategic Planning Unit weaved and dodged its way towards an Interim Strategic Plan (what certainty can you have in an "interim" long-term planning document?) followed by a new Tweed Local Environmental Plan. Needless to say, the Interim Strategic Plan cost ratepayers a massive amount, yet never saw the light of day. But it did succeed in stifling development in the Shire for some three years.

After nearly ten years of planning procrastination and some $60,000 in costs to Mr Abernethy, the final result was that Council retained the original rural zoning under the new Tweed Local Environmental Plan 2000. Exactly the same zoning that Mr Abernethy set out to develop ten years earlier, but was dissuaded from doing so by Council to meet its future urban requirements. The same incompetence is still practiced today, with Council Planners saying one thing, feigning agreement and support, then proceeding on an entirely different course of action.

Had Mr Abernethy ignored Council's advice, the 73 Lot rural subdivision would have been completed and sold at a substantially lower development cost. He would have gained a financial return on his investment, the inefficient use of Council resources and cost to ratepayers would have been avoided, and all parties involved would have suffered less stress and anguish.

A brief history of the Abernethy rezoning is included at **Attachment A**. Copies of correspondence and documentation are available if required.

BOLSTER PROPERTY

The Bolster property consists of one large Lot totaling 52 hectares located on Trutes Bay on the northern boundary of Area E.

In August 1994, Council resolved to consider a detailed rezoning application for Area E. At the time, Council was promoting the Integrated Local Area Planning (ILAP) approach, which ostensibly involved the co-ordination of the three tiers of Government with landowners and the community in planning 'local areas'. Area E was a prime example of what could be achieved under the ILAP system and was fully supported by Council.

In May 1995, a rezoning application was lodged with Council for the Bolster property after extensive consultations with Council Officers, who were supportive. It was agreed that about 14% of the site would be developed for integrated village residential, neighborhood retail, and community facilities. The balance of the land (86%) would be rehabilitated as environmental park, foreshore wetlands, and water quality control facilities for the whole of Area E.

A major distributor road (Broadwater Parkway) was included as part of the rezoning and TLG agreed to fully fund the construction of this road from Mahers Lane to Fraser Drive. The road would relieve the heavily used Terranora Road and has been incorporated into the Tweed Road Development Strategy.

At the 'eleventh hour' and without any warning or consultation, Council Officers blocked the rezoning for all of Area E on spurious grounds, the main one being perceived lack of sewerage capacity at the Banora Point Sewerage Treatment Works. Despite all of the communication with Council Planners under ILAP, sewerage treatment capacity problems were never mentioned. As sewerage is a major component of strategic planning, TLG can only conclude this vital information was withheld for some reason by the Planners.
The Planners gave a report to Councillors warning them that rezoning would lead to the STW exceeding its discharge licence, making them liable for criminal prosecution under the EPA's Environmental Offences and Penalties Act.

This statement was profoundly untrue. EPA confirmed that the statement was incorrect. However, no amount of protestation by TLG could move the Council Planners to correct what was a poorly researched and incompetently prepared advice to Councillors. It became apparent that the statement was designed to prevent the rezoning of Area E by threatening Councillors with the potential for criminal negligence. Put bluntly, it was scare mongering.

To resolve the issue, TLG was forced to engage Mr Noel Hemmings QC to provide a legal opinion to Council that they had nothing to fear in considering the Area E rezoning. The legal opinion clearly showed that rezoning of land would not result in criminal prosecution under the Environmental Offences and Penalties Act. This was obvious, as rezoning of land only determines the future land use. Demand on the STW does not occur until Council grants consent to a Development Application and the residences approved are constructed and occupied. Council has a range of controls to ensure that sufficient treatment capacity exists before the development is permitted to proceed. Adequacy of the sewer system is one of the DA controls.

From November 1995, the project fell victim to a 'round robin' of strategic plan preparations. The Interim Strategic Plan took some two years to prepare, but was

never adopted. The Tweed Local Environmental Plan took over three years to complete. The Tweed Shire 2000+ Strategic Plan took a similar period to prepare. This is extraordinary, as the time for preparation of the Plan actually exceeded the "short-term timeframe" strategies of the Plan itself. These are examples of the Planners inability to manage a large strategic planning project. Council made additional resources available to the Planning Division for the specific purpose.

The Tweed LEP attracted some 900 objections and a walkout by some Councillors in protest against the Plan when it was approved in December 1996. The main area of contention was that recommendations from the Community Advisory Committee and community consultation meetings were almost totally ignored by the Council Planners. Substantial changes were made to the Draft Tweed LEP without any consultation with landowners or the community.

TERRANORA LANDOWNERS GROUP PROPERTIES

Terranora Landowners Group (excluding Abernethy) consists of 18 farmer landowners with contiguous properties bounded generally by Fraser Drive, Terranora Road, Mahers Lane and Trutes Bay at Terranora. The land is known as Area E in the Tweed Residential Development Strategy and other Council documents. The land area is approximately 240 hectares.

Although the Bolster land along Fraser Drive and Trutes Bay has been referred to separately in this letter, Mr Bolster has been a member of the Terranora Landowners Group (TLG) since its inception. Matters that affected Area E also impacted on the Bolster property.

Development potential of Area E for residential purposes was first recognised by Council in the 1974 Strategic Plan and again in the 1984 Strategic Plan.

In September 1993, Council Planners recommended that the landowners form a single group and that Council was prepared to consider a rezoning of Area E in accordance with the Tweed Residential Development Strategy. The Terranora Landowners Group (TLG) was formed in April 1994 for this purpose.

In June 1994, a Workshop was held with Council Planners to ensure the correct process for rezoning was followed and to identify the information requirements of Council necessary to processing the rezoning. Council required that work proceed in accordance Integrated Local Area Planning (ILAP) principles.

Before TLG spent many thousands of dollars on the investigations required by Council, it was agreed that TLG should seek a formal 'agreement in principle' to the rezoning. In August 1994, Council resolved to consider the rezoning (10 votes for and 2 votes against).

In April 1995, TLG lodged the rezoning application with Council. During preparation of the rezoning application frequent communication was maintained with Council Planners and relevant authorities under the ILAP principles. Detailed consultant reports were prepared to meet the agreed requirements of Council.

On 2nd August 1995, Council resolved to rezone Area E and to prepare the necessary draft LEP amendment under Section 54 of the Environmental Planning and Assessment Act (9votes for and 3 against). Council also resolved that future development of the land could not take place until the following matters were addressed:

- Adequate sewerage treatment capacity
- Water quality control measures
- Agricultural viability and scenic impact
- Adoption of a section 94 Contribution Plan

On 4th October 1995, a newly elected Council resolved to defer the draft LEP amendment approved two months earlier in August 1995. Council Planners advised Council that the rezoning needed to be linked to the Interim Strategic Plan being prepared for Cobaki/ Bilambil Heights/ Terranora. The Interim Strategic Plan had been underway for some time, but Council Planners never indicated that the rezoning of Area E should be dependent on that Plan. So much for ILAP principles of communication!

On 1st November 1995, only one month later, Council resolved that the Interim Strategic Plan for Cobaki/ Bilambil Heights/ Terranora now be linked to a new Tweed Shire 2000+ Strategic Plan for the whole Shire. Council Planners had met strong opposition to their proposals for the Interim Strategic Plan and wanted to 'bury' the issues in a wider reaching document. The Interim Strategic Plan had taken so much time to prepare that it was virtually useless. The Plan never saw the light of day and was pigeon holed.

The Tweed Shire 2000+ Strategic Plan dragged on for over 12 months until adopted by Council in December 1996. Approval of the Tweed Strategic Plan was beset by controversy. Some 900 objections were received, recommendations of the Council appointed Advisory Committee were ignored (members were actually told they were 'advisory only' and the opinions of the professional officers took precedence), and Councillors walked out of the meeting preventing a vote being taken.

There was a strong feeling in the community that the Council Planners had gerrymandered the Tweed Strategic Plan outcomes. It was the single most important issue that led to the majority of the Councillors being voted out of office at the next Council election.

Council Planners successfully delayed our rezoning for a further three years by including the following statement in the Tweed Shire 2000+ Strategic Plan:

> ***Policy & Action No.114***
>
> ***Long Term Urban Release -*** *The Bilambil Heights Release Area has major infrastructure impediments and requires a multi-ownership planning approach. If after three years no commitment has been given by landowners for infrastructure at Bilambil Heights, then Area 'E' at Terranora should be considered for release subject to other Strategic Plan requirements.*

This statement gave TLG no confidence at all because it stated "should" and not "will" be considered, and its "release" (rezoning has nothing to do with actual release of land for development) would be subject to "other Strategic Plan requirements" that were not defined in the Plan. TLG protests regarding the Strategic Plan fell on deaf ears.

Tweed Council Planners do not seem to understand that **rezoning** is setting aside land for the 'highest and best' use for the future. It is an integral part of strategic planning and is necessary to provide for future growth, give certainty to the community and confidence to the investor market. **Release** for development is the process following rezoning, where the proponents must satisfy Council on infrastructure and other requirements. If the project does not meet Council's requirements, then it does not gain consent to proceed.

Why Area E was tied to Bilambil Heights was never made clear to TLG. Needless to say, the 'multi-ownership planning approach' never took place in the three year period to December 1999.
This was an obvious outcome from the start, as Bilambil Heights owners already had a history of being unable to work together to develop the area. In fact, there were two separate owners groups that would not combine, and Council Planners were aware of this.

Council was forced to abandon their plans for the Lakes Drive Bridge costing $20 million following massive community resistance to the bridge and associated debt. The bridge was essential to the development of Bilambil Heights. It would have turned a quiet residential street into a major thoroughfare and burden the ratepayers with a huge debt. Council had to ban further development at Bilambil Heights due to access problems. It should be noted that Council's own planning documents identify Area E as the most cost effective land to develop in the Shire.

In October 1999, Council Planners deliberately excluded the rezoning of Area E from their Strategic Planning Works Program just prior to the expiry of the three year period under Policy & Action No.114. Other projects that were not included in the Tweed Shire 2000+ Strategic Plan were added to the Strategic Works Program thereby 'jumping the queue'. Council had resolved to rezone Area E, but Council Planners continued to thwart that resolution at every opportunity.
TLG lodged a complaint with the Mayor, which we understand was referred to the Council's Strategic Planner. TLG received no response.

On 15th December 1999, Council resolved to extend the three year period of Policy & Action No.114 by one month to 19 January 2000, to allow the Bilambil Heights landowners to reach a position on future development. The landowners had requested an extension of three years.

On 19 January 2000, Council Planners were successful in having Council resolve to extend the period a further two months to 31 March 2000. One reason for the further extension was to convene a Workshop with landowners of Bilambil Heights and Area E. The Workshop was held on 12 April 2000, after the expiry of the extension period. It merely confirmed that the Bilambil Heights group was unable to proceed as

required by the Strategic Plan. TLG insisted that the rezoning proceed as specified by the Strategic Plan.

On 17th May 2000, Council Planners were successful in removing all reference to rezoning of Area E from the Tweed Shire 2000+ Strategic Plan. This was done without any notification or consultation with TLG. The amended Policy & Action No.114 now reads:

> ***Long Term Urban Release -*** *The Bilambil Heights Release Area has major infrastructure impediments and requires a multi-ownership planning approach.* ~~If after three years no commitment has been given by landowners for infrastructure at Bilambil Heights, then Area 'E' at Terranora should be considered for release subject to other Strategic Plan requirements~~. *No development approvals for the release of land for residential development will be granted until such time as the Tugun Bypass and Cobaki Parkway are commenced to provide appropriate access to the regional road network.*

Council Planners had removed the undertaking of rezoning for Area E by once again 'moving the goal posts' and introducing the need for completion of the Tugun Bypass and the Cobaki Parkway. Rezoning of Area E was never dependent on the Tugun Bypass or Cobaki Parkway, unless Council was contemplating the majority of traffic from Area E heading to Queensland. This would do little to help the economy of Tweed Heads and Tweed Heads South.

There is a large body of water, the Terranora Broadwater, between Area E and these proposed roads. Tugun Bypass is an integral part of the Pacific Motorway (National Highway No.1) and is therefore required for highway through traffic between NSW and Queensland. It is not a requirement for local traffic for a land area some 10 kilometres away.

When fully developed over 8 to10 years, Area E would only generate some 11,000 vehicles per day, with only a percentage of these going to Queensland. Hardly a major traffic load on the existing system in the short term. TLG understands that Federal and State Governments have agreed on the funding of the Tugun Bypass and planning work has commenced.

Cobaki Parkway has nothing to do with Area E as it services an entirely separate residential development west of the Coolangatta Airport with no direct connection to areas south of the Terranora Broadwater.
Changes to the Tweed Shire 2000+ Strategic Plan were not made available for community input, an essential element in any strategic planning process. TLG were given no notification, although Council Planners were clearly aware of the impact on the rezoning. There was no opportunity for negotiation or to object. This is typical of the dictatorial approach of Tweed Council Planners, safe in a monopoly organization and knowing that the clients have no where else to go.

The only shining light in this fiasco was an approach to TLG by Cr. Warren Polglase, who explained that, if Area E was to be rezoned, the only chance was to participate in the payment for a Contract Strategic Planner to assist Council Planners in overcoming a backlog of work. He was contacting other major projects that were also 'on hold'

because of resource problems in Council. TLG agreed to participate, but had a number of concerns regarding the practicalities of spreading one contract planner over three projects.

On 17 May 2000, Council resolved to contract a Senior Strategic Planner for one year at an estimated cost of $72,750 to undertake the investigations for rezoning for Area E, Chinderah, and Black Rocks projects. Funding is to be provided by the proponents in the following proportions:

Area E	50%	$36,375
Chinderah	25%	$18,188
Black Rocks	25%	$18.187
		$72,750

No rationale for calculating the percentage of contributions was provided by Council. The Director of Planning claimed it was impossible to calculate a cost, yet Council regularly seeks fixed costs from external consultants to do this type of work

At a meeting in June 2000 with Cr. Polglase, Council Planners and the Black Rocks proponent (no one from Chinderah), Council attempted to escalate Area E's share from $36,375 to $45,000 following representation by Black Rocks. TLG would not agree to the increased amount and expressed concern that the arrangement was "open-ended" on further contributions for the contract planner.

TLG therefore arranged with a professional town planning firm for a cost estimate for preparation of an Environmental Study and LEP amendment for a large scale urban release area on the NSW North Coast, and the preparation of a draft DCP for the release area. Information regarding consultant studies for the rezoning lodged with Council was supplied.

Cost estimate range received was:

Environmental Study and LEP Amendment	$20,000 to $25,000
Draft DCP	$10,000 to $15,000

On this independent basis, it was clear to TLG that the median price should be $35,000 fixed for the whole job relating to Area E. Council Planners were either receiving some allowance for their own involvement (in addition to normal fees and charges) or were having TLG subsidise the other two projects.
It is worth raising that in 1986 and in 1993, TLG members provided in easement through their land for sewer and water mains to adjoining Terranora Village. This was done at no cost to Council or the Developer, on the understanding given by Council that Area E would be rezoned for residential and would be connected to the services provided through our land.

Council reneged on both promises. The rezoning has been blocked at every turn and Council allowed the Developer of Terranora Village to size the mains to service their area only.

Even worse, Council Planners then demanded that any development in the area obtain approval of the Terranora Village Developer to connect to the sewer system. Council Planners forced others to negotiate with the Terranora Village Developer (and pay the Developer) for connection to the system under a Council Agreement that never existed. Council's breach of the law on this matter was only brought out in the Dalton Street – Karlos vs Council case in 1999. Mr. Karlos had provided a legal opinion to Council Planners on the issue, which they apparently ignored. Karlos won his case.

Because of Council's past record, TLG collected the contributions for the Contract Planner, but has held the amounts in a Trust Account until such time as the details surrounding the rezoning arrangements and the contract planner are provided in writing by Council.

On 19th July 2000, Council resolved to inform the Dept. of Urban Affairs and Planning that it intends to prepare draft amendments to the Tweed LEP 2000 for Area E, Black Rocks and Chinderah.

In the Director of Development Services Report supporting the resolution, a list of matters ("sensitive issues") to be addressed was provided, including "accessibility".

TLG had proposed a new road link through Area E to provide an alternative to Terranora Road, which is the main distributor link. The proposed road planned by TLG was recognised by Council engineers as a future part of the Tweed road network, and it was incorporated into the Tweed Road Development Strategy as "Broadwater Parkway".

Broadwater Parkway links from Neponyah Road in the west to Fraser Drive in the east. TLG had offered to meet the full cost of Broadwater Parkway from Mahers Land to Fraser Drive estimated at $2.865 million (1997) including intersections. To meet Council Planner's demands of paying for the whole road would add another $1.892 million to this cost.

Council Planners wrongly state that Area E landowners are the only significant beneficiaries of the road. This is untrue and is contrary to Council's own Road Development Strategy.

Council Planners then decided the TLG should fund a Development Application for Broadwater Parkway before the rezoning takes of Area E place. This is placing the cart before the horse.
TLG has already provided engineering drawings and reports that demonstrate the Broadwater Parkway can be built and would be suitable to the Tweed road network. Council engineers accepted this as part of Council's road strategy.

A prudent business person would only expend money on expensive design and survey work AFTER the rezoning is approved. As stated before, rezoning only determines future land use. Detailed road design is a function of the development approval process that follows rezoning to enable land release.

TLG is concerned that Council may try to compulsorily acquire the Broadwater Parkway road corridor from our members and is delaying any rezoning to reduce the cost of the land to be acquired.

Traffic impacts were supplied to Council with the rezoning. Eventual development of Area E has the potential to generate 11,000 vehicles per day (at 9 trip ends per day per dwelling unit – low density residential). The estimated vehicle loadings (two way AADT) generated by Area E on the proposed Broadwater Parkway is 9,300 vehicles per day.

At the present time, the rezoning of Area E is in limbo. TLG has collected the money for the Contract planner, but is holding it in trust until Council finalises its arrangements with us and we have protection against delays and cost over-runs.

We also await the day when Council Planners structure the program (hopefully with our input) that clearly defines the steps, activities and timeframes for undertaking the rezoning. This is the ILAP process that Council Planners claim to support, but do not action.

TLG would like to see Tweed Council Planners change from being pedantic on process, to being progressive on outcomes.

In summary Mr. Payne, we would like to see the Tweed Shire Council Planning Division investigated on the following matters:

1. **Unconscionable conduct.**

    - Deliberately encouraging TLG to spend over $90,000 in consultants fees on rezoning, when they had no intention of proceeding. The amount jumps to some $200,000 when your include Bolster and Abernethy.

    - Negotiating with TLG members to provide land at no cost for sewer and water mains on the promise of rezoning, then reneging on the arrangement after the mains were installed.

    - Retaining Area E as part of the Tweed Residential Development Strategy when the Planners continue to block the rezoning for that purpose.

    - Allowing the Lindisfarne Anglican Secondary School to be built on Area E, then start insisting that the land should remain as Agricultural Protection zone, with inevitable conflicts between farming and school operations.

    - Constantly changing the reasons ("moving the goal posts") as to why Area E should not proceed.
    - Failure to keep TLG informed of events and providing opportunity for discussion and input before decisions were taken that affect our future livelihood.

- Failure to adhere to the principles of ILAP that the Planners claim they subscribe to.

- Failing to reply to correspondence until reminded or forced to do so.

- Failing to respond to questions in a clear and unambiguous manner.

2. Misleading conduct.

- Advice to Councillors that they would be subject to criminal prosecution if they approved the rezoning of Area E when sufficient sewerage capacity was not thought to be available. TLG was forced to demonstrate the untruth of this statement by obtaining a QC's opinion.

- Stating that the Broadwater Parkway through Area E would only benefit Area E landowners, which is contrary to Council's own Tweed Road Development Strategy and defies commonsense.

- Promoting that Area E should remain Agricultural Protection, when the Planners are aware that:

  - 79% of the land is Class 3, 4 and 5 which is <u>not</u> prime agricultural land.

  - Land is susceptible to erosion and requires labour intensive farming because of topography.

  - Loss of the land to farming will <u>not</u> have a negative affect on Tweed's agricultural industry.

  - An independent Accountant's assessment showed that only two farms are viable without off-farm income.

  - NSW Agriculture has stated in writing that they do not oppose residential use of Area E.

- Linking the future access of Area E to the Tugun Bypass and the Cobaki Parkway that have no impact on the 11,000 vehicle per day that would eventually be generated when the project was fully developed (8 to10 years).

- Director of Development Services advised Council (27th May 1998) that "no definitive studies have been undertaken" in respect of Area E rezoning. This statement is untrue. Studies were undertaken at the instigation of Council into areas such as soils, agricultural economics, chemical residues, flooding and water quality assessment, biological assessment, traffic, civil engineering, and urban planning.

- In the Interim Strategic Plan, Council proclaimed that there was sufficient residential land for 30 years. Months later in the Tweed Shire

2000+ Strategic Plan, Council was proclaiming sufficient residential land for 20 years.

A similar assessment was made of industrial land and now in 2001, Council Planners are trying to find industrial land to meet demand.

Mr Payne, this is a condensed list of problem encountered with Tweed Council Planners. Given the project has been "tampered" with by Council since 1994, you can imagine we have quite a deal of individual examples that can be raised. TLG can provide evidence of the claims made in this letter.

TLG is heartened by the fact that an investigation is being made into the activities of the senior officers in Council's Planning Division. For too long they have been a law unto themselves, dictating to the community and costing the ratepayers thousands of dollars. Developers and consultants are reluctant to complain or become involved in bringing about change. They have a vested interest in working with Council Planners, because to complain or "rock the boat" results in the Council Planners taking retribution on future jobs.

As the Local Government regulator, TLG is sure that you wish to find the truth about the activities of Tweed Council Planners. We ask for reconsideration of our case being included in the current investigation or, given the $200,000 lost by us to date, a separate investigation be undertaken by your Department..

The information we have supplied is the " tip of the iceberg". TLG has been poorly serviced by senior officers paid by the ratepayers, and who supposedly have the community interest and public good at heart.

We are not developers, members of the white shoe brigade, speculators or real estate agents. We are long term residents on family properties who are genuine, honest and pay their way.

However, we are no longer reluctant to speak out for fear of the repercussions to our rezoning application. The past years have demonstrated that you cannot trust Tweed Council Planners to do the right thing. We dutifully followed the council system and it has failed us dismally. We trust that TLG can rely on your help to address and resolve this disgraceful situation.

Yours sincerely

Geoff Greber
On behalf of the
Terranora Landowner Group

THE CHINDERAH DISTRICT RATEPAYERS ASSOCIATION INC.

PO Box 1259
Kingscliff 2487

September 3, 2001

Dr. John Griffin
General Manager
Tweed Shire Council
PO Box 816
Murwillumbah
NSW 2484
(Copy to Garry Payne, Director General of Local Government)

Dear Sir,

Concerning A Formal Complaint about Council's Planning Officers

Our association represents the interests of a community of 241 landholders, many of whom are South Sea Island descent who raised the $25,000 requested by Council to fund the preparation of an LES, as Planning Officers refused to address Chinderah and our repeated requests for rezoning.

Over the years, our Association has proved itself as a truly representative, reasonable, and responsible association with the interests of our local community at the heart of our activities.

It has been decades since our Association commenced dialogue with the Tweed Shire Council with a view to have the village rezoned to allow appropriate development to proceed for the benefit of our community. Problems arose from the very start when

the Council Town Planning Officers removed the Village of Chinderah from the "Chinderah Planning Study" in 1991.

We have, over a number of years, placed on record numerous complaints stipulating how our community has suffered enormous damage as a result of the injustices, actions and inaction of the Planning officers of the Tweed Shire Council in relation to the planning of our village.

Our complaints have included the following areas of misconduct by the Planning Department:

> *The officers have displayed no objectivity and given no credence to the plethora of independent studies undertaken in relation to Chinderah – most being actually commissioned by Council itself.*
>
> The officers have paid no due attention to the independent studies which support planned development.
>
> The consultative process has utterly failed as the officers pay only lip service to the policy of consultation and community involvement.
>
> Our submissions have been totally dismissed without reason.
>
> The officers' reports to Council are badly flawed and Council has been asked to make decisions on the basis of inaccurate, incorrect and at times unintelligible information.
>
> The officers' position in relation to the rezoning of Chinderah has remained the same after the LES process was completed to that position it held before it commenced, despite the same officers acknowledging factors which necessitated the LES.
>
> The officers' report to Council has misrepresented the LES by GeoLink, the consultants Council engaged.
>
> The position taken by the officers is unreasonable and indefensible in light of the independent information available.
>
> We are of the opinion that Council and its officers have behaved in a way which at least, would be described as unprofessional and deliberately obstructive.
>
> There has been inaction and obstruction at every turn in the discussions on Chinderah dating back to at least 1979.
>
> The process has been a charade, which was obviously entered into by the Planning Department as an exercise of appearing to do something while in fact doing nothing.

The Chinderah community has suffered at the hands of successive councils.

The officers have exhibited an unjustifiable, intractable stance without any justifiable technical basis for so doing.

There is misinformation and blatant errors in the 3/9/97 Business Paper.

The consultative process has been a disgraceful waste of (our) time, effort and considerable finances put up by the Chinderah Community, not to mention the cost to the ratepayers.

The above complaints, put on record in exchanges with the Council and government representatives over a number of years, have not been acted upon in any acceptable manner. All of our complaints can and will be substantiated by documentary evidence in an appropriate forum.

And reasonable development and prosperity has been denied to our Chinderah Village, even though an enormous amount of flood studies together with an LES that we funded ourselves has unambiguously supported our aspirations for some well-planned developments. Chinderah has been neglected and passed over like a Tweed leper colony.

Chinderah used to be the commercial hub of the lower Tweed. It became a village of the South Sea Islander community which has continued to play an important role in the social and economic life of Chinderah. The economic deprivation inflicted on Chinderah by the unjustifiable restrictive policies of the Planning officers has impacted on the South Sea Islanders along with other Chinderah landowners.

The Chinderah District Residents Association Inc., shares the vision to return Chinderah to its original glory. It is beautifully situated on the bend of the river between Kingscliff and Banora Point. Through neglect of Council's planning department, Chinderah has not been able to take advantage of the opportunities presented by the new highway by-pass. We refuse to be excluded from the surge of economic development now sweeping the Tweed.

Our patience has run out. The disgraceful treatment dished by to Chinderah by Council's Planning officers year after year demands in inquiry. The intolerable discrimination against Chinderah has got to stop and be redressed without further delay.

As ratepayers we demand that Council seek a formal inquiry into this matter without delay.

Yours truly sincerely,

Felicia Cecil
President

Cc Mr. Garry Payne
Director General of Local Government

COMBINED TWEED RURAL INDUSTRIES ASSOCIATION

Mr. Garry Payne
PO Box 1359
Director General
Murwillumbah
Dept. of Local Govt.
NSW 2484
Locked Bag 1500 Bankstown NSW 2200

P.O.Box 1359
Murwillumbah
NSW
28/7/200l

Dear Mr. Payne,

Re: Current investigation into Tweed Shire Council's Planning Department.

The Combined Tweed Rural Industries Association (CTRIA) is a rural lobby organization representing the interests of most of the farming groups in the Tweed Shire, and although problems between the farming community and Council's Planning Department are not part of the current enquiry, it is appropriate that Mr. Bulford be made aware that there are many issues of concern with the planning department other than development issues.

The public consultation process between the Planning Department and rural stakeholders has been a sham. It has reached the stage where the CTRIA no longer bothers to make submissions as we have never achieved any input into planning issues relating to rural matters.

The classic example was when submissions were called regarding the draft Tweed Shire 2000+ strategic plan.

Despite presenting a document with many constructive comments, we achieved absolutely no input, bearing in mind that we were probably the one group in the community most affected by this document.

Landowners were so frustrated with this absolute disregard for their interests that several hundred attended a protest rally on the steps of the Murwillumbah Civic Centre.

This still failed to achieve any input! Attendance on Council Consultative Committees has been a most frustrating exercise. You must attend because the issues affect your industry, but most committees have been an attempt by Council Planners to have the committee “rubber stamp” the planners’ own agendas.

Landowners have had restrictive zonings placed on their land without any consultation by the planning department. Most of these zonings have been environmental and have denied some landowners access to large areas of their properties. This has resulted in significant economic losses to these landowners.

For too long the Planning department at Tweed Shire Council has been a “law unto itself.” They have planned for what they see as community needs, disregarding the impact of this planning on the stakeholders involved.

It is to be hoped that the present investigation brings about a change in thinking within this department, so that genuine input is achieved by those most affected.

The above comments can be supported with documentation, if necessary.

Yours faithfully,

Colin Brooks
President.

Alan McIntosh
14 Ocean View Crescent,
Kingscliff, 2487

I June, 2001

The General Manager
Tweed Shire Council
P.O.Box 816
Murwillumbah 2484

Dear Sir

Re: the rezoning of the land east of Old Bogangar Road, Cudgen

I write to you concerning the above in my capacity as the chairman of the Cudgen landowners group. I have only become aware of a report to Council by your director of development services dated 18 August marked “late addendum” concerning the outcomes of the public hearing.

I have to say that there are a number of inaccurate and misleading statements in the report by the Director of development services. It is my view that because of the inaccurate and misleading statements Councillors may have been misled and the land rezoned causing substantial damage to the landowners.

I shall now set out the inaccuracies and misleading statements contained in the report.

1. The statement that is made on page 2 at item 3 on the fourth line which says: “reflecting the non disputed prime agricultural land classifications…” This statement is completely untrue as there remains a major dispute over the land classifications. The consultants to the Anglican Church had designated the land as class 4 when accounting for the erosion hazard as they were obliged to do, when using the guidelines prescribed by New South Wales Agriculture.

2. The statement that is made on page 1 as the bottom of the first paragraph: “during the hearing of New South Wales agriculture representatives did not resile from an interpretation of the land currently class 3 remaining as such although conceding that much of the land was marginal class 3.” Mr. Rick Whitehead an officer of New South Wales agriculture effectively withdrew departmental support for the proposed rezoning of the land at the public hearing citing, amongst other things, a lack of public support. These comments by Mr. Whitehead were recorded as “insightful” in the report of the public hearing by Mr. Walsh.

3. The statement on page 8 being the first paragraph of the conclusions and recommendations which says:

“The public hearing has raised some very significantly new information and issues in relation to…the methodology and assessment of the proportion of the land currently class three by New South Wales Agriculture.”

4. The statement on page 8 in the third paragraph of the conclusions and recommendations which says:

“Mr. Walsh’s conclusions do not undermine the integrity and professional judgment that the land which has been identified as class one and two by New South Wales Agriculture.” This again wholly misrepresents Mr. Walsh’s conclusions that the land be zoned 1 (a) subject to the preparation of a development control plan.

I have ready access to the statement of evidence of the consultant to the Anglican Church, Mr. Neil Sutherland, and a statutory declaration from an attendee at the public hearing, Mr. Mr. Bolster solicitor.

I am deeply disturbed that because the public hearing and findings of the public hearing have been misrepresented by a council officer to Council, that I have suffered substantial damage as a result. I have no alternative but to hold council responsible for the damage that we have suffered. I call upon Council to advise me immediately what action it will take to mitigate the damages that we all have suffered.

I call upon the Council to immediately implement an inquiry into the conduct of council officers in relation to the rezoning of the land east of Old Bogangar Road and to ensure such in inquiry is an open and honest process.

Yours faithfully,

Alan McIntosh.

A Report to the Project Steering Committee
And Tweed Shire Council

MURWILLUMBAH DISTRICT ECONOMIC ACTION PLAN

DRAFT REPORT

25th SEPTEMBER 1998

Prepared by
ABNETT CONSULTING
14 Jasen Street
CAPALABA Qld 4157
Phone: (07) 3823 3420
Fax: (07) 3823 3208
Mobile (0412) 135 794
Email: Error! Bookmark not defined

[See Statement by Abnett Consulting next page. Ed.]

[This entire section below was removed from page 10 of the Report due to pressure applied to Abnett Consulting. Ed.]

Major Concerns over the Planning and Development Role of Tweed Shire Council

There were a very high level of criticism of the Planning and Development Role of Tweed Shire Council, regarding discouraging rural industry activities and other industrial activities in the Shire. The concerns came primarily from rural and industrial business people, not professional developers (the latter were not interviewed as part of this Study). These business people operate or seek to operate businesses in the Shire. They are not speculators seeking a quick capital gain on land and property developments, as is common in the property development industry.

There is a deep concern over the planning controls in the Shire. Frequently when a planning approval is gained, it is subject to conditions which render the proposal economically unviable, ensuring the proposal does not proceed.

A common view is that even if the Planning provisions operating in the Shire <u>permit, with consent</u>, a rural, industrial or tourism

use, the activity does not emerge to the application of the planning provisions.

The issue that has to be resolved in the Tweed Shire is how to adequately address these apparently conflicting planning "intents" i.e. many uses are permissible under the Local Environmental Plant, but "unreasonable" conditions of approval effectively stop activities occurring. The issue is beyond the brief of the Murwillumbah Economic Action Plan, however, it is not beyond the role of the Tweed Shire Council and the community to address and resolve.

[The following is a typed copy of the relevant parts of a consultant's Draft of a Retail Strategy that was sent to Council's Planning department. The consultant's comment of special interest appears near the end of the document. Ed.]

WORKING DRAFT FOR COMMENT

6th July 1999

David Broyd
Director Development Services
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

Dear David,

Re: Consultancy Brief – Kingscliff, West Kingscliff and South Kingscliff

1. Commercial Structure – Kingscliff, West and South Kingscliff, Kings Forest

1.1 General

The Tweed 2000+Strategic Plan ("Strategic Plan") sets the tone for the style of development that is required in this area. The focus of the Strategy is on community.

1.2. **The Most Accessible Sub Regional Site**

Kings' Forest is the most accessible sub regional site in the area. This is due to the combined effects of geography, land development patters and the road system. Whilst the area lacks the attraction of the beach, it is nevertheless the most central and accessible site for sub regional facilities for the majority of residents who will live in the area.

Kings Forest is also less constrained by natural features and provides the best opportunities for a contiguous centre of sub regional size, without development pressures for holiday accommodation and higher and better uses.

Kings Forest

The majority of the Kings Forest land is owned by Narui, a development company.

It is understood that the company has plans for the site that include a major retail component within a town centre.

At this point, the consultants have not viewed the plans that have been prepared by Narui so it is not possible to provide a detailed evaluation of the future of retail within the town.

However, the site is suitable for retail of a district scale of around 15,000 square meters with additional retail at local centre level flowing from a structure plan.

The retail component of the town is likely to staged [sic] in accordance with demand, with a neighbourhood centre of approximately 6,000 square meters possible at a point where the dedicated catchment area contains around 10,000 people.

Commentary

David, this is for your review to ensure that its says what you want it to say.

Let me know your thoughts. I am at home for the holidays so you can get me on (02) 9453 1909 anytime.

Best regards

Mike

RESPONSE TO RECOMMENDATIONS OF THE BULFORD REPORT

This is a statement presented to the Meeting of the Tweed Shire Council 17/7/2002

Council is a creature of the NSW government and under its control.

In creating a local government, the State government created the Local Government Act. This Act creates a "space" or carves out the "turf" in which the local government is to operate. This places limits on the responsibilities, duties, powers and prerogatives of the local government.

Through the Local Government Department, the State government, acting like a parent who has a duty of care and responsibility for its child, has the right and the responsibility of local government surveillance.

The State government control, however, is circumscribed by its own Local Government Act. This means that the control exercised by the State government must not be capricious, vexatious or unreasonable. Whilst it can insist that the Council operates within the Local Government Act, the State government must also respect the democratic freedoms that the Council has within its own "space" or "turf."

Using again the analogy of a parent/child relationship, the child is a creature of the parent and is under the parent's care and supervision. The parent has the right to discipline the child. But the child has rights under the same rule of law that the parent is obligated to respect. Or failing that, the penalty imposed on a parent for violating the rights of a child is far more severe than the penalty a child may incur for transgressing its rights.

In its role of monitoring whether Council is operating within the Local Government Act, the State government should be careful that its surveillance is within the bounds set by the same Act.

The Bulford Report makes findings that are critical of some of the Tweed Shire Councillors. But it is significant that nowhere is the Report able to show that these Councillors have transgressed the Local Government Act, or for that matter, any other State or Federal law. There is not a single instance where the Bulford Report is able to allege or even offer the opinion, "This thing that this Council or this Councillor has done is contrary to this Act."

For instance, at a very critical or central point of the Report it says:

"I have…not been able to find any direct evidence that might prove that there had been corruption, collusion or other such inappropriate conduct or practices." (p.152, Part II)

Or again, citing an officer of the Election Funding Authority, the Report says,

"I can see no breach of the Election Funding Act." (Ibid. p.238)

The foregoing is typical of the whole Report. If Mr.Bulford is not able to proffer a legal opinion that the Councillors have acted in violation of the Local Government Act, or indeed any other Act, then his findings against the Councillors are no more than the expression of his political, bureaucratic or personal opinion. In this category are his comments about Councillors "being too close to developers" or "putting staff under pressure."

This brings us to the matter of the Report's *recommendations.*

The question needs to be raised whether they should be called *directives* rather than *recommendations*. This is because the Report couches the *recommendations* in the context of some not too subtle hints that the Council could be sacked like Bega Council if the *recommendations* are not heeded. In the context of warnings or threats like this, the word *recommendation* is clearly a euphemism for an order. It sounds too much like a bureaucratic thug making the Councillors an *offer they can't refuse.*

If a recommendation was addressing a matter in which the Council was not complying with the Local Government Act, then it should not be called a *recommendation* but a *directive*, meaning that Council has no option but to comply with the law.

The *recommendations* in the Bulford Report are not addressing things that are in conflict with the Local Government Act. The *recommendations* simply address a number of policies and practices that are matters for Council's determination under the Local Government Act.

What the Bulford Report has done, therefore, is to intrude or to invade Council's freedom to operate on its own "space" or "turf" given to it under the Act. It presumes to control what the State government has no right to control. It is therefore in danger of acting in violation of the Local Government Act.

The Council is free to accept the ***recommendations*** of Mr. Bulford, but by the same token it is free to insist that the Department of Local Government keep out of Council's "turf."