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Hon Cameron Dick
Minister for State Development, Manufacturing, Infrastructure and Planning
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Dear Minister Dick

Subject: Undermining of the Sunshine Coast Planning Scheme 2014

OSCAR, as the peak body representing resident and community organisations on the Sunshine Coast, has written to you on two previous occasions in 2018:

- On 5 February requesting a meeting with you and representatives of OSCAR, the Sunshine Coast Environment Council (SCEC) and Development Watch to discuss our growing concerns with the assault on the Sunshine Coast Planning Scheme by the Sunshine Coast Regional Council (SCRC) and developer interests.
- On 19 February in relation to development of the Pelican Waters Golf Course which is an example of the problem we are trying to draw to your attention.

We have only recently received a response to both letters; in both cases the responses do not address our concerns and there is no real indication they got past your bureaucratic “gate-keepers”. We will continue to seek a meeting with you, as a peak body representing almost 40 resident and community organisations on the Sunshine Coast who in turn represent thousands of individuals.

We appreciate that you have major portfolio responsibilities and hope it is the pressure of competing demands on your resources that has resulted in the lack of an adequate response to our request for a meeting and not because your Government views issues impacting on the Sunshine Coast as a low priority due to the political reality of who holds the State seats in this region. Hopefully this is not the case but it should be obvious that the problems we are drawing attention to are symptomatic of a much wider problems in Queensland where the actions of councils are at best undemocratic (in the case of the SCRC excessive use of confidential sessions to conduct Council business for example) and in some cases would appear to be illegal.

At the last meeting of OSCAR, I was instructed to write to you again with yet another example of a potential development on the Sunshine Coast where the interests of the community at large have been disregarded in the interests of a Council that is fixated on growth at the expense of the amenity of the existing community and a developer that is willing and able to exploit this fixation.

We refer to the Twin Waters West (TWW) Planning Scheme Amendment, which is currently of concern to the Twin Waters West & Surrounds Inc. (TWW&S) group (a member organisation of OSCAR) and to the overall OSCAR membership due to the precedent this will set for due process and for development on other flood-prone land if it is ultimately approved.

We wish to formally record our support for TWW&S concerning this matter and to lodge our dissatisfaction with the processes and procedures undertaken by both the State and the SCRC in the management of the TWW Planning Scheme Amendment.

Twin Waters West (TWW) Planning Scheme Amendment

We would note that the processes and procedures undertaken by SCRC do not meet the requirements of the State Planning Policy. Whilst these issues are further elaborated below, we would advise that TWW&S have, and will continue to formally lodge their concerns through official channels with detailed information on each of the matters listed below:

1) *Inappropriate Public Consultation Process*

We initially refer to SCRC's legal dispute with the developer Stockland during 2013 concerning the urban development of the Twin Waters West floodplain site. It is on record via the QPEC 2013-79 case (Stockland v Sunshine Coast Council and Others (2013) QPEC 79, s186 at 52) that presiding Judge Michael Rackemann summed up this case by stating that *'an overriding need in the public interest is one of the circumstances in which development, with mitigation measures, might be permitted in the floodplain'*, however the appellant has not established an over-riding need. Instead the Judge reported: *"The development would result in the raising of the David Low Way and the creation of a flood refuge in an area prone to flooding but, on the other hand, would locate an additional residential population, of approximately 2000 people, into the floodplain, thereby potentially putting more people at risk and potentially adding to the burden on local and state emergency responses in times of disaster"* (s192, at 53). He confirmed also that *"the development would place a substantial new residential community into a floodplain, with the attendant risk of a substantial number of persons becoming isolated in times of major natural disaster"* (s201 at 56).

Please note that there is no part of the TWW floodplain site that is not flood-prone heavily constrained land. We accordingly note that the developer Stockland's initial TWW development proposal was not approved at this time following Judge Rackemann's ruling.

Further, we note that, within SCRC's Amendment Explanatory Memo, with respect to the TWW floodplain site, it states *"Given previous reservations from the local community in relation to development of the subject land, Council required demonstration of community support for the development of the Twin Waters West site, before contemplating a planning scheme amendment process"*.

We further note that the SCRC apparently had a reversal of position regarding the development of the TWW floodplain site during 2014, and revised its position to support the developer Stockland in the progression of the proposed urban development of the TWW floodplain site. The official explanation of this reversal was to support the development of new communities within a close radius of the proposed Maroochydore CBD development. This reversal is not in accordance with the QPEC 2013-79 decision as it places people within a floodplain. However anecdotally, there are reports that amending the scheme was agreed by Council in a trade-off with Stockland for easing back on its proposals for further development in the inter-urban break as part of the SEQ Regional Plan negotiations.

The decision also places SCRC in a position of conflict for the TWW Planning Scheme Amendment as SCRC is both the proponent and administrator/reviewer for the CBD development/business unit.

In support of this planning reversal for the TWW floodplain site, we understand that the Planning Amendment process was prematurely initiated by SCRC and the developer whilst the planning scheme was in its infancy.

Further, we understand that SCRC and the developer Stockland undertook regular meetings with the committee members of a local association, the Twin Waters Residents Association (TWRA), and only briefed very few other local Associations once prior to public notification in the first part of 2015 – we note that Development Watch for example, a co-respondent to the previous appeal were not approached at all prior to public notification.

SCRC's decision to only engage with 6 individuals from the TWRA committee during 2015 and 2016 appears to demonstrate inappropriate behaviour from SCRC and its complete misunderstanding, contrary to accepted planning practice, of what it means to gain local community support to gain apparent local community support for the TWW Planning Amendment. SCRC and Stockland engaged in direct discussions with the TWRA committee only, often behind closed doors, without the knowledge of the local

communities, from December 2015 to December 2016. Members were not asked or consulted with meaningfully from July 2015, as per the Minutes.

On 2 November 2016, the TWRA committee issued a formal letter to SCRC advising that the overall Twin Waters community supported the proposed Twin Waters West development, which was certainly not the case. They also claimed that they had kept the entire Twin Waters community informed via their monthly newsletter, however, analysis of the above demonstrate no mention of the TWW planning scheme amendment from December 2015 through December 2016 after the public notification period closed.

We advise that no local community associations have provided majority support for the Twin Waters West zoning amendment and that SCRC has received substantial correspondence from the local communities confirming overwhelming opposition to the TWW development. For SCRC to use the TWRA letter of 2 December 2016 to present overall local community support for the Twin Waters West planning amendment is not a true record and is inaccurate. Full details of these matters have been previously presented on many occasions, and by TWW&S via formal letter with breakdown analysis of the consultation process on 11 September 2017.

We further draw to your attention the Sunshine Coast Planning Scheme, Part 3 documentation, namely, "Strategic Framework" policy direction which states:

"Part 3 sets the policy direction for the planning scheme and forms the basis for ensuring that appropriate development occurs within the planning scheme area for the life of the planning scheme". (We understand the life of the planning scheme to be 10 years).

Although we acknowledge that there is some merit in justifying the need to make planning scheme amendments over time, we, along with our member group TWW&S, question the timing of the TWW Planning Scheme Amendment, and given it was so soon after the scheme was adopted by Council, and coincided with negotiations over the SEQ Regional Plan, we would wish to understand the rationale behind the TWW site not being included and consulted on during the preparation of the Sunshine Coast Planning Scheme 2014.

2) Non-Compliance with State Planning Policy

We are advised that the SCRC, in its endeavours to progress the TWW Planning Scheme Amendment, has apparently not followed due planning process for the following reasons:

a The State Interest test – SPP 2016

State Planning Policy 2016 indicates that planning schemes and their amendments need to *"appropriately integrate State interests"*. It states that natural hazards are to be properly considered in *"all levels of the planning system"* (p34). Further the SPP states the *"effects of climate change need to be considered in hazard assessment as they are projected to impact on the footprint, frequency and intensity of natural hazards"* (p6). The coastal environment section indicates that, in relation to canals and artificial waterways, development will not contribute to, among other things, *"an increase in the risk of flooding"* (s5 biii).

The Explanatory Memo suggests that Council met SPP 2016 requirements because sufficient information (such as the flood hazard overlay) was provided when the Planning Scheme was adopted in 2014. However, at the time, this site was proposed as rural land, and Maroochy North Shore (MNS) did not include this land. The information provided at that time might have been adequate for the proposed rural use, but the guidelines for SPP 2016 about *"fit for purpose"* did not exist at that time and so could not have been met.

Moreover, such hazards were not identified or addressed in the amendment, nor was a natural hazard study provided that is fit for this new purpose, or any evidence that an acceptable level of risk can be met, as required by the SPP (p35) which was in force by this time. The information provided was inadequate and not *"fit for purpose"* for the increased risk associated with the proposed intensive urban development.

b The Sunshine Coast Planning Scheme 2014

The amendment proposed changing the zoning from *"rural"* to *"emerging community"*, and including the Twin Waters West site within the Maroochy North Shore (MNS) local plan area and within an urban growth management boundary.

The current Planning Scheme 2014 (with red indicating the amendment, below) states that the purpose of the Maroochy North Shore (MNS) local plan code will be achieved through:

Urban development within the Maroochy North Shore local plan area is limited to land within the urban growth management boundary so as to protect environmental areas and landscape values, avoid further urban development on heavily constrained land, particularly low lying and flood prone land, Whilst some limited consolidation is expected within allocated zones, further significant residential development is not supported in the local plan area due to flooding, coastal hazards and environmental constraints. (SCC Planning Scheme 2014 s7.2.18.3 2(b))

Neither the current Plan 2014 nor the proposed amendment support urban development on flood prone constrained land. There is no part of the Twin Waters West site that is not flood prone heavily constrained land. As a result, there is no justification for changing the zoning to emerging community. The purpose of the MNS will not be achieved if the rezoning occurs.

c The SEQ Regional Plan

The SEQ Regional Plan does not support development of the Twin Waters West site. In the SEQRP, the Urban Footprint identified land that could meet the region's future urban development needs.

However, not all of the Urban Footprint is expected to be suited for development, with some areas subject to constraints or natural values that require protection or that do not allow development to occur, such as flooding (The State of Queensland, 2017c, p7).

3) Lack of a Credible or Verified Flood Model for the Twin Waters West Floodplain Site

We note that TWW&S was successful, via its many formal presentations to Federal, State and Council institutions during 2017 and 2018, in gaining State involvement to undertake an independent review of the flood modelling relied upon by Council and the developer, Stockland. WMAwater was selected as the independent engineer by State for this review.

This was a welcome development as SCRC and the TWW site developer Stockland, had produced separate and inadequate flood models for the two main developments in the area, the TWW floodplain site and the Maroochydhore Airport expansion. TWW&S had quite properly argued that since the drainage of both the airport expansion and the TWW floodplain development would directly affect the local communities, an integrated flood plan was required to properly assess flooding risks to the local communities.

Notably, Stockland's design consultant Cardno, had initially produced a preliminary flood modelling statement for the TWW site in 2017 which advised that *"there is no adverse impact from flooding to local communities and that, indeed, there is an overall benefit to the local communities from the TWW development"*. This statement was erroneously repeated by decision makers to justify progressing the amendment.

We note that this preliminary modelling conducted by Cardno for Stockland has since been proven to be incorrect and not fit for purpose as a result of the review process, and has subsequently been abandoned with another consulting firm, SLR Consulting, confirming there is no evidence to demonstrate merit, assurance or public benefit to local communities. On the contrary, development proposals to infill the TWW floodplain site for urban development will directly result in very large quantities of flood water, estimated at between 1.5 and 2 million cubic metres, being displaced from the TWW floodplain site to the surrounding communities. This is a hydraulic fact and is being neglected by the SCRC in its support of the TWW development.

Importantly, SCRC on Easter Eve, 13 April 2017 debated the Planning Amendment (in closed session), before voting to change the planning status of the TWW floodplain site from rural to urban, based on Cardno's preliminary model study (and alleged community support via the TWRA submission). As this modelling study has been proven to be inadequate by WMAwater, the SCRC should have complied with Statutory Guidelines 01/16 (The State of Queensland, 2016) and returned to Stage 1 of the planning process. Despite being formally advised of these discrepancies by TWW&S on 9 January 2018, the SCRC executive management has continued to approve the TWW development to progress to the DA stage without further review or vote by Councillors.

Of note is that the recent Queensland Flood Commission Inquiry (QFCI) recommended that *"works on a floodplain ...do not reduce on-site flood storage capacity"* or affect flooding storage, flow paths, flood warning times outside the site (QFCI 2012. p.165, recommendation 7.16-17). The SCRC's intent for the TWW floodplain development directly contradicts this fundamental recommendation and is not accepted by the local communities – it will directly increase flooding and flooding potential to the surrounding

communities, as demonstrated in Sunshine Coast Planning Scheme Flood Hazard Overlay Maps, and, in particular, to the Maroochydore suburb south of Bradman Avenue which is located directly opposite to the TWW floodplain site. We also note that SCRC is apparently neglecting this suburb area in its flood model, which already has a “nuisance flooding” tag.

We note that the independent engineer, WMAwater, as commissioned by the State, confirmed via its memo of 9 January 2018 that SCRC’s and Stockland’s flood model was described as “inadequate” and even by the date of the memo, despite many months of endeavour by State, SCRC and Stockland to improve the flood model, WMAwater still stated *“there are several items that should be addressed to improve the integrity of the model for use in a site specific assessment to support development applications for the proposed master plan”*, i.e. the flood model was still not fit for purpose for properly assessing flood risk for the (site specific) TWW development and impacts to surrounding communities.

We further note that the media release by State representative Deputy Director-General, Planning Group at Department of State Development, Manufacturing, Infrastructure and Planning, Mr Kerry Doss, concerning the flood modelling, is incorrect and is accordingly disputed. The issue of this media release statement was consistent with the release of the WMAwater memo of 9 January 2018. Mr Doss has stated that *“Importantly, flood modelling demonstrates that the rezoning (of the TWW floodplain site) will not impact on surrounding areas”* and *“The independent third party review (by WMAwater) confirms this”*. We advise that WMAwater’s memo of 9 January 2018 does not in any way support this inaccurate media statement. TWW&S has advised us that it wrote to Mr Doss on 18 March 2018 requesting the relevant technical particulars to support the media release statement and they are still waiting for his formal explanation.

Summary

The above issues clearly demonstrate and provide evidentiary merit that the TWW Planning Scheme Amendment did not meet the State Interest Test under SPP, or comply with the Statutory Guidelines 01/16. Further issues regarding due process, transparency, social inclusion and the disregard by SCRC to acknowledge local communities’ comments or concerns on a range of issues, and demonstrated overwhelming community opposition as formally advised to SCRC, has resulted in administrative breakdown and non-compliance with a range of statutory provisions. SCRC has delegated those concerns to be addressed at the DA stage, however, those concerns and submissions were intended to oppose the rezoning and should be held in that regard.

Our member group, TWW&S accordingly informs us that there are grounds to seek judicial review of the processes surrounding the TWW Planning Scheme Amendment, owing to the above concerns. We understand that under Sustainable Planning Act 2009 s126 & s129 and the Local Government Act 2009 s113 & s121, there are provisions to have relevant Ministers seek remedy, and we seek your advice with respect to these provisions.

We endorse and support the efforts of TWW&S to seek Ministerial action under the relevant Acts and provisions, and we request that the Minister oblige this community with access to social and administrative justice in remedying these errors, by way of revoking the decision to rezone the parcel of land known as Twin Waters West from “Rural” to “Emerging Community”.

Yours sincerely



Greg Smith
President

cc Premier and Minister for Trade
Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs