



## INDEPENDENT COMMISSION AGAINST CORRUPTION

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**Staff:** About 100 staff at present. All are and will be volunteers. They include seconded NSW police officers, directly employed investigators, lawyers, criminal analysts, forensic accountants, complaints officers, administration and support staff.

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**AS AT OCTOBER 1989**

# INDEPENDENT COMMISSION AGAINST CORRUPTION

## POWERS AND FUNCTIONS

### **Independent Commission Against Corruption Act 1988**

The Independent Commission Against Corruption ("the Act") sets out the charter, functions and powers of the Commission.

The ICAC is a new organisation completely independent of the elected government of the day. The Commission is answerable only to the NSW Parliament - both Houses can by resolution require it to investigate and report on a matter, and all ICAC reports go to the Parliament.

The following information summarises the main features of the statutory scheme.

### **The Commission**

The Act creates the Independent Commission Against Corruption.

The functions of the Commission are exercised by the Commissioner. Mr Ian Temby QC took up his appointment as Commissioner on 13 March 1989.

Mr Adrian Roden QC, an eminent retired judge of the NSW Supreme Court, took up a position as Assistant Commissioner on 3 April 1989.

### **Aims and Functions of the Commission**

The Commission regards the protection of the public interest and prevention of breaches of public trust as its paramount concerns.

The principal functions of the Commission are:-

i. **Investigative**

To investigate possible corrupt conduct, with a view to prosecution, or report to the Parliament. It is important to stress that the Commission is a NSW State body and therefore only concerned with the State public sector - not the Commonwealth and not the private sector.

ii. **Advisory**

To advise public authorities on ways to prevent corrupt conduct.

iii. **Educative**

To educate public authorities and the community regarding the detrimental effects of corrupt conduct and the importance of maintaining the integrity of public administration.



## Corrupt Conduct

Corrupt conduct is defined widely in the Act. The key notion is misuse of public office involving a criminal offence, a disciplinary offence or reasonable grounds for dismissing a public official. Misuse of any State or local government office can be the subject of investigation.

Corrupt conduct can also be conduct which affects officials carrying out their duties and involves any of the following:

- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);
- (b) bribery;
- (c) blackmail;
- (d) obtaining or offering secret commissions;
- (e) fraud;
- (f) theft;
- (g) perverting the course of justice;
- (h) embezzlement;
- (i) election bribery;
- (j) election funding offences;
- (k) election fraud;
- (l) treating;
- (m) tax evasion;
- (n) revenue evasion;
- (o) currency violations;
- (p) illegal drug dealings;
- (q) illegal gambling;
- (r) obtaining financial benefit by vice engaged in by others;
- (s) bankruptcy and company violations;
- (t) harbouring criminals;
- (u) forgery;
- (v) treason or other offences against the Sovereign;
- (w) homicide or violence;
- (x) matters of the same or similar nature to any listed above;
- (y) any conspiracy or attempt in relation to any of the above.

## Conduct of Investigations

The Commission may investigate possible corrupt conduct:-

- on its own initiative;
- on a complaint made to it by any person;
- on a report made to it by a public authority.

The Commission must investigate any matter referred to it by both Houses of Parliament. Following investigation the Commission may decide to:-

- submit a brief of admissible evidence to the NSW Director of Public Prosecutions;
- report to the Parliament;
- refer a matter for investigation or other action to a person considered to be appropriate in the circumstances.

It can do the last of these things at any time, including before or during an investigation.

## **Operations Review Committee**

The functions of the Committee are to advise the Commissioner:-

- whether the Commission should investigate a complaint or discontinue an investigation of a complaint;
- on such other matters as the Commission may from time to time refer to the Committee.

The Committee consists of:

- The Commissioner (Mr Ian Temby QC);
- An Assistant Commissioner nominated by the Commissioner (Mr Adrian Roden QC);
- The Commissioner of Police (Mr John Avery);
- A person appointed by the Governor on the recommendation of the Attorney General and with the concurrence of the Commissioner (Mr Bill Robinson, Director of the Legal Aid Commission);
- Four people appointed by the Governor on the recommendation of the Premier and with the concurrence of the Commissioner, to represent community views. (They are Major General Ronald Grey, Mr Jack Davenport, Sister Margaret McGovern, Professor Brent Fisse).

## **Parliamentary Joint Committee**

The functions of the Committee are to:-

- monitor and review the exercise by the Commission of its functions;
- report to Parliament on matters concerning the Commission;
- examine each annual and other report of the Commission and report to Parliament accordingly;
- examine trends and changes in corrupt conduct and practices and methods relating to corrupt conduct and report to Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the Commission;
- inquire into any question in connection with its functions which is referred to it by Parliament and report to the Parliament on that question.

The Committee consists of nine members of whom three are members of and appointed by the NSW Legislative Council, and six are members of and appointed by the NSW Legislative Assembly.



Committee members are:

- Mr Ron Dyer MLC
- Mr Duncan Gay MLC
- Mr Stephen Mutch MLC
- Mr John Hatton MP
- Mr Malcolm Kerr MP
- Ms Sandra Nori MP
- Mr Andrew Tink MP
- Mr John Turner MP
- Mr Paul Whelan MP

### **Budget**

The Commission is funded directly by Parliament and has its own budget. Recurrent annual expenditure is \$10 million.

### **Staffing**

The Commission can employ its own members of staff and, with the concurrence of the Premier, fix their salaries, wages, allowances and conditions of employment insofar as they are not fixed by or under another Act or law. The Public Sector Management Act does not apply to the appointment of staff.

# THE INDEPENDENT COMMISSION AGAINST CORRUPTION CAN:

- Investigate allegations of corruption involving any public official including matters in the past.
- Investigate procedures which allow corruption to occur.
- Give advice on ways to reduce and eliminate corruption.
- Educate the community on ways to fight corruption.
- Apply for warrants for listening devices from a Supreme Court judge.
- Demand information from Government agencies and inspect any documents.
- Enter any premises used by Government agencies and inspect any documents.
- Demand documents or any other items from anyone.
- Hold public and private hearings.
- Obtain orders to stop interference with investigations.
- Summons a witness to give evidence at a hearing.
- Arrest a witness who does not comply with that summons.
- Apply for a search warrant or issue one in its own right.
- Recommend the Attorney-General grants an indemnity from prosecution.
- Arrange for the protection of witnesses.
- Refer matters to relevant bodies with recommendations for action.
- Require those organisations to report on the action taken.



## **THE INDEPENDENT COMMISSION AGAINST CORRUPTION CANNOT:**

- Prosecute people.
- Deal with matters not concerned with official corruption.
- Deal with complaints about Federal Government agencies.
- Investigate criminal activity unless it involves corruption.

## **UNDER THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT IT IS AN OFFENCE TO:**

- Obstruct the Commission.
- Make false complaints to the Commission.
- Fail to provide information or documents when required.
- Fail to attend a hearing when required to do so.
- Fail to answer a question at a hearing.
- Give false evidence at a hearing.
- Destroy, alter or fabricate documents.
- Take documents outside New South Wales so as to thwart investigations.
- Cause any person to give false evidence.
- Bribe or deceive a witness.
- Prevent any witness from attending a hearing.
- Injure or disadvantage a witness.
- Sack a witness from his or her employment.
- Impersonate an ICAC officer.
- Publish or allow to be published evidence given before the Commission which the Commissioner has ordered not to be published.



Mr J. Tedder,  
Honorary Secretary,  
Pavan's Road,  
Grassy Head via  
Stuart's Point. 2441.

December, 1989

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SUBMISSION TO  
THE INDEPENDENT COMMISSION AGAINST CORRUPTION  
REGARDING RECOMMENDATIONS TO  
INQUIRY INTO NORTH COAST LAND DEALINGS

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- 1.0 INTRODUCTION
- 2.0 POSSIBLE FINDINGS
- 3.0 RECOMMENDATIONS TO THE COMMISSION

Prepared by  
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with the assistance of  
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SUBMISSION TO THE INDEPENDENT COMMISSION AGAINST CORRUPTION  
RE RECOMMENDATIONS OF INQUIRY INTO NORTH COAST LAND DEALINGS:

1.0 INTRODUCTION

The North Coast Environment Council Inc. is a public interest, community based, voluntary environment organisation of 11 years standing.

It is now incorporated in NSW under the Associations Incorporations Act 1984 and acts as an umbrella group with 27 member bodies, including several based in the Tweed Shire.

As a regional organisation, the Environment Council receives a small annual grant from the federal Department of Arts, Sport, Environment, Tourism and Territories (DASETT) to assist with administration costs.

Additional funds for the Council's activities of campaigning, public education, participation in local council planning and development approval processes and input to NSW government policy documents are raised by the member groups and the Council as a whole.

The Environment Council applauds the establishment of the Independent Commission Against Corruption and the Commissions investigations to date. We look forward to the issuing of the Report and Recommendations arising from the current Inquiry.

1.1 FOREWORD

The Commission's Inquiry into the Tweed Shire and other areas on the North Coast and the subsequent revelations of alleged corruption highlights the need to have the planning decision making processes made much more open to public scrutiny.

Improvements to the extant processes and new, additional measures need to be incorporated into planning decision making processes at both the state and local government levels because, clearly, the existing processes have been open to systematic abuse, resulting in corrupt activities over many years.

Without the implementation of such measures there can be no public confidence that corruption will not continue.

In its hearings to date, the ICAC appears to have focussed attention on electoral donations.

The Environment Council submits that the offering and acceptance of donations are corrupt acts which give effect to an intention for corrupt manipulation of the planning process.

In the Environment Council's experience, very often the actual effect of these corrupt acts at the physical level is gross destruction of important natural features.



At the community level however, the Environment Council is aware that, as a result of the corrupt activities, there has been a growing lack of confidence in the Tweed Shire Council which has undermined respect for the Council as an institution and which has brought the planning process and development generally into disrepute.

It is our view that, in order to restore respect for the Council and its processes, the mechanisms of the actual corrupt manipulation of the planning process need to be addressed and appropriate measures instituted which will eradicate these mechanisms, as well as the donations.

The Council believes that these anti-corruption measures are best framed so as to empower the community, maximise public involvement and promote the accountability of elected decision makers to their electorate.

#### 1.2 THE TWEED SHIRE AS AN EXAMPLE TO THE REST OF NSW

The North Coast Environment Council understands that the activities of the allegedly corrupt team of Hogan, Munro et al were not limited to the Tweed Shire.

We believe that similar patterns of corrupt activities may have been repeated in other NSW shires e.g. Coffs Harbour, Ballina, Hastings, etc.

Consequently, the Environment Council is of the view that the means of dealing with corruption in the Tweed Shire has an enormous relevance to other shires, potentially the subject of future investigations.

However, the Environment Council wishes to emphasis the need to focus on the specifics of the Tweed Shire in the immediate future, while still learning about and testing patterns of corrupt activity likely to be reproduced elsewhere.

To this end the Environment Council has made a series of broad 'in principle' recommendations based on the Tweed experience and a number of specific recommendations which address particular matters and suggest particular responses relevant to the local scene.

These specific recommendations regarding the future of planning in the Tweed Shire are included in Section 3.15.



1.3 ISSUES WHICH IT IS REQUESTED BE ADDRESSED

In the course of witnessing the Commissions hearings and reading media reports a number of questions have arisen, which the Environment Council would be pleased for the Commission to address in its' Report and Recommendations:

- 1.3.1 What is the legal status of development approvals with which it appears corrupt payments have been associated?  
Do these Development Approvals stand?
- 1.3.2 Will the ICAC recommend that procedures and/or arrangements be implemented in Tweed Shire Council and other shire councils to ensure corrupt practices cannot continue?
- 1.3.3 Will the ICAC recommend greater opportunity for public scrutiny and action leading to an empowerment of the public in an anti-corruption watchdog role, etc?
- 1.3.4 Will there now be a review of all development approvals under s.103 of the Environmental and Planning Act, in which Cr. Tom Hogan and Dr Roger Munro were involved?
- 1.3.5. Will the Commission comment on the desirability of the standing down of public officials, the subject of serious allegations, who are named in future inquiries as 'substantially and directly interested' in the Commissions Inquiry and Report pending the tabling of the relevant Report?

The Environment Council would strongly argue that the Tweed Shire be treated as an example to other coastal shires and that the Commission make recommendations, arising from its' current inquiry, which will have an impact both in the Tweed Shire and beyond.

1.4 ROOTING OUT CORRUPT ACHIEVEMENTS

One issue which the Environment Council wishes to canvass in some detail before the Commission is the method of dealing with past corrupt activity.

While the Environment Council strongly advocates the empowerment of the public and the adoption of public procedures to prevent further corrupt activity, the Council asserts that mass participation of unspecialized members of the public will not remedy and correct past corrupt actions unless very carefully focussed.

The intention of the Commission in looking ahead to recommend methods of preventing corruption is supported, and must proceed in tandem with a 'rooting out' of past corrupt



practices and achievements. It is this 'rooting out' which will require specialised skills, careful stalking, a professional understanding of the detail of the planning process and an ability to focus the public's interest.

#### 1.4.1 Recognising the level of corrupt activity

The Environment Council alleges that members of the Tweed Shire Council have, in the two years since its' Shirewide LEP was completed under the previous Minister for and Department of Environment and Planning, undertaken to systematically destroy the concept of shirewide planning since it provided major obstacles for 'spot rezonings' and favoured developments - the bread and butter of the corrupt 'fixers'.

These obstacles have been in the body of the LEP: the zone tables, which describe permitted and prohibited development within particular zones; and in the maps of the zones, which describe specific areas where certain types of development can and cannot occur.

As such the Shirewide LEP ends an earlier era of 'ad hoc' planning where no consistency or shirewide overview was applied.

Thus, in the (nearly) two years since that Shirewide LEP was signed into effect, the Council has agreed to over 20 amendments to the LEP, each to accommodate a softening of the original plan in order to facilitate particular development aspirations.

While the Environment Council does not specifically allege that all these Amendments were the subject of corrupt payments, or improper, the number, extent and sensitivity of many of these require closer investigation.

One example of this process is the Mount Nullum LEP Amendment No 16 which together with Shirewide Review No3 bent the Shire wide LEP so far that a major residential and hospital complex is being promoted for an otherwise substantially undisturbed area -an isolated mountain-top.

Another example is the Amendment sought, and paid for, by Mr Bolster, for the rezoning for his land which hugely increased the profitability of his sub-division at South Tweed.

#### 1.4.2 Rorts become legitimate planning instruments

Some of these amendments could however been seen as 'corrupt achievements' since through allegedly corrupt intent and action, the planning process has been used to entrench deals and rorts as legitimate planning instruments.

The role of the Department of Planning in not supervising these Amendments closely is detailed in Section 3.9 and would appear to have permitted this process to proceed.



It is these legally made but corruptly engineered amendments which need to be reviewed and tested against public opinion and superior planning instruments, State Environmental Planning Policies and North Coast Regional Environment Plan.

If this is not done, the fruits of the corruption in Tweed Shire will endure even though the architects may have disappeared from the scene.

Even more concerning, these same corrupt amendments, to the permitted uses in certain zones, will be able to be used by others to achieve development aspirations which the Shirewide Plan did not permit or intend to even consider.

This may occur irrespective of whether the applicants were a party to the first corrupt actions.

This is the real substance of 'rooting out' the corrupt achievements: tracking down other inappropriate rezonings and evaluating those amendments to the LEP provisions to prevent continued abuse.

#### 1.4.3 Experts needed to overhaul Tweed S.C. planning instruments

Consequently, the Environment Council has advocated in 3.15 the removal of Tweed Shire Council's planning powers and the appointment of a team of two Planning Administrators to process current planning matters and to investigate and 'root out' entrenched corrupt achievements now enshrined in the Tweed Shire Councils Local Environment Plan (LEP).

This recommendation could be characterized as 'undemocratic' since it removes from elected members of council powers which they are entitled to operate by virtue of their election to office.

The Environment Council argues however that such characterization obscures the fact that the Council has not exercised those powers consistently with a respect for the democracy nor due process.

Information available to the Commission, some of which has been supplied by members of the North Coast Environment Council, would bear out this assertion.

#### 1.4.4 A Sharp, short-term solution to clean up the mess

The over-riding priority must be to extinguish the corrupt activities, 'root out' the achievements of this corruption and create a climate in which a new Tweed Shire Council can accept and operate these planning powers correctly and unhindered by the events of the past.

A team of Planning Administrators is seen by the Environment Council as a good mechanism for a short term intervention to achieve these priorities. Such an appointment is suggested for a period up to the next local council elections in 1991, during which a thorough review can be undertaken to ensure



that the new council starts off free of any contamination of past corruption.

While the removal of council's planning powers is well short of 'sacking' the council, the appointment of Planning Administrators will shock many other councils who don't believe it could happen to a rural council in a Government held seat. Such action would provoke a real sense of care and propriety amongst other shires' councillors in exercising their planning powers

Such procedures are provided for under s.118 of the Environmental Planning and Assessment Act and have been used elsewhere in NSW. Additional mechanisms which ensure that the public can and will have significant involvement in the planning and development approval processes are included as recommendation in Section 3.15 to assuage any concern that we are advocating a 'dictatorship' for the Tweed.

Generally speaking, the appointment of a Planning Administrator to the Byron Shire Council in 1986 was very effective in instituting much needed reforms to the Councils planning procedures and in handling the huge volume of development proposals current at that time.

The lessons learnt from that recent exercise should be applied to any Administrators appointed to the Tweed Shire and suggestions for improving performance are included in Section 3.15 of this submission.



2.0. POSSIBLE FINDINGS

The North Coast Environment Council makes the following suggestions to the Independent Commission Against Corruption regarding north coast land dealings:

That the Commission find that:

- 2.1. the Tweed Shire Council's decision making processes in planning matters has been corrupted by Councillors and individuals whose undisclosed pecuniary interests have improperly influenced the outcomes of Councils' decisions;
- 2.2. the Tweed Shire Council's handling of applications for development consent, building approvals and Amendments to the Shirewide Local Environment Plan has been grossly deficient.
- 2.3. the state government agencies which participate in the planning process and which are responsible for supervising the activities of local government, particularly the Departments of Planning, Lands and Public Works, have failed to ensure that normal and appropriate procedures are systematically applied, thus allowing corrupt activities to develop and flourish;
- 2.4. the current inquiry focussed on the Tweed Shire has an enormous relevance for other shires, since there is evidence that the web of corrupt practices discovered in the Tweed Shire has been repeated in other shires, potentially the subject of future investigations.
- 2.5. there has been a history of donations paid to individuals and political parties in order to gain opportunities and favours from local and state government officials which may not have been otherwise available.
- 2.6. there has been a deliberate pattern of deception and non-disclosure of donations paid to political parties which has allowed political parties to circumvent the intention of the electoral funding laws and permitted individuals, companies and organisations to avoid public scrutiny of their payments and receipts.



### 3.0 'IN PRINCIPLE' and SPECIFIC RECOMMENDATIONS

The North Coast Environment Council Inc. makes the following recommendations to the Commission:

#### Recommendation 3.1 - Amendments to Electoral Funding Act

that a thorough review of the electoral funding law in NSW be undertaken and appropriate Amendments made to the Act to achieve:

- i) the elimination of artificial schemes which avoid the Act's requirement for disclosure of donations; and
- ii) much greater public access to information regarding donations.

To achieve ii), the Environment Council requests that the Commission recommend a requirement for the advertising of electoral funding disclosures in newspapers circulating in the state, so as to enable any person, anywhere in the state, the opportunity to scrutinise the donations without going to the effort and expense of applying and paying for a copy of the electoral funding report.

##### Recommendation 3.1.1 - Advertising of electoral funding donations

that the Electoral Funding Act be amended to require the advertising of electoral funding disclosures in newspapers circulating in the state,

#### Recommendation 3.2 - Review & re-design 'reference' procedures for proposed landuses by state gov't agencies

that a fundamental review and re-organisation be undertaken of the National Parks and Wildlife Service's, Department of Public Works', Department of Lands' and other state government agencies' systems of 'referencing' proposals for preferred landuse to ensure that full information is available to all other government instrumentalities to assist in decision making;

The Environment Council strongly recommends the adoption of a system of 'reciprocal reference statements' whereby all state government agencies and local councils which have a proposal for future landuse of an area of private or public land are required to formally advise other agencies and adjacent councils of their interests and proposals for landuse.

Such a system is long overdue. While there is a requirement for the National Parks and Wildlife Service to circulate reference statements, other agencies such as the Public works Department, Tourism Commission, Department of Lands and the (now) Roads and Traffic Authority are not similarly required.

As a result the NPWS clearly signals its' intentions but other agencies do not, they simply proceed without co-ordination or agreement.



Any revised system of 'reciprocal reference statements' must include a requirement for a reasonable period for making a response to the circulating agency. This period must reflect the fact that many agencies commit staff resources well into the future and for efficiency ought not to be diverted from agreed work programs in order to answer numerous reference statements.

In addition, the period for providing a response must address the fact that some agencies such as the National Parks and Wildlife Service, may need to assemble detailed information or conduct research and/or investigation in order to adequately respond.

For an agency such as the Department of Lands to reference a development or disposal proposal for vacant Crown land, and give the NPWS one month to respond and/or act to acquire the land is unacceptable.

Further, the review of referencing procedures must include a 'circuit breaking' mechanism whereby a resolution can be achieved if two or more agencies have conflicting claims or proposals for an area.

Currently, where agencies have competing interests, e.g. Fingal Head, there is no forum or agreed mechanism for achieving a resolution, with the result that the agency that can move quickest (usually the development oriented agency) effectively frustrates and extinguishes the opportunity of the other agencies (another development agency or more likely, a conservation/protection Department).

#### Recommendation 3.2.1 - Reciprocal reference statements

that the relevant Acts be amended to establish a system of 'reciprocal reference statements' requiring all state government agencies and local councils to formally advise other agencies and adjacent councils of their interests and proposals for landuse through formal 'reference statements'.

#### Recommendation 3.2.2 - Reasonable response times

that the 'reciprocal reference statements' system include a requirement for a reasonable period in which an objecting agency may make a response to the circulating agency.

#### Recommendation 3.2.3 - Resolution of landuse conflicts

that the 'reciprocal reference statements' system include a mechanism for resolving disputes between agencies with competing landuse proposals which is based on the highest possible landuse option available under a hierarchy of priority landuses.



Recommendation 3.3 - Complaints public information program

that the NSW Government allocate resources and priority to a public education program to advise and inform members of the community of opportunities for making complaints under NSW laws viz: the Ombudsman's Act, the Independent Commission of Against Corruption Act, the Crimes Act, and the Local Government Act.

Recommendation 3.3.1 - Long term education via schools

that NSW Department of Education develop a legal studies core unit for secondary education courses which includes, among other legal issues, the identification of, the effects of, and opportunities and procedures for making complaints about, corrupt activity by public officials.

Recommendation 3.3.2 - Teacher educators to train teachers in legal studies

that teacher education institutions be requested to develop programs to train teachers in legal studies units focussed on identifying and making complaints about corrupt behaviour.

Recommendation 3.4 - Public empowerment for participation

that the NSW Government allocate resources and priority to a public education program to advise and inform members of the community of opportunities available for public participation in local government decision-making under the Environmental Planning and Assessment Act, 1979,

Recommendations by the Commission for programs of public information and education, about participation and complaint procedures available under NSW laws, would remove the mystique which apparently surrounds NSW planning decision making processes, enabling the community to understand, participate and scrutinise these decisions.

Further, such programs would empower the community to seek redress through appropriate avenues if improper conduct was suspected.

On the north coast in particular there is considerable development activity by Queensland and international interests who apparently do not understand or accept the differences between NSW planning law and procedures in operation elsewhere.

Consequently there are unreal expectations about development opportunities, processing times and lobbying mechanisms. In the post-Queensland National Party days it's not unreasonable to consider that interest and pressure from these companies will increase.



Recommendation 3.4.1 - Target non-NSW developers

that in addition to educating the NSW public, emphasis be given to educating non-NSW developers about relevant NSW laws affecting their development proposals, the consequences for breaching these laws or engaging in corrupt activity.

Such a specifically targeted education program should clearly articulate and apply the significant distinction between NSW and Queensland law regarding planning processes and development approval procedures, viz: the need for adequate prior studies and environmental assessments, the right at law for public participation, including Court Appeals etc.

Recommendation 3.5 - Amendments to other legislation

that the Commission evaluate and recommend amendments to a number of other Acts to remedy identified weaknesses in legislation that has the potential to permit corrupt conduct;

Recommendation 3.5.1 - Third party restraint provisions

that other existing development control legislation be amended by inserting third party restraint provisions enabling any person to undertake legal action to require compliance with the Act or to restrain breaches of those Acts. i.e as per s.123 of the Environmental Planning and Assessment Act, 1979.

Currently, under many Acts the only authority which can undertake legal action is the relevant state agency, sometimes only with the Ministers approval. Corrupt activity to dissuade the relevant public official to make a decision not to take warranted legal action will have no purpose if any person can begin proceedings.

Recommendation 3.5.2 - Public advertisement of Register

that the Local Government Act be amended to require local councils to publish the Register of Pecuniary Interests and subsequent amendments as paid advertisements in a local newspaper and council newsletter.

Recommendation 3.5.3 - Certain employment not permitted

that the Local Government Act be amended to require that no person actively employed in a Real Estate Agency or related occupation, eg development company finance brokerage etc operating in the council's area, be permitted to seek election to local council.



Recommendation 3.5.4 - Councillors actions limited

that the Local Government Act be amended to require that no councillor during their term of office shall be permitted to submit a rezoning proposal, or Development Application, apart from a DA for their personal residence, to the council of which they are a member.

The two recommendations above, while seemingly severe in that they limit actions of elected councillors, are viewed as appropriate since there has been a history of elected members of councils abusing their positions to benefit their employers company, or their personal development aspirations.

Councillors ought to stand and work for the general community benefit not for their sectional pecuniary interests.

Recommendation 3.5.5 - Prohibit secret meetings

that the Local Government Act be amended to require meetings with development company staff and local councillors or council staff, regarding development applications or rezoning proposals etc, to be held in a public place, with at least 3 persons from local council attending and either tape recorded and transcribed or fully minuted.

This recommendation would invalidate any secret meetings which might be held for purposes of negotiating deals for the proposed development. All meetings regarding proposed development should be held publicly and/or the record of proceedings made available to the public.

Recommendation 3.6 - Greater legal aid resources

that the NSW Government make available considerably greater legal aid resources to individuals and community watchdog groups, via the Legal Aid Commission of NSW, to ensure that legitimate community concerns about the processes and merits of Development and Building Applications consents and Amendments to Local Environment Plans can be fully tested in Appeals at the Land and Environment Court.

This recommendation would permit public interest groups much greater opportunities to pursue concerns and objections in the Land and Environment Court.

Recommendation 3.6.1. - Extend legal aid opportunities

that the availability of legal aid be extended to individuals and community watchdog groups taking public interest legal actions to restrain or remedy breaches of NSW legislation.

This recommendation is seen as an important consequence to Recommendation 3.5.1 which seeks amendments to other Acts to permit any person to pursue legal proceedings to restrain or



remedy a breach of an Act. Without extending legal aid availability, third party enforcement of Acts through the Courts will remain difficult.

Recommendation 3.7 - Councils to release relevant information

that the Department of Local Government and the Local Government and Shires Associations be directed to take prompt action to ensure that all Councils immediately and consistently release, and make available, all relevant documents and information relating to Development Applications, proposed Amendments to Local Environment Plans and the decision making processes involved in each stage of consideration;

Extracting information from many local councils and state government agencies, on Development Applications, Building Applications, Amendments to LEP's, draft Plans of Management etc. even material which is supposed to be 'available, is extremely difficult.

Many council and Department staff correctly deduce that more public information means better argued and documented submissions, probably critical of the proposal under consideration. Consequently, many local government staff are most unco-operative in providing information - some are even hostile.

Whether this sensitivity to an informed and active community is because of laziness, an unwillingness to address and integrate a large number of concerns as part of their work, because of a bias and antagonism against community and environmental concerns or because of complicity in improper activities is not clear.

What is clear is that there is a huge need for up-front honesty and an improvement in the reputations of many local and state government staff.

Consequently a recommendation by the ICAC which addresses this matter would do much to reduce the risk of corrupt decision making happening away from public scrutiny, or remaining undetected should it succeed in the short term.

Recommendation 3.7.1 - Information Officers

that local councils employ and/or specifically train staff to efficiently and provide information on development proposals to the public.

Recommendation 3.7.2 - Information location and retrieval systems

that local councils develop, maintain and implement effective information location and retrieval systems to assist local council staff answer enquiries and provide information on development proposals to the public.



Such a system should log in any and all information received by local council, indicate what file or matter it relates to and where the file or information is currently located.

Recommendation 3.8 - NSW Government pecuniary interests laws

that the state government review pecuniary interest laws applying at the state level and adopt a broader and more detailed system of public disclosures of pecuniary interests equivalent to local government pecuniary interest provisions.

Under Amendments to the Local Government Act which came into affect in September 1987, the NSW Government, via the Department of Local Government, now requires all elected members of local government and senior staff operating delegated authorities to fully disclose in a public register all the pecuniary interests which affect themselves, their spouses, de factos, children or other relatives.

These amendments are important and positive changes which should now be reflected in laws applying to NSW Members of Parliament and senior staff of Government agencies who operate a range of statutory powers.

Recommendation 3.8.1 - Senior NSW public servants be included

that senior staff of Government agencies who operate a range of statutory powers be required to list pecuniary interests in a Register and lodge an annual return of changes to this initial list.

It remains a concern of the Environment Council that members of Cabinet only disclose their pecuniary interests in confidential documents to the Premier and are not required by law or by Government policy to publicly release this information.

Recommendation 3.8.2 - Disclosure of current Cabinet interests

that, irrespective of other foreshadowed actions, the Premier be requested to publicly release the schedule of pecuniary interests of members of Cabinet.

Recommendation 3.9 - Department of Planning's role

that the Department of Planning be directed to carefully scrutinise all planning decisions and processes of local councils and state government agencies and act promptly to enforce NSW planning laws;



The Department of Planning, since the change of Government, the change of Director and change of emphasis away from being the Department of Environment and Planning, has consistently taken the position that 'the Department is not a policeman'.

On many occasions the Department of Planning has refused to require councils or other state government agencies to be consistent, or to adequately justify any inconsistency with NSW planning instruments, particularly State Environmental Planning Policies No. 14 (Coastal Wetlands), No. 26 (Littoral Rainforests) and the North Coast Regional Environment Plan.

The Department has been most haphazard in its manner of giving concurrence to council approved Development Applications or scrutinising the consistency of proposed Amendments to LEP's.

The North Coast Environment Council Inc. contends that this haphazard approach and the failure to play the role of being the 'policeman' has meant that developments are approved by councils and/or receive the Departments concurrence, when they ought not to.

Further, the Department has permitted the Tweed Shire Council, and other north coast councils, to very seriously undermine their Shirewide Local Environment Plans, by constantly approving 'ad hoc' Amendments to their LEP's to permit rezonings for developments which would have been unable to proceed otherwise.

In this way, probably unknowingly, the Department has created a situation where Councils can 'try on' just about anything and very often succeed because 'the Department is not a policeman'.

When challenged at various times on this stated policy of not being a 'policeman', officers of the Department have taken the view that if there is something seriously wrong, the public can Appeal to the Land and Environment Court or request intervention by the Minister.

Neither of these two options is accepted as a valid reason for failing to ensure the law is applied in every case.

Difficulties in obtaining legal aid when there is little funding available, the massive effort required to prepare and mount a case in the Court and the sheer intimidation that is applied to a person taking such action, means that the first of these excuses cannot substituted for competent action by the Department.

Requesting the intervention of the Minister involves a political solution to what are essentially legal questions. Experience to date has shown that the current Minister for Planning prefers a 'hands off role' and is extremely hesitant, for reasons of political policy and ideology, to intervene in the decisions of local government at the request



of local people, on environmental or planning matters.

At other times he appears very willing to intervene, usually for purposes of achieving Government objectives, not solving public interest concerns.

The ranking of the Department of Planning within the NSW Government hierarchy also means that the Department is not prepared to 'take on' other agencies, such as the Department of Public Works, the Forestry Commission, or the (now) Roads and Traffic Authority when these agencies do not comply with the NSW planning law, the Environmental Planning and Assessment Act, 1979.

Recommendation 3.9.1 - Reinstate Department of Environment and Planning

that the NSW Government reinstate the Department of Environment and Planning as the Department responsible for administering the Environmental Planning and Assessment Act 1979.

This important administrative change is needed to ensure that one prime reason for proper planning and an aim of the Act - environmental protection - is a pervasive issue in the minds of the staff of the Department. Currently the Department of Planning appears to be simply 'going through the motions' and somewhat haphazardly.

Recommendation 3.9.2 - Require Councils to fully justify inconsistencies with other superior planning instruments

that the Department of Planning enforce the provisions of the E.P. & A. Act which require all local councils to provide full justification of any and all inconsistencies between draft Local Environment Plans and other planning instruments as a condition of issuing s.65 Certificates.

Recommendation 3.9.3 - Refuse s.65 Certificates for grossly inconsistent draft L.E.P.'s

that the Department of Planning adopt a policy of refusing to issue s.65 Certificates for draft Local Environment Plans which are grossly and unjustifiably inconsistent with other planning instruments.

Recommendation 3.9.4 - Refuse s.65 Certificates for developments on land the subject of 'reference statement'

that the Department of Planning adopt a policy of refusing to issue s.65 Certificates for rezoning Amendments to Local Environment Plans for land the subject of a 'reference statement' until the Department has the written consent of the agency or agencies which issued 'reference statements'.



Recommendation 3.9.5 - Refuse concurrence if not satisfied development complies with planning instruments

that the Department adopt a policy of refusing concurrence for developments requiring concurrence if the Department is not satisfied that the development complies with other planning instruments, or if other prudent and feasible alternatives have not been addressed.

Recommendation 3.9.6 - Department to prosecute breaches

that the Department adopt a policy of initiating legal action on its own behalf, to restrain or remedy a breach of the Act where any breach is detected by or brought to the attention of an officer of the Department.

While it has been argued above that the public should be empowered to undertake legal action to restrain or remedy breaches of legislation, it is not inconsistent to assert that the Department should also be empowered and willing to commence necessary proceedings.

The current situation, where the Department becomes aware of breaches but does nothing because of existing third party rights to commence actions, should not be allowed to continue.

Nor should the Department be permitted to abrogate its responsibilities for enforcement of the Act by relying on local councils to undertake proceedings. Most local councils have limited staff and resources for legal action and often they are unwilling, due to political antagonism to the Act, to take action to enforce the Act's provisions.

Recommendation 3.10 - Local Government Councillors to meet pecuniary interest requirements

that all local government councillors and appropriate staff comply with the Pecuniary Interest Amendments to Local Government Act;

Recommendation 3.10.1 - Tweed Shire Council compliance

that Department of Local Government undertake a review of the compliance by Tweed Shire Council staff and councillors with the pecuniary interest declaration provisions of the Local Government Act.

Recommendation 3.10.2 - Consequences of non-compliance  
that the discovery of any non-compliance with the pecuniary interest declaration provisions of the Local Government Act trigger the consequences under those provisions.



Recommendation 3.10.3 - Spot checks and audit of declared financial interests

that the Department of Local Government be advised of the bank account numbers of all local government councillors and senior staff and be empowered to undertake spot checks to audit the financial affairs of individual councillors and staff.

In order to implement such a recommendation Councillors and senior staff would be required to authorise banks and other financial institutions to release account details to Department of Local Government auditors.

This recommendation would provide great deterrent value to potentially corrupt council members and staff since they would not know when their accounts might be open to scrutiny.

Recommendation 3.10.4 - Public advertisement of Register

that local councils publish the Register of Pecuniary Interests and subsequent amendments as paid advertisements in a local newspaper and council newsletter.

In this way the community can be made aware of the interests represented by their elected Councillors and senior staff.

Such a Register cannot be allowed to sit unknown, unseen, but 'available' in the offices of the council.

Recommendation 3.11 - Investigation of Tweed Shire staff

that the Commission continue its' careful and searching scrutiny of all past and extant staff at the Tweed Shire Council to identify, and where appropriate recommend the dismissal and/or prosecution of, any staff member who has been a party to corrupt activities;

Recommendation 3.12 - Refer matters to the Ombudsman's Office

that evidence on matters which cannot be substantiated as 'corrupt conduct' be referred to the Office of the Ombudsman for further investigations to determine compliance with proper administrative procedures;

Recommendation 3.13 - Amendments to Environmental Planning and Assessment Act, 1979

that the Commission evaluate and recommend a range of amendments to the above Act to remedy identified weaknesses in planning decision making processes which have the potential to permit corrupt conduct;



Recommendation 3.13.1- Refuse exhibition of incomplete Environmental Impact Statements

the Act be amended to strengthen the requirement for councils to ensure that any Environmental Impact Statement for a development, complies with Regulations made under s.105, or additional requirements as notified from time to time by the Director of the Department of Planning, before permitting its exhibition.

Recommendation 3.13.2- Refuse exhibition of incomplete Local Environment Studies

the Act be amended to strengthen the requirement for councils to ensure that any Local Environment Study for a draft Local Environment Plan complies with the requirements as notified from time to time by the Director of the Department of Planning, before permitting its exhibition.

Recommendation 3.13.3 - Amend Schedule of Designated Developments

that the Acts Regulations made under s.158 be amended to include as Designated Development developments which exceed a prescribed value in construction costs.

It is suggested that a construction cost of \$2.5 million be adopted. This would mean that all developments greater than \$2.5 million would require full public notification and advertisement, the preparation of an Environmental Impact Statement, permit councils a period of 60 days in which to make a determination and allow for greater public accountability through an 'objectors appeal' to the Land and Environment Court.

Recommendation 3.13.4 - Amend Schedule of Designated Developments

that the Act's Regulations made under s.158 be amended to include as Designated Development clearing of greater than 0.5 ha of native vegetation for any purpose whatsoever.

Recommendation 3.13.5 - Review Schedule of Designated Developments

that the Act's Regulations made under s.158 be reviewed and amended to include as Designated Development the creation of or dredging of artificial waterways greater than 0.5 ha

The clearance of native vegetation for 'agricultural purposes', the construction and later dredging of drains or artificial waterways have been used as 'covers' for substantial commercial residential and canal estate development.



These types of development are grossly destructive to remnant native vegetation and to adjacent natural watercourses and should be subject to the stringent public accountability and environmental impact procedures which Designated Development requires.

Recommendation 3.13.6 - Advertising of Development Applications

that the Act be amended to require councils to advertise on a regular basis, Development Applications received by council.

Recommendation 3.13.7 - Exhibition of Development Applications and applications for Building Approvals for Designated Developments

that the Act be amended to require the exhibition and public inspection of any Development Application or application for Building Approval for Designated Development, or any relevant documents appended, and lodged with local councils.

It is not thought that these recommendations are onerous since some councils have adopted an informal practice of simply listing Development Applications in a weekly newsletter advertisement.

These proposed amendments would mean that all development activity would be in the public domain and subject to inquiry by the community at large.

Recommendation 3.13.8 - Making of submissions on Development Applications

that the Act be amended to permit any person to make a submission on or lodge an objection to Development Applications.

Recommendation 3.13.9 - Appeal of Development Consents

that the Act be amended to permit a person who has made an objection to a Development Application to make an appeal to the Land and Environment Court to review the decision of the local council.

These proposed amendments would allow members of the public to comment on proposals for development, require councils to address matters of public concern contained in submissions and empower members of the public to test the appropriateness of council's decisions in the Land and Environment Court.



Recommendation 3.13.10 - Issuing of and response to Requisitions

that the Act be amended to permit, during the period of exhibition of a Development Application, members of the public to issue formal Requisitions, and to require developers to supply, within a reasonable time, answers which will be legally binding on the developer.

Currently, many development companies do not provide all the information which is relevant or necessary to form and informed opinion about the proposed development. This deliberate ploy aims to stymie active inquiring members of the public and reduce their ability to make cogent comments or objections to their proposal.

Otherwise, developers may convene 'public relations' meetings where a convenient version of the development proposal is proffered for public consumption. Very often this version is modified, embroidered or gainsaid in other public venues to suit the developers interests and to confuse the community about the developers real intentions and/or impacts.

Both these scenarios would be defeated if the public were empowered to issue formal requisitions for information or clarification to the developer, and the developer was required to reply within a reasonable time, 14 days, and legally bound by those responses.

Recommendation 3.13.11 - Consideration of financial capability

that the Act be amended to insert in s.90 a consideration of whether the cost of construction or implementation of the development is within the financial capability of the developer.

This amendment would allow councils to refuse to grant consent to a development company which is incapable of completing the proposed development, and who intends to simply sell the approval to another financially capable company at exorbitant profit margins.

It would also prevent major works commencing then grinding to halt because of lack of finances, provoking environmental damage via soil erosion etc or the creation of ugly eyesores on a scenic landscape.

Recommendation 3.13.12 - Provision of Corporate structure information

that the Act be amended to require relevant information on the corporate identity and structure of the proponent company and all associated companies be provided to local councils with Development Applications.



Basic Corporate Affairs documents, (such as list of Directors, issued capital, shareholders, last annual return) should be exhibited with the Development Application by the Council to enable council to make the judgement as the company's ability to undertake and complete the proposed development.

Any changes to the relevant company structure and financial viability which occur during the period of exhibition should be required to be immediately advised to Council and the necessary amended documents exhibited.

Recommendation 3.13.13 - Open complete files to be available

that the Act be amended to require the files for all Development Applications to be freely available, complete with all relevant correspondence during normal working hours.

Recommendation 3.13.14 - Pecuniary interest provisions to be included in Environmental Planning and Assessment Act, 1979

that the Act be amended to extend s.148 to cover gratuities etc included under Part VI of the Local Government Act s.101(1) and (2).

This is viewed as desirable since it will specify conflicts of interest and pecuniary interests which must be avoided or declared in administering the Environmental Planning and Assessment Act. Currently these important but little known provisions are buried in the weighty volumes of the Local Government Act as amended.

Recommendation 3.14 - Implementation of the Commission's contempt provisions

that the Commission recommend the prosecution of any person who breaches the Commission's contempt provisions.

The Environment Council is concerned that there have been a number of instances where the Commission's contempt provisions have been breached and is keen to see no repetition. Prosecutions under these provisions would go far in discouraging further breaches.

Recommendation 3.15 - Remedy and rectify structural results of corrupt activity

that the Commission evaluate and recommend a range of procedures to overhaul the planning instruments and decisions of the Tweed Shire Council to identify, remedy and rectify structural results of corrupt activity.



The recommendations contained below, while of relevance to other local councils are included here to specifically refer to the current situation affecting the Tweed Shire Council.

Recommendation 3.15.1 - Remove Council's Planning powers

that the Minister for Planning remove Tweed Shire Council's planning powers under s.118 of the Environmental Planning and Assessment Act, 1979.

Recommendation 3.15.2 - Appoint a team of Planning Administrators

that the Minister for Planning appoint a team of Planning Administrators to the Tweed Shire Council under s.118 of the Environmental Planning and Assessment Act, 1979, notwithstanding the recent appointment of a Chief Town Planner,

While a new planning officer has been appointed to Tweed Shire, this person is still operating under the staff umbrella of the 'bad old days' and will be limited by their lack of seniority.

The filling of this staff position cannot be seen as the solution to the Tweed Shire Council's problems. In no way is it a substitute for a team of Planning Administrators, nor can such an appointment be accepted as a valid reason for not removing Tweed Shire Council's planning powers and appointing a team of Planning Administrators.

This staff member should provide expert assistance to the 'team' and be trained by the Administrators to carry on proper and intelligent planning functions once the Administrators brief has been completed, a new council elected and the council's planning powers have been restored.

Recommendation 3.15.3 - ICAC to recommend procedures and guidelines to vet Administrators

that the Commission recommend procedures and guidelines to ensure that any persons appointed as Planning Administrators, are fit and proper persons to hold and operate a range of powers under the Environmental Planning and Assessment Act, 1979;

The Planning Administrators cannot be simply appointees of the Minister for Planning, or delegates from the Department of Planning since there is insufficient public credibility in the Minister and the Department to ensure that the Administrators would not be subject to influence and manipulation.

The notion of a Planning Administrator has had currency in the Tweed for some years with recent suggestions being made that an Administrator has been groomed by the Department of Public Works, who would be pro-development and inclined



towards 'can-do' planning - perpetuating the corrupt regime.

Without the vetting of possible candidates, by guidelines and procedures prepared by the ICAC, to ensure their highest integrity, Administrators may be appointed who will not do the job fairly and impartially.

Recommendation 3.15.4 - One Administrator be empowered to process planning matters

that the Minister direct one Administrator to process, i.e. approve or refuse, all current and future applications for building approvals, development consent and Amendments to the LEP on the behalf of Tweed Shire Council until a new Council is elected in September 1991;

Recommendation 3.15.5 - Another Administrator to research abuses of planning powers

that the Minister direct a second Administrator to review the extant planning code in the Tweed Shire (viz: the Tweed Shire Local Environment Plan and consequent Amendments) to ascertain, objectively, against the measure of public interests, whether certain prior amendments to the 1988 Shirewide L.E.P. are appropriate and consistent with other Regional and State Planning instruments;

Recommendation 3.15.6 - 2nd Administrator to propose remedy to planning instruments

that the Minister direct the second Administrator to prepare and recommend to the Minister for Planning, in accordance with the Act, subsequent Amendments to the L.E.P., which will repeal corrupt Amendments and/or unjustified inconsistencies and extinguish the possibilities for using inappropriate prior rezonings, in the future, for purposes which conflict with the zone or shire objectives.

Recommendation 3.15.7 - 2nd Administrator to identify inappropriate development consents and propose remedy

that the Minister direct a second Administrator to prepare a list of Development Consents issued by the Tweed Shire Council which are 'prima facie' improper or unwise approvals, for consideration of modifying or revoking those consents under s.103 of the Environmental Planning and Assessment Act, 1979,

The appointment of Planning Administrators, will be extremely onerous positions, at least at first, and will require significant administrative and political support if the forces of corruption are to be effectively defeated.



While it is considered very important that the Administrator be appointed to deal with recommendation 3.14.3, it is seen as essential that an additional Administrator be appointed and charged with responsibilities as described in recommendations 3.14.4, 5, and 6.

The Environment Council has recently experienced at close quarters the activities of a Planning Administrator, appointed to the Byron Shire. The following suggestions, based on that experience, aim to reproduce and improve the functions of such Administrators.

Recommendation 3.15.8 - Resources to assist Administrators

that the team of Planning Administrators be provided with additional staff, including a fulltime Secretary, to maintain a proper distance between the Administrators and people representing development interests;

Recommendation 3.15.9 - Public information meetings

that the Planning Administrators hold public meetings, where developers can put their development proposals to the community, in an informal manner, and where the public can question and debate the merits of development proposals before they are formally submitted;

Recommendation 3.15.10 - Public planning meetings

that the Planning Administrators hold regular public planning meetings, where they can:

- be addressed by development companies regarding proposed developments and/or rezoning proposals,
- invite and hear comments and input from individuals and groups concerned with the public interest,
- report on their activities and investigations; and
- announce decisions made on behalf of the Council on Planning matters;

Recommendation 3.15.11 - Prohibit secret meetings

that the Planning Administrators refuse private interviews between themselves, council's Planner and developer interests for the purposes of making representations.

Recommendation 3.15.12 - Open up the files

that all relevant files be opened to public scrutiny and the all relevant documentation be provided to the public to inform local opinion and assuage public concern regarding the influence of hidden information;



Recommendation 3.15.13 - Council staff to co-operate  
that the Minister, when delegating significant powers of inquiry, investigation and decision making authority to the team of Administrators, include the power to require the compliance of all Tweed Shire staff and Councillors to reasonable requests;

Recommendation 3.15.14 - Administrators work to be independently evaluated  
that the Commission recommend the institution of a process whereby the activities of the Planning Administrators are properly and independently evaluated.

Recommendation 3.15.15 - Council to implement previous recommendations

that the Tweed Shire Council be required to institute as a matter of urgency, all the recommendations, in all their detail, made by Local Government Inspectors in 1986/7 and in subsequent further investigations and Reports;

Following the Local Government Inspectors Inquiry and subsequent Report, only several of the recommendations to the Council were acted upon and several were strongly resisted since they fundamentally threatened 'the arrangements' which it would appear were operating the Tweed Shire to assist developers with problems needing solutions.

The Environment Council requests that the ICAC recommend a follow up of all the recommendations contained in the 1987 Inspectors Report and subsequent Reviews.

Recommendation 3.15.16 - Prosecute breaches of the Environmental Planning and Assessment Act

that investigations and, where appropriate, legal actions be commenced and/or continued against persons who, it is alleged, are/have been in breach of the Environmental Planning and Assessment Act, 1979 and/or development consent conditions, in the Tweed Shire;

In a complaint made to the then Minister for Environment and Planning in March 1986, members of the North Coast Environment Council Inc. made a series of very serious allegations regarding the failure of Tweed Shire Council to comply with the NSW planning law and the complicity of certain then Councillors. Following a Local Government Inspectors Inquiry and subsequent Report many of these matters were shown to have been substantially proven.

Legal actions against individuals who had breached the Environmental Planning and Assessment Act, 1979 have not been commenced to the knowledge of the Environment Council. These same developers are continuing to pursue their outrageous and insupportable development aspirations with impunity.



The details of this matter have been reported by Mr John Corkill, one of the Environment Council's Vice Presidents and original complainant, to Ms Jodie Camden and Investigator Matthews, officers of the ICAC on 28/7/89 and are contained in a file C89/695.

Recommendation 3.15.17 - Appoint new Chief Executive Officer

that a Chief Executive Officer be appointed to the Tweed Shire as the most senior staff member who will have seniority and control of all extant staff, including the Shire Clerk, Engineer and Town Planner;

This matter should be pursued towards the end of the tasks described above for the Planning Administrators. The new council elected in September 1991 must have a competent chief executive officer who is the most senior member of staff and who is free of any taint of the previous administration.

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#### 4.0 SUGGESTIONS TO THE COMMISSION REGARDING ITS' OPERATIONS

The North Coast Environment Council wishes to make some observations of and signal issues to the Commission regarding the current inquiry.

In doing so, the Environment Council recognises that it cannot be aware of the considerations informing the Commission or the activities which the Commission may have underway.

Thus, the Commission may already be attendant to some of the matters raised below, and may have these matters in hand.

Alternately, some of these matters may not have been drawn to the Commissions attention to date, and a brief canvassing of them here may prove useful.

4.1 It would be unfortunate if the financial and human resources available to the Commission for its important activities were to severely limit the ability of the Commission to follow up corruption at all levels of public office.

Potentially disturbing perceptions in the community, reported to the Environment Council, are that the Commission:

- i) is not interested in corruption of public officials who are not high profile;
- ii) is following the trail to the biggest 'fish';
- iii) concerning itself with current corruption and giving lesser priority to corruption before March 1988.

4.2 Public confidence in the Commission may be diminished if, in the opinion of people who have made submissions to the current inquiry, the ICAC is seen to be not pursuing avenues of investigation, which on the information provided, appear to be worthy of further inquiry.

e.g.

- \* issues concerning the Labor Minister for Lands, Jack Hallam, MLC; and
- \* at the Tweed Shire Council level, the widely held perception that Peter Border (TSC Shire Engineer) has been corrupt.

4.3 In recognising the complexity of the technical planning issues involved, concern is expressed that the ICAC investigators, with their conventional law enforcement backgrounds, are not familiar with state and local government planning processes, practices, etc. and therefore may be potentially unaware of the significance of information they discover or which is made available to them;

The current inquiry, focussed keenly on the Tweed Shire and its processes, has clearly indicated patterns of planning law abuse and attendant corruption which is likely to be repeated and 'perfected' in other shires. It is very important that the Commission have relevant skills at its' disposal which



assist with this particular line of investigation.

4.4 The internal organization of material submitted to the ICAC is of paramount importance if the full dimensions and interlinking of corruption is to be recognised. Information needs to be adequately integrated and cross-referenced to avoid the potential for related information to be not put together, lost in system, or pigeon-holed as irrelevant to current inquiries.

It is essential that a perception that 'a sense of chance' process, does not develop regarding information submitted to the ICAC.

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INTERVIEW

Time: 9.25 a.m.      Date: 28/7/89      Chief Investigator: Matthews

Complainant:    John Corkill  
                  12 Albert Street  
                  Forest Lodge      Ph: (H) 660 4042

MATTHEWS: Now can you just explain the background that brings you here today to assist our enquiries.

CORKILL: Right. From 1983 I was working in Lismore for the environment centre there known as The Big Scrubbing Environment Centre.

MATTHEWS Now that's not a government

CORKILL: No it's a non-government organisation, its now an incorporated association as a community group. I was for a time there their Secretary and later was employed as their Project Officer. Concurrent with that I worked as a voluntary officer of the North Coast Environment Council which is a regional umbrella organisation for other local community environment groups. I've been their vice president since 1985, from memory. Going back to the early days in '85, I was working for the environment centre, the Big Scrub Centre, looking at developments that were occurring in the shires of Ballina, Byron, Lismore and Tweed. Some colleagues of mine from the Tweed Valley Conservation Trust, which was one of the -- sort of a parallel group if you like -- a local community environment organisation -- raised a number of matters that they were concerned about developments in the Tweed. Now, myself and two associates started to do some investigation about what we thought were illegal developments in that shire and we started to research Council's minutes and Council's planning register in



order to gain some information about whether those developments were proceedings appropriately. All we did was prepared a preliminary submission to Bob Carr which set out, I think four or five matters, that we felt were of extremely concern. We forwarded that to him in late '85. We then put together

MATTHEWS Were those submission in relation to Tweed only?

CORKILL: In relation to Tweed only at that stage.

MATTHEWS Do you remember any of those developments that you were concerned about?

CORKILL: Yes one of them was the Peter Crickleberg Canal Estate at Possible Water, another was a large area of widening and destruction in Kehellers Road, in Tweed Shire. It's in this blue report.

MATTHEWS Whereabouts is that actually situated, I cant place it.

CORKILL: That's in the southern part of the shire, south of Moogal. Now that preliminary report went to Carr -- no that preliminary report was delivered to Carr's staff at the end of '85 and through the summer of '85 early '86 we started to prepare a very much more detailed submission to him and eventually in March '86 we presented him with some 20 matters which had been serious allegations, complete with some documentation and a detailed map of what we alleged to be illegal development in the Tweed Shire. That submission was made to Bob Carr personally, late in March '85 in the company of a number of officers of the State Nature Conservation Council. Carr was shocked, amazed and surprised at the extent of our allegations of illegal activities in Tweed and he subsequently appointed two local government inspectors to get stuck into our allegations and research them. One of those people



was Mr Jim Waugh who was at that time, I think even the Deputy's Director of the then Department of Environment and Planning or the Assistant. There was also a second person, a Miss Jeannette Jones, who was a part time inspector as well. Both those people conducted a detailed investigation subject to a report which is here, this is their report to Bob Carr, and it details the process of their investigation and it details our allegations and the conduct of their inquiry and the details of their investigations and then draws recommendations about a whole number of matters.

MATTHEWS Were you satisfied with that particular report

CORKILL: We were very pleased that the report was done, there was a very large number of recommendation, most of which we'd alleged --? were/weren't ?-- implemented. Now Carr received that report and, we understand, was extremely concerned about the nature of illegal activities and the complete failure of the Tweed Shire council to properly implement the Environment Planning and Assessment Act or other acts, the Local Government Act, under which it was supposed to be conducting control over development of the shire.

MATTHEWS Did you actually have written documents to Tweed that you kept, your organisation.

CORKILL: Written letters from us to Tweed?

MATTHEWS Yes. Outlining some of your concerns

CORKILL: Yes. There were letters written largely by the local group at that stage, the Tweed Valley Conservation Trust, written to the council and to in some cases developers of particular developments named in the report. Which basically said, what the hell are you doing?



MATTHEWS: Can we have the principal's name please that we can contact from the Tweed Valley section

CORKILL: Yep. Mr Andrew Murray, Couchy Creek by Chillingham. He is a consultant and marine biologist and his phone number, home phone 066 791 481.

MATTHEWS: Is there anybody else up there with a

CORKILL: There was Andrew, I and Elizabeth Smith from Beacon who undertook this investigation and I understand Elizabeth Smith has already been interviewed by officers of the commission. Following on from Bob Carr's receipt of this report, we understand that he went to Cabinet and said I want to sack the Tweed Shire Council because they are not properly implementing the Planning Act. Now it's never been said publicly and it's not clear to us even to this date, why that didnt happen. Except that there are very strong rumours, or there were very strong rumours circulating at the time that the then Minister for Local Government Janice Crozier wasnt prepared to sack the council and we understand that there was a very bitter debate in the Cabinet at that stage about whether planning powers ought to be removed or not. So consequently, the planning powers weren't removed, council was only asked to implement the recommendations of the inspectors about the restructuring of the council's department and adopting a new and proper way of operation. I would allege that those things still have not substantially been done to this day.

MATTHEWS: Are you aware of the inquiries done by the local council inspectors that was presented just recently. The overview of the administration of the Tweed Council

CORKILL: I was aware that that was undertaken, I haven't see the report or the detail of it. No.



MATTHEWS: Ok. It may also duplicate some of the recommendations and that is being carefully watched at the moment.

CORKILL: A key thing that I want to say about this process of us coming to Carr perhaps it was in my naivety at the time, is that when we got this list of some 20 matters, which I think is contained..

MATTHEWS: Yeah, 26

CORKILL: I think we listed 22 and we they started the investigation another 4 or 5 popped out of the woodwork once the inspectors were up there. Now part of my naivety at the time was that we made a press release to the Northern Star and to the Daily News stating that basically the greenies were going to Bob Carr to rat on the council because they were not properly implementing the Planning Act, because there was a whole range of illegal developments underway. Now because we chronically under funded I caught the train down that night and I don't remember the exact date, I don't have my diaries in Sydney, so I know it was late March '86. The day that that press release hit the newspapers in the Tweed, there was apparently an enormous cuffuffal in Tweed, amongst the councillors there who knew basically that we now had a fair bit of information on them and they were very concerned that we would go to Carr. Now we understood that Tom Hogan and some of his associates including Alison Pearson who was on the council at that time, had a very hurried meeting, and a number of them, I don't know how many, flew from Tweed to Sydney in order to preempt our submission and to prepare the ground that in fact all these things were now being taken care of and the greenies hadn't got it right. It was to basically head off what would have been a bombshell had we not done the press release in the first place. As I say, in



retrospect, I wouldn't do that again.

MATTHEWS: You probably know why we started .....inaudible....

CORKILL: Well I've been following it with great interest. Now the situation was that we had had correspondence with Carr's office for quite some time on a number of matters and we were completely dissatisfied with the way our information and our requests for action were not being acted upon and I would allege that a senior staff member in Carr's office, Mr Peter Fitzgerald, was there as a minder and was linked very closely to Hogan and other people in Tweed in order to make sure that certain things happened or didn't happen according to how they might have unfolded.

MATTHEWS: Is there any direct evidence of that or is that just a

CORKILL: I personally had a number of interviews with Peter Fitzgerald where he just basically patted me on the head and physically patted me on the head and said don't you worry about that I'll see to it, See ya later. And nothing happened. There's a number of occasion where we had written, or I had approached him for particular action, sometimes in the follow up of this, and he said I'll take care of it. Now, my files at still at Lismore, it would probably take me some time to actually dig out the correspondence or to recall those matters

MATTHEWS: I think it important that we do look at some of those, because its also part of the commission's inquiries that to look at possible inactivity as also being part of corruption. It doesn't have to be necessarily bribes to make it corrupt.



CORKILL: I have no allegations about Carr, Carr acted with speed whenever we got to him directly. The problem was that there was this block between us and him, where our allegations and our concerns and our requests for action were basically stifled and that's a serious concern that we've got. One of the matters that I specially raised when I spoke with Jodie on the phone was about a then councillor Peter Crickleberg and the detail in the local government inspectors report here, indicates that council had received a letter from council's solicitors regarding this matter, following representations from the Tweed Shire Council that they referred to their solicitors. The solicitors wrote back to Tweed Shire Council and said there appears to be a prima facie case of an illegal development here and that council has basically three options - to do nothing - to seek further legal advise - or to institute a prosecution against Crickleberg for an illegal development. Now council resolved to take no further action on. I would allege that that is a corrupt act and that anybody who did other than vote against that motion would be implicated in allowing corrupt activities to carry on.

MATTHEWS: You could also say, I think that that is an environmentally

CORKILL: Oh it was an environmental disaster.

MATTHEWS: the area of the main high water marks the whole works.

CORKILL: Yes, yes. There are some matters that we allege are all environmental disasters not on a small scale, most of these are very serious matters. And the details are contained in there. We allege that the Planning Act wasn't properly implemented, The Local Government Act was properly implemented, and I suppose that those amount to allegations that there in fact corrupt



activities, decisions not to act, to implement these. Council has said on other occasion, I think Max Boyd has said in press releases, "oh we didn't know at the time," or "we didn't understand how it operated". But I don't accept that and we never accepted that they were incompetent to the extent to which they were pretending they were incompetent. We believe that there was a conspiracy of interests to particular allow certain things to go through and not apply the laws as they stood at the time.

MATTHEWS: Alright. We've got a fair bit of documentation on that possible matters, which is part of our inquiry. Is there any direct evidence of the reason why he commenced that development.

CORKILL: No I don't have any direct evidence to that effect, I'm afraid. That might be discovered on enquiry to him.

MATTHEWS: I just wondering whether or not your organisation had gone back as far as actually how he purchased it. etc.

CORKILL: We were not able to discover that, we were trying to conduct a very discrete inquiry given that we were three essentially local people, with environmental concerns, knowing that we were dealing with very big developers and very powerful interests and that we had to be quite careful about how far we tipped our hand basically. Another matter which is listed in here which I do want to draw to your attention, because it implicates Max Boyd, and Max is to this point, pointing the finger rather than having the finger pointed at him, one of those is called the Daleside Development at Pigabeen Road.

MATTHEWS Now Daleside, that's the matter of Bolsters.

CORKILL: Bolsters - no.



MATTHEWS Is it in here, what page is it?

CORKILL: Yes it is. The situation that occurred at Pigabeen Road was that an earlier application for some clearing and levelling of the site was later changed to a Caravan Park Development which was later changed to a Motel Development and what actually occurred on the site was one monstrous absolutely huge excavation to provide basically fill, to build up a wetland area into an area that was capable of further development. Now the situation in regard to that was that, and what the local government inspectors found, that it was quite improper for council to approve a series of seemingly unrelated developments to fill or to excavate in a particular area without knowing what the purposes of that filling and excavation were. There was a subsequent series of amendments to the development application, so that any person who wanted to conduct an inquiry into what was going on such as a member of public, as we did, was then faced with this enormous bureaucratic riddle of which was the development application; was it the first one, the second one, the subsequent one after that or the ultimate one which was then for, I believe, a hotel and sort of , sorry a motel and shopping centre type complex. Now the direct allegation that we make here and I confirmed in speaking with Andrew Murray on the phone last night, was that Andrew Murray was employed as a consultant to do a investigation of the wetlands significance of that site and he found that there were important areas there and recommended to the principal that no activity take place. Now he was not comfortable with their continuance instance on that and met with the principal whose name is Iver (I can't think, it will come to me). The direct allegation is that this man later told Andrew and told us, although he didn't speak to me personally, told other members of the Tweed Valley



Conservation Trust, that he had been paying \$450 per month to a person known as Murray Falher, as a development consultant, in order to obtain the approvals and sort out the go ahead for this development. Now he blew the whistle to Andrew Murray and other people, because he was pissed off that he had been paying good money and hadn't got the results, and the thing had got bogged down and that he hadn't got what he paid for. Now this then was introduced to, ah Murray Falher was introduced to the owner, his first name's Iver, by Tom Hogan at a dinner at Oscar's restaurant and this process of having Falher meet council staff, and we understand both Boyd and Hogan held on site meetings to work out how they could go ahead, occurred on a number of occasions, and there were also probably a number of occasions where they met in what was then known as the (I think it was) The Development Referral Group, which was this sort of select group of council members and senior council staff whose job it was to massage development through the process. And Jim Waugh in his report, the local government inspectors report, was extremely critical of that select group that basically approved developments when they had no authority to do that.

MATTHEWS: This fellow, Falher, have you any other information of any other developments he may have been involved in?

CORKILL: I don't at this stage. It's not an area that I've enquired into in detail. It is certainly something that I would recommend requires some follow up.

MATTHEWS: There are enquiries being made about him, I just thought you may have had something.

CORKILL: No not at this stage.



MATTHEWS: Right now, apart from these large list of some 26 areas of concerns about developments. Are there any others since this actual inquiry which your group has been investigating.

CORKILL: Yes. Mount Nulla in particular in the Tweed Shire.

MATTHEWS: I know the background of that one

CORKILL: Well do you know about John Burrell? I'll go back again on this, in early '86 the North Coast Environment Council was preparing a discussion paper on tourism development and how it could be done in an environmental sensitive way. Now John Burrell at that stage was a consultant to the tourism commissioner of NSW. And he prepared a North Coast Tourism Development discussion paper, that said we should have all sorts of things for North Coast Tourism development including skyhooks to the top of Mount Warning and a whole range of things. What he did was that he offered and I accepted to travel with him by light plane to fly over the far north coast region and he basically pointed out the areas that he wanted to see developed, which were largely crown land areas, and kept -- was attempting to coerce me into a position of saying, well the North Coast Environment Council says that ok, or that area is ok or not. I went along for the ride in order to hear what he had to say, and basically because I wanted to see what -- how far he would go in describing the sort of things that were happening. Now he identified Mount Nullim, in those very early days, when it was still crown land, as being an area available and suitable for development.

MATTHEWS: Was Mount Nullim crown land at that stage though?

CORKILL: I understand it was, and I understand that it still is crown land on the top of that mountain.



MATTHEWS: I thought the escarpment and surrounding was actually privately owned.

CORKILL: There is some private land on the mountain, we understand that following that, the Tweed Shire Council purchased the land from the Department of Lands and subsequently --? Moran ?-- wanted to develop it. Now you've probably see the press on that and the way Moran attempted to use his style of operation in Queensland, in NSW, and said I will only buy it if I can have all the approvals, and the road constructed as part of the negotiated deal. And he offered the sweetener of the Art Gallery prize and all those sort of things to the community to smooth the way. He also attempted to take the wind out of the environmentalists sails by approaching one of the older environmentalists up there Bruce Chick and having him, I think employed as a consultant, saying when we build the development, you'll be the landscape architect Bruce. Now Bruce went along with that for a while and sort of we felt had compromised his position to a certain extent. But later Bruce spat the dummy and said I'm not going to be involved in this. So in terms of following up Bruce Chick might be another useful person to speak to.

MATTHEWS: What have they got planned for that. Has there been a development application?

CORKILL: I don't know if there has been a DA lodged because Moran is still not the owner. I don't know that there has been a final exchange of land.

MATTHEWS: Between the council and Moran?

CORKILL: What there is underway at the moment and on display at the moment is yet another amendment to the Tweed Shire Local Environment Plan where its proposed to rezone the



land from its current status as environmentally protected land and escarpment land to zoning that will permit the development to occur. The development is for a sanatorium, which is sort of this hospital, because he runs hospitals of excellence on the Gold Coast. A cheap hotel, a 5 star hotel, there's a discussion about a golf course, which is right on the top, and I think that there are a number of other components in terms of commercial activities that would occur there too, shops and those sorts of things. So that current, the rezoning application is before council at the moment and I don't think a DA will be received until the rezoning succeeds.

MATTHEWS: Now what do you know, if anything about allegations of a corridor being provided to allow access to that particular area

CORKILL: Well the question about the corridors is a vexed one for that mountain. Basically what the National Parks and Wildlife Service - the Lismore District office - had done - is they have done a number of brief surveys of that area which identified that there are some very important habitat areas there for -- areas where animals and plants live not areas that they move through. and the developer, Moran, has on numerous occasions attempted to portray it as a corridor through which they move, and if we leave a bit of scrub elsewhere, they can move through there, which of course is completely fallacious in terms of understanding how the biological process works. But in terms of what is actually there there is actual plants and animals on the site, its not a question of it being corridor, its habitat and now the Parks Service, did a preliminary study and recommended to council that no rezoning proceed until much more detailed further studies had been undertaken.



MATTHEWS: Has there been an environmental impact study presented with the rezoning application.

CORKILL: Not to my knowledge, and EIS wouldnt be required unless there was a designated development and I don't understand that this would be a designated development.

MATTHEWS: Is there an allegation, you may not be aware of it, of purchase of some land which will enable access to .....

CORKILL: I don't know about it. I do know that there was an attempt to have council construct the road for the sum of some million dollars, and over a period of negotiations with increases in various costs, the council later said their costing for the road had significantly increased, and Moran was very upset about that and said that Council was trying gazump it's earlier quote for the roads construction and he was very angry about that. There's been this history of tension between Council and Moran. Moran basically wants to get it done as quickly as possible and council is saying we're not going to be pushed. Now Max Boyd has been one of the people who has been encouraging this development and attempting to steer it through, and I don't understand why Max is doing that, I don't understand why he's keen to see that development go ahead, I don't understand what connections he's got with Moran, but he certainly one person in council who is very interest and very on side and personally in support of that development.

MATTHEWS: Any other developments in your group submission?

CORKILL: It's all up and down the coast

MATTHEWS: Is your group also .... any enquiries in relation to the .... Big Scrub environment



CORKILL: Yes, they certainly have. I in fact made a submission on behalf -- well I wrote the submission which was subsequently signed by one of the members of the Big Scrub Environment Centre which was a submission to the calling of expressions of interest for that land at Fingal Head. We wrote to Deryck Sinclair who was the person calling for submissions of interest, stating that we were extremely alarmed that this was happening, that the normal process of establishing whether land was suitable and surplus, we believe had not been done there had been no land assessment planning process done and that their decisions to let this land be disposed of, or leased probably ignored the fact that there were rare and endangered species on that site and in particular, rainforest trees adjacent the Macquarie Side.

MATTHEWS: That's the literal one?

CORKILL: Literal rainforest yeah. Now we wrote and made a complaint at that stage, and said that the land ought not be proceeded and we asked a number of questions about the policy of disposals of land and what we understood was the previous policy for conducting investigations

MATTHEWS: this is subsequent to the elections?

CORKILL: Yes this is subsequent to the elections, this is in the very early days of the now Greiner Government.

MATTHEWS: When Causley was the new minister

CORKILL: Yes.

MATTHEWS Did you get a reply to that submission?



CORKILL: We received a two sentence acknowledgement saying thanking for your correspondence. Your views have been noted. We then booted it upstairs to the Regional Organisation, the North Coast Environment Council, then wrote again to the Department of Lands saying we are extremely concerned about the way this expression of interest was being conducted and we mentioned at that stage that we understood the National Parks and Wildlife Service had referenced the area for a Nature Reserve Proposal. We received a reply which basically was quite incorrect, on a number of levels, we were given a copy of a letter from some of the Fingal people signed by Noel Mercer, that said that the Parks Service had no interest in the area, when we had also had a document from the Parks Service, pre-dating Noel Mercer's letter which quite clearly stated that the Parks Service was interested and had circulated that.

MATTHEWS: Can I have a copy of that, when you get your files.

CORKILL: Well can I say that following on from these series of complaints that we made we wrote again and again to the Dept of Lands and ultimately I wrote to -- I made a meeting with Stan Day and Mike Offwell from the Dept of Lands and went through with them our serious concerns and Stan Day invited me to write another letter to him about the matter. And he replied in very terse terms saying, you've got it wrong and here is the situation. Now we went to the ombudsman on that.

MATTHEWS: Now hold it a second, it may be that one of these people will be giving evidence this morning, and it might be more advantageous for you to have a listen to what he has to say and then have a talk to us on another occasion. Because that particular, that point at the moment is the subject of evidence this morning.



CORKILL: Well Hugh Dillon at the Ombudsman's office has taken up a complaint that I then made to him on behalf of the North Coast Environment Council saying that there are serious errors of fact in Noel Mercer's letter and in Stan Day's subsequent letters where they allege that a detailed environment impact statement was done, quite patently hadn't been done.

MATTHEWS: It's most important that we find out, I'll just find out what time they should be available, you keep talking till he's ready.

CORKILL: So what has happened since then is that I've been called into an interview with Hugh Dillon of the Ombudsman office. Hugh tells me that he thinks that there are serious grounds for investigation and he is pursuing it. I think they make a preliminary investigation to determine whether there is anything to follow up. Now I understand he has had a number of meetings with the Dept of Lands people and that they have refused permit the release of documents and policy information that we requested in our series of letters because they would possibly compromise a court case which would be, which I think is still pending, where the Tweed/Byron Aboriginal Land Council is prosecuting Causeley as Minister for Lands for not granting a Land Claim which had been lodged prior to the issuing of the special lease in December, '88. So my latest correspondence with -- or my latest information from Hugh Dillon, was that he was pursuing the enquiry, he could advise me of nothing except that he was doing that and at some later date there may be something that came out of it. He thanked me for my complaint and said that he would be following it up and would possibly extending the breadth of his enquiry beyond the range of matters that were listed in our correspondence. I think there was one letter from the Big Scrub Environment Centre and then two letters from



the North Coast Environment council to the Department of Lands which were referred to him for his information and to following up.

CAMDEN: I notice you've got something down here about Lennox Head Seawall. I don't think you've mentioned that yet.

CORKILL: No. I haven't. There has been a big talking up of the idea to construct an extensive seawall, north of the Lennox headland in Ballina Shire.

MATTHEWS: Mr Day is going to be giving evidence.

CORKILL: Oh is he. I would very much like to hear what he has to say.

MATTHEWS: Let's cancel the interview.





INDEPENDENT COMMISSION AGAINST CORRUPTION

NEW SOUTH WALES

All correspondence to:

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Box 500, GPO SYDNEY 2001

Cnr. Cleveland & George Streets  
REDFERN NSW 2016

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Our ref: C89/695

9 August 1989

Mr John R. Corkill  
c/- The Nature Conservation Council of NSW  
39 George Street  
SYDNEY NSW 2000 (200)

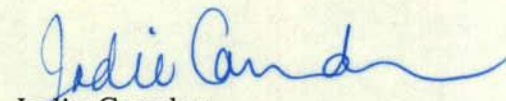
Dear Mr Corkill,

I refer to your visit to the office of the Commission on 31 July 1989.

Pursuant to your request, I now forward a copy of the recorded interview conducted on 31 July 1989.

The matters which you raised with the Commission are currently under consideration, and you will be advised of the outcome in due course.

Yours sincerely,

  
Jodie Camden  
COMPLAINTS OFFICER

Enc.

John: returned for your info.  
Corrections have been made  
on my copy as  
noted.

Jodie  
12/9/89.

For Corrections.



JC It is 12.53 pm, the date is 31 July 1989, this is Jodie Camden, Complaints Officer, with John Corkill, who is the complainant in File Number C89/695. This is a continuation of the interview conducted between myself, Mr Corkill and Chief Investigator Matthews on Friday 28 July 1989.

JC Firstly I have a couple of matters to clear up. In your record of the interview last Friday you talked about a gentleman by the name of Ivan, you now know his surname?

C Yes, Ivan Stevens, he was Principal on the ....<sup>Dale</sup> side Investments Development Company operating on ..... Road.

JC Further, on Friday, we started talking about the Lennox Head Sea Wall Development and we want to continue with some more matters on that.

C Yes, the concern that I and a group called the Ballina Environment Society, which is another local environment group, a member of the North Coast Environment Council, are concerned about this. It's a matter which concerns ..... the local body, is that the Ballina Shire Council has talked about constructing a lengthy sea wall north of the Lennox Head Point on the coast in Ballina Shire. Now, we initially were concerned about this because of the environmental implications of constructing a massive engineering works off the coast and a number of my friends and associates are keen surfers, and what that would do to the coast there in terms of the surf, breakers is one thing, the implications further up the coast in terms of continued wave action or exacerbated wave action is another matter, and the areas to the North of where the wall would be built are still Crown Lands and Crown ownership, and some important areas that we've proposed ought to be incorporated in the Nature Reserve, so we wouldn't want to see that area of coast damaged by extensive wave action from that. So we've started to pick that one up from a principally environmental perspective. Now what subsequently emerged, is that a Councillor, Councillor Graham Ellis, who is a heavy in the National Party in that area in Ballina Shire, has been on the Coastal Advisory Group, which has been looking at this proposal for the sea wall. Now I'm not clear, at this stage, about where the proposal came from, but certainly it was discussed by Council's engineers and by this Coastal Advisory Group of the Ballina Shire Council, ~~has been~~ a good idea that they should follow up. Now, we started to smell a rat when it came to our knowledge that Graham Ellis, ~~his~~ family had land very close to where the sea wall would be built and that their properties would be protected and probably their value enhanced by a wall's construction. Now he'd been pushing it and he probably would be receiving a direct benefit from that. The Council prepared, and we got very angry about this, the Council prepared a statement of environmental effects, which is not an Environmental Impact Statement, it's a much less rigorous document, and normally a detailed EIS is placed on public exhibition for, I think, 28 days, and copies of that can be obtained, and under the EP & A Act that can cost no more than \$25. So what Council

also  
Lomax



did, was that it put its document on display, the proposal on display, I think for only 14 days, but it was charging \$100 in order to obtain a copy of that which made it very difficult for our members to afford to purchase that document with regard to the land in that area. So we got a bit upset about that, but what happened was, the father of an old school friend of mine who was living, whose name is O'Sullivan, his name is Jim O'Sullivan, we call him J K O'Sullivan, he lives, again, very close to this area where the proposed sea wall would operate, and Jim O'Sullivan and his wife Biddy came in and saw me and showed me a copy of the statement ~~that~~ <sup>of environment</sup> ~~which~~ <sup>effects</sup> which they had purchased because they were very concerned about the idea of the sea wall being built, because they live near there and they like to walk along what area of beach is there, I think JK does a fair bit of fishing and he could see that his residential amenity would be seriously affected. So in looking at the proposal in the statement of the environmental ~~facts~~ <sup>effects</sup>, I became rather concerned about this and asked him to go and see some people in the Ballina Environment Society and if he could, to give them a copy of the report or allow them to photocopy his \$100 version so that the local people down there could look at that. At that time I was preparing to come to Sydney to do work and I couldn't buy into deducting a detailed undertaking of that, so a man called Mr Brett Robinson from the Ballina Environment Society subsequently did obtain a copy and has prepared a copy, has prepared a submission to the Ballina Shire Council about the proposal. I believe I've given you a copy of that which it looks like you've copied and returned.

C That's right, I've copied all those documents.

C Earlier, Brett had talked to me on the phone a couple of times about his concerns about the nature of that document and what became clear was that the Council was the proponent, ie they would construct the wall, they were the developer, those two roles, they're the one's who are saying "this is it", and they had done principally most of the work in-house, they would be the ones who'd constructed it. They're also the consent authority, they would be the ones who'd say "yes", "no", or change or approve it and it was later revealed that it was probably likely that Ballina Shire Council's quarry which supplies rock ..... for a number of purposes in the Shire of course, would then be the source of the rock for the wall's construction and that it was likely that the Council would receive a significant subsidy from the State Department of Public Works if they approved that as a coastal protection work. And we thought this was a bit of a rort, basically because it looks suspicious to have the proponent who is also the approver, who is also the one who's going to profit by the approval, and tying in with that, the interests of a particular Councillor who apparently was living very close to this area. In our discussion with Jim O'Sullivan, Jim said that he understood that there had been a policy of freezing any

Betty

Investigation

conducting

+ gravel



development on that part of the coast there, just north of the Lennox Head, but that a couple of matters had gone through quick smart and he understood that those were, I think his quote was something like, "the Shonky boys from Queensland who've got Council to agree", and that raised my interest as well, and it was at that point that I asked you to go and talk to Brett to see if he could find out any more about it. The story from there, basically, is that the Ballina Environment Society people said "yes, this is a serious matter, we want this raised". I'm on an Advisory Committee to the State Government called the Coastal Committee of New South Wales which is an interim committee awaiting the amendment of the Coastal Protection Act in order to formally constitute a committee as opposed to Council under the Coastal Protection Act. So that provided the vehicle, if you like, for me to raise this question and at the next meeting of the Coastal Committee, I raised this question saying "is the Coastal Committee interested and concerned about coastal development works, coastal protection works of these natures?" particularly where they would have a positive effect in some areas and a very negative effect in other areas. The Chairman of the Committee, Professor Bruce Thom, from the University of Sydney said "well, yes, I think we ought to be", and we had a very brief discussion ..... <sup>which turned into an</sup> argument at the end of the meeting, a very brief discussion about the proposal and it was requested that the Public Works' Department representative on the Coastal Committee prepare a report which was subsequently done. That report said that the Public Works Department hadn't had any involvement at this stage, that they weren't a consent authority and they would look at the matter on its merits, should it come up. There wasn't much joy at that stage, from that angle, there was a fair bit of resistance on that Coastal Committee to us looking at details of individual developments, except those specifically referred to us by the Minister, because there's hundreds of jobs along the coast and we could easily become snowed under, we're supposed to be a policy advisory body rather than some kind of remote consent authority. I should actually go back and say what one of the earlier inquiries that I made in regard to this, was to speak to the Department of Planning, the Regional Manager of the North Coast, a man called Mr David Hume. He was the then Manager, I'm not sure that he still is, there's currently staff changes going on. I spoke to him and said are you aware of this proposal and are you concerned about it, and he said "yes, we're both, we're both aware of it and concerned about it" and it was my understanding, David could not volunteer information but because I'm on this advisory committee we have a relationship where he's prepared to talk to me about certain matters, but not in an expansive way, he will answer my inquiries. So I was frozen in my questions to the extent of saying, well what's the nature of your enquiry, what's the nature of your concern, is this something which the Department of Planning has a formal role in, and he said, "well, we thought that

him

X  
Mike Geary  
PWD

not still  
Manager NC  
Region



we did because initially the rock wall would have been sited on land which Council didn't own and control and therefore it would have come under part 5 of the Environmental Planning and Assessment Act, which would have required an automatic environmental impact statement." The Department of Planning's adviser to the Ballina Shire Council Coastal Advisory Group had argued and had apparently a fairly bitter argument with the Council Committee about whether or not an EIS would be required.

JC Which Council Committee was that?

C That's the same - Ballina Coastal Advisory Group, Ballina Shire - there's several coastal advisory committees and I know it is confusing. I was advised by David Hume that the Ballina Shire Council had had a number of discussions with the Department, the ultimate outcome of which, the Council had resited or proposed to site the wall construction in an area which was under their own control and that they would therefore not have to prepare an EIS, and that they had, in fact, been able to do a bit of clever manoeuvring in order to remove the need for a formal Environmental Impact Statement. And the Department was concerned about that, and the Department was also concerned that the discussion at the Ballina Shire Council Coastal Advisory Group or Sub-Committee, the minutes of those meetings, did not accurately reflect the comments made by the Department people, there'd been a subsequent ~~find~~ about what the Council was saying the Department had said at the meeting, so there was apparently a bit of bad blood on that issue with the Department. So given that the Department had had this involvement, that there was this, well, a fine legal debate about whether or not an EIS would be required, I raised the matter, as I've said with the New South Wales Coastal Committee, which is an advisory body to David Hay, that staff that provided the Secretariat, the Secretariat is provided to that from the Department of Planning. So I thought this is a legitimate .... to raise here and when I raised that the Department people said "yes, we are concerned about it" and they asked the Department of Public Works to look at that. In terms of the bureaucratic process, I don't know how far the proposal has developed from here. ~~I~~ I don't know that it has been formally considered by a council or approved. It may not have, they may have just put it on the back burner at this stage. What I did, was to write a briefing note to a man called Bruce Hawker and Bob Carr to try and have the matter raised in Parliament as a Question Without Notice. A copy of that briefing note is there and a number of the local parish, Lot numbers are included because it was hoped that Bruce Hawker could do a search of land titles to discover who the owners of certain properties might be. If I put this in the

fight? }  
fend? }

tactic?

\* see latest  
advice

ten



political

Singleton

polemical context that, at this stage, Matt ..... had just been sacked for the dealings that he'd had at Coffs Harbour and the Labor Party was very keen to try and get more runs on the ball about corrupt ..~~coastal~~ land dealings, and Hawker was given this information and I think unable to turn up anything of any interest, or anything that provided a firm lead and then the debates over the next couple of weeks, the debates swung away from coastal issues and to my knowledge, it hasn't been raised. Basically there are a number of serious concerns there about whether Council has, in fact, done a bit of jiggy-pokery in trying to evade the Environmental Planning & Assessment Act, whether in fact a Council-elected member has, through the Ballina Shire Council Advisory Committee, strongly pushed and recommended this when he personally has interests or his family have interests which would be affected. The further concern is that there was not, and Brett Robinson does say this I believe, in his submission to the Council, there is nothing like an adequate consideration of other cost effective means of dealing with the coastal erosion problems in that area, particularly buying the land that's being washed away and saying to the owners, "well, you've lost the coastal front land because the sea's washed down, carved it away, we'll buy it out for 'x' thousands of dollars or hundreds of thousands of dollars", end of story. The counter proposition to that was the \$6 million sea wall for which Council would receive a very considerable subsidy, we understood, from the Public Works Department in order to build the thing. So there are a number of concerns there, I haven't been able to pursue that, that was all happening at the beginning of this year, 1989, I haven't been able to pursue that, only a little bit of detail at this stage. I've left it in the hands of the local conservation group who the Ballina ..... Society, who has written a submission and forwarded it to Council, presumably he is considering that and will ultimately respond to the Ballina Environment Society about that. You'll probably see, also, that in some of these newsclippings that are attached, there has been quite a history of coastal erosion in that area, and one of the - they all seem to be quite old press clippings, '67 through to - they're all '67 - I recall quite clearly that the Ballina Shire Council's engineer, at one time, was Mr Fred Woods, said at one time, "Council could build the sea wall come hell or high water" and that was seen by the local groups, the local residents, as being a very provocative statement because they hadn't done the study, they hadn't gone through the formal planning process at that stage, and the statement of the plan to that effect was really to say, "well, we're not going to wait for the public to give us the OK or not, we're going to go ahead and do

A date of  
this?



it and it doesn't matter about the planning law." We thought that that was a pretty provocative thing for him to say and just looking at these press clippings, that's not here and I'm sure I should be able to find that clipping or have that clipping sent down from the North Coast, which I can bring to your attention if you like. So that's basically the story on the Lennox proposal.

JC So you've read through the interview that we conducted on Friday and you've made some small changes to that?

C Yes, mainly grammatical and spelling.

JC You had on Friday, with you, a list of points that you wanted to raise with the Commission, have you covered to your own satisfaction all the points that you wanted to raise?

Pottsville Water  
Krekelburg

C Well, can I say that there are these twenty-two matters of which I think I've only spoken about the Pottsville and possible Waters Cricklebird development and the Dale site development. There are another twenty or so matters there which I haven't given any direct information or any detailed information on. The point I do want to make about those things is that our allegations are contained in great detail, in a documented way, both in the preliminary submission, which was sent to Carr's office in late '85 and in the very detailed submission that was provided to him in March '86.

Daleside

JC Have you provided copies of those to us at all?

C No, and I would strongly recommend that you obtain the originals because in the originals are colour photographs, panoramic photographs of three or four photographs wide, overlapped and taped together that provide a clear understanding about the nature and the extent of the works in some cases, because they're massive works, and a map, a colour map, which we produced basically and spent quite a bit of time over that. We made file copies of the preliminary submission map and the detailed submission, those aren't with me in Sydney they're in file at Lismore, but I do know that the photographs and maps do not reproduce at all well and in assisting the Commission it's probably better that you obtain the originals.

JC They were handed to Bob Carr, then, as the Minister for ..

C The map and the detailed submission were, I recall that the preliminary submission that had black and white photos which was handwritten with urgent matters in it, did not go directly to Carr, it went to his staff members and I think in the first instance it went to a man called Ken Cribbs and to Peter



Fitzgerald.

JC That was the submissions that were done by the Big Scrub Environment Centre?

C It was actually done by a group called Fern, far North Coast environmental resource network and that was an ad-hoc grouping of the Byron Group 'Beacon', the Byron Environmental and Conservational organisations, their name is Beacon, the Big Scrub Environment Centre and the Tweed Valley Conservation Trust, so the three of us had an informal grouping known as Fern. And all three of those members are members of the much larger regional organisation known as the North Coast Environment Council, and at that stage both Elizabeth Smith and I were Vice-Presidents of that group and Andrew Murray had been ... member of the Council. So it was Fern who made the submission to Carr and that submission was made to Carr in the company of people from the Nature Preservation Council of New South Wales. In the transcript of my earlier evidence I say that there was this press release and newspaper clippings, it's probably ..... you could obtain those from mid-March '86, press reports from the Daily News and the Star and I suspect that there probably are diary notes or there may be internal memos or internal correspondence about the preliminary submission and the formal detailed submission of March '86 and those would either be in Bob Carr's personal Ministerial documents or in his Ministerial's staff records, that's ..... C They may indicate who came down from the Tweed, where they met and what they discussed. They may have been smart enough not to record it. None of them deals ..... sea head, I talked about Noel Mercer and the Department of Lands, so they're the things that I intended to come and talk about,

Conservation

JC There are no other persons in public authority, Councillors and such like, that you had any other knowledge of, what you would consider to be corrupt dealings in respect of any of the matters you've raised?

C Well I've alleged that there is a conspiracy, there has been a conspiracy in the Tweed Shire not to implement the Planning Act over a number of years and that was basically the nature of our submission to Carr and I would suggest that Jim War's Local Government Inspector's Report bears that out. He doesn't say there was a formal conspiracy, he says there has been a long history of maladministration of the Environmental Planning & Assessment Act. Failure to seek legal advice, failure to prosecute where it was clearly necessary to do so - those sorts of matters. So I suppose I'm implicating all, except

Wangh



several Councillors in the Tweed Shire who've acted on those matters, and I'm implicating Ballina Shire Staff and Councillors who have, well, ..... on this sea wall proposal. I did actually start talking about John Burrell, and I didn't follow that through so maybe I should come to that.

JC You mentioned last Friday, a John Burrell, who was a consultant with the Tourism Commission of New South Wales, you say that he took you up in a plane and tried to get you to agree to a certain number of things. Would you like to detail a few of those?

C Yes, alright. I think it is instructive that you hear a bit more about John Burrell.

JC Who is John Burrell, he is someone who is actually employed by the State Government?

C Yes, I'll tell you about that process as I go along, because I believe that he's done some pretty ~~shady~~ *shady* deals in his time as well. Going back before he was with the Tourism Commission, John Burrell was, I suppose, a property developer, an entrepreneur ... one of his staff *when he started* a multiple-occupancy development in Tweed Shire known as Crystal Waters, no, sorry, it was Mebbin Springs and he proposed to purchase, or wanted to purchase, a large area of land in the Tweed Shire for the purposes of then developing a smart block, he didn't see there was going to be a new-age lifestyle village alternative. He never actually purchased the land but started selling shares in that land before it was in his hands. I don't know the full details of the negotiations or the dealings between he, as the entrepreneur developer and the owner of the land. The owner of the land ultimately did not sell it to him and the whole thing folded and fell through. Several of my friends on the North Coast, my personal friends, had been interested and keen to buy into an ideologically sound new-age lifestyle and had their fingers burnt, and some had lost money because of his involvement in that.

JC Do you know roughly how long ago this was, was it many years?

C It would have been somewhere in the '83/84 area - it may have been 81/82, somewhere like that - but early certainly in the 80s and there'd be any number of headlines on that in the Daily News and the Northern Star's press clippings and I'm sure that they've kept a separate file. It was a public scandal at the time and I suppose, because people had lost money, but also because the conservative community up there was freaking out that "the hippies are coming, the hippies are coming", it was one of those lifestyle ~~pensions~~ *pensions*,



they were reacting against the idea of a new urban development, new residential development of the Shire. So that was his first thing and I only became aware of his involvement at Mebbin Springs once he approached me in his role as consultant to the Tourism Commission. There was a lot of discussion about the way tourism was happening on the North Coast and the North Coast Environment Council was preparing a discussion paper about how tourism might be well located and properly designed and Burrell approached me, rather unhappy that, in fact, the Environment Council had got further down the track than he was comfortable with, because the position that we were taking was a variance with what he was recommending to the Commission, and he saw us as being, he saw the North Coast Environment Council's position as being at odds with his, and a threat to his proposition. He produced in, I think it was May '86, a discussion paper called North Coast Tourism Development - A Discussion Paper - A New Radical Framework for Identifying and Guiding Tourism Development on the North Coast - some long-winded title like that. And it was one of the least intellectually rigorous documents I have seen in my time, it was an utter ....., it talked about targeting tourism development largely on Crown Lands, also in National Parks and in State Forests, and of course, that was a red rag to the bull of the North Coast Environment Groups because it is an article of faith..... of North Coast Environment Groups that we fought for these National Parks and we are not going to see them turned into the front yards or the back yards of hotels. It was in that context that he approached me with the Discussion Paper and said, "I've got this discussion paper, I've got all these good ideas about environmentally sensitive tourism along the north Coast", and he showed me the Discussion Paper. I looked at it and was very cautious about making any kind of comment about it. I challenged whether, in fact, what he was calling 'environmentally sensitive development' was what we called, would admit our criteria for environmentally sensitive development. He was up in the area to look at potential sites and it was in that context that he took me up in a plane and said, or invited me up in a plane and said, "see this Fingal Headland, what about that, that's a bit of Crown Land ..... how about we have a tourism development there?". As I've said in the interview earlier, I was being reticent to offer any kind of support or idea for that, I was along for the ride to hear what he had to say. And in fact I was pretty reticent about going up with him, and I consulted a number of my colleagues about whether I should go or not, whether I should have nothing to do with him, and they said, "well, maybe it's good if you go along for the ride, say nothing and just listen to what he has

crap.



to say". Which is what happened. Arriving out of that, and around the same time, the Opportunities Brochure was produced and that was produced for Michael Cleary, then Minister for Tourism, apparently with the approval of Jack Hallam, then Minister for Lands, and it identified a large number of Crown Land sites along the Coast, and that brochure was a very glossy sales document saying 'here is the opportunity, here is what you can do if you're a tourist developer with money to spend.' And Cleary took that document with him to Japan, to interest Japanese developers in buying Crown Land sites and that was quite a deliberate strategy by Cleary and, I believe, Hallam, at that time. That brochure had a very much *prettier* glossy insert, if you like, the name of which I can't remember what the name of the insert was, but it was, there was the brochure and then there was a sort of a second part of it that listed the details of the opportunities in terms of sites and said what the market options were. And in some places they had things, this was what Burrell was saying in his discussion paper, that there were certain rugged adventure opportunities and there were other leisure style segments of the potential tourism industry that could have this and then there was the young anti-establishment set that wanted a particular style of development and tourism activity. So the brochure went through and said 'in New South Wales, here are all the opportunities.' A number of those were high tech, some of those were communications and coal-mining venture opportunities and some of them were Crown Land sites. Now the insert in that had this detail about all the market *secrets* and what sort of development might be done on which pieces of Crown Land. One of those key areas that was targeted was the area called Broken Head Nature Reserve in the Byron Shire, I believe Dianne Mackey has been to speak to the Commission and she and I and a number of people became very heavily involved in defending that Crown Reserve at Broken Head, which still is a caravan park. The proposal was to build a 5-star multi-storey total destination resort in the middle of this beautiful piece of *literal* rainforest which was still Crown Land but adjacent to a very large and very important nature reserve which is the Broken Head Nature Reserve. We basically cranked up the green machine on the North Coast and said "over our dead bodies are you going to develop this site", and we generated an enormous amount of *support from* people on that. That was coming up to the time at which I think Unsworth was making his run. He was then Premier I think, and Dianne Mackey will be able to give you some more details on this if she hasn't already done so. We had a Protest Meeting and said, that this isn't going to happen, we had a huge roll-up and we communicated very, very clearly to the Government that this was not *on*... In retrospect



details about the  
environmental values of

we were only dealing with one site, that was the Broken Head Site that was very near and dear to us and we didn't know about Fingal because it was very remote from our area of interest, we didn't know about South Ballina because it was very remote from our area of interest, we didn't know about the natural values, there'd been very little study on that, of those areas. But there had been a lot of work done at Broken Head and we did know that it was a beautiful piece of rainforest, so we attacked the strategy of selling Crown Land to Japanese developers of the tourism development through the individual case of Broken Head rather than the general case of saying, "well, this isn't a popular way to do your land dealings." What happened was that Mr Tom Mooney who was then seeking pre-selection for the seat, I think it's the seat of Byron, no it's the seat of Ballina, it was the old seat of Byron, now the seat of Ballina, he had been a member of the local group Beacon, the Byron environment and conservation organisation, and was quite keen to get some kind of endorsement or some kind of support, and probably the votes from the Greens, because it was seen that the Labor Party needed to green up their image and that this was a good idea, that he link with us in opposing this development in Broken Head. He went to a Country Conference in Woollambah, not long before the State Election in '88 and came back and reported to us saying, "well, we've knocked Broken Head out, it's not going to happen", and we slapped him on the back and said "well done", and he said later to us, that he thought that there would be other developments going ahead in other Crown Land areas on the North Coast and "what did we think about that mate?" We took the position of, "we're not making any deals on this, we'll take it as they come and the fact that you've done good work on this doesn't mean that we're now going to roll over and say go ahead at Fingal or at South Ballina or at Lakes Head." I think there was a quite deliberate attempt to try and have us - that's the Conservation Environment groups of the North Coast - on side with the Labor Party, and that's probably a legitimate part of the political process, but we weren't entering into any kind of trade-offs of "OK - you get Broken Head but we're going to go ahead at Fingal." So clearly, very clearly in my mind, Hallam had an agenda of disposing of Crown Lands back before the State Election. He had said at the Country Conference that other Crown Lands areas would be leased. The conference at Woollambah, the Report from the Conference was that Fingal would go ahead. I've got off talking about John Burrell but I'll come back to him. As part of this election strategy Unsworth had a Cabinet Meeting at Ballina where they announced the leasing of land at South Ballina to a company called Mirvac in order that they could lodge a

Ballina

proper

Murwillumbah  
88?

Lennox

Murwillumbah



development application with Council for a total destination resort there because it's a isolated site, it's a long way by road but, if you spin a boat across the river it's reasonably close. And of course there's an airport at Ballina which was part of the reason why Burrell was saying when he'd have certain areas available for development, quoted the infrastructure. So there was quite clearly a Crown Lands disposal agenda there for the Unsworth Government well before the election. When the Unsworth Cabinet met in Ballina and announced that they'd given this lease of Crown Land at Ballina to Mirvach the National Party President of the Ballina Shire was in the papers saying "first I've heard of it", "why weren't we told" and it was significant, he made I think, some significant points there of saying, "well, the Government is dealing behind the local people's backs", and that was at the time Keith Barlow who was the Shire ~~President~~ of that time prior to the election. He was the Shire President, he wasn't the President of the National Party of Ballina, he was the Shire President in the National Party's ~~state seat~~? So, I'll come back to South Ballina in a minute because now that I've started talking about it there is another thing that comes to my mind. Just on the John Burrell trial - after we had seen this Opportunities Brochure and the insert on that which said 'you can do these wonderful things with bits of Crown Land' there was then an idea to produce a North Coast Tourist Development Strategy, a formal document that said - here is the policy of the Government to do .... things for tourism - and the North Coast was targeted. There was a draft of that and that draft went through accompanied by an advisory committee that I was on a couple of times and there were several comments made on it. We weren't very comfortable with that. At a meeting in Dala Beach at the, I think it's the Annual Conference, or what's known as the North Coast Planning Conference, which I think is jointly run the local government planners professional association and the University of New England's Department of Continuing Education, that was the venue, the Valla Beach resort was the venue (not far from Coffs Harbour) and at that meeting Burrell was there, and we'd wound up our opposition to his sell-off ~~motion~~, to his draft tourism development strategy, we'd already started to prepare our rebuttal of his discussion paper and they got the next stage together, the draft tourism development strategy. At that meeting I was very critical and I was a member of the panel who said, "if tourism is the way forward on the North Coast, it's got to be very much more carefully planned, we certainly aren't going to roll over and say you can have the best of the last of the natural areas," and I was very critical of Burrell at the approach. He later approached me afterwards and said,

Valla



*dragging*

well you're ~~a~~ drag in the chain, you haven't finished your submission on my earlier discussion paper, and here you are getting stuck into it. And I said, we are preparing our response and I understand there may be other documents which are available. Talking about projections of future uses of basically, other documents, talking about how the Tourism Commission was proposing to structure itself in order to meet these sorts of things. And I asked him several times in the company of some of my fellow officers of the North Coast Environment Council, whether there were other documents which were available and he repeatedly said no. And I had in my briefcase, at that time, that I was holding in my hand, copies of documents that had been supplied to me, which a number of my associates had obtained through ..... is a member of Bellingson Shire Council, things that he thought I ought to see. And so we were testing him, we were testing Burrell quite clearly to find out if he was going to be straight with us. And he said no, there ~~was~~ wasn't. And on the basis of that, I wrote a very steamy draft for the Secretary of the North Coast Environment Council saying how pissed off we were that he'd lied, that he'd been duplicitous, that he'd attempted to compromise us on a couple of occasions and I gave a copy of that draft to the Secretary of the Council who said, I don't think we'd better send it quite in those terms, I'll take your comments and work it out. So he wrote a bit calmer, a letter that was a bit more calm to the Tourism Commission had made a serious allegation that Burrell hadn't been properly consulting, that he wasn't supplying information, that he'd been complicitous and we basically put as much pressure as we could on him at that time, about what was going on. Because we saw him as being the key player. Around this same time, the environmental matter began to surface and Bonville Beach Hardwoods was wanting to buy an area of land just south of ~~Salt Hill~~ for a big tourism development. This is one of the things that we were discussing. And he was having difficulty financing that. About the same time that we wrote this letter causing a stir ..

*Kevin Childs**blatant lying*

?

JC I'm sorry to interrupt you but who's he with respect to ~~Bondell~~ Beach.

*Bonville*

C I'll come to that. But basically what happened was that basically we wound up and said Burrell's a ratbag we think it does the commission no credit whatsoever to have people like this involved, the commission's credibility is decreased now in our estimate by his actions. So the commission prepared to resign or they asked him to leave or whatever and he went there, (to the office of State Development) to the then New South Wales Investment Corporation, so I don't know how much

*not this**28k luhn #**Sawtell*



*Bonville* of our pressure about his poor performance led to that move, but his next jump from the Tourism Commission was of the Investment Corporation. Now back to Bondell. Around this same time, Bondell was beginning to surface as a major issue, the company couldn't raise all the money, and they approached the NSW Investment Corporation just before the election saying, how about you make a loan, a \$5 million loan in order to help us purchase this land. I don't know whether Burrell from the Tourism Commission side had recommended that or whether he did that as one of the first things that he did when he went to the Investment Corporation or whether both things happened.

JC So Burrell had an active part in the application by Bondell for the \$5 million, did they ever get the loan?

C They got the loan about three months before the election.

JC And you allege Burrell had something greatly to do with that?

C Oh yes, yes. What happened in the Bondell matter from there was that BONVILLE - and that's not far from Valla, the geographic reference. Pressure on Burrell, Tourism Commission, he's been working on Crown Lands areas and tourist development and now goes to Investment Corporation. The company says we want a loan from the Government because tourism is now identified as being a *good* thing, the Government says yes, yes, and they applied to the Investment Corporation for a \$5 million loan. A \$5 million loan was granted, I understand against the recommendation of the office of State Development which was then in the Premier's Department, and I spoke ..

JC Office of state Development, is that right?

*Cahill* C Yes the Office of State Development in the Premier's Department - and I spoke with a woman there called Ms Judith ~~Carl~~, who I had been recently introduced to as being a senior person in that office, and she told me confidentially that the Premier had approved that investment against her advice and against the advice of the *Ombus. Office*

JC Premier of the time being *Barrie* Unsworth.

C *Barrie* ~~Jerry~~ Unsworth. He announced that \$5 million loan not long before this and that incensed the conservation community up there. Here was the Government saying, no money to the Parks Service to acquire this land to put into a National Park, but we'll give \$5 million,



we'll loan \$5 million to a private developer, a shonky private developer Bob Johnson,

JC Bob Johnson is involved with *Bonville Beach Handwoods* .....

C Yes, yes, he's the Principal in that. For the purposes of tourism development in a very environmentally sensitive area. Now that incensed us, that really incensed us and ~~Marlow Dumfry~~ from total environment centre and myself, and a couple of other people from ~~Bondell~~ went to see the then Premier, ~~Jerry Unsworth~~, in the company of Bob Carr - we talked to Carr and Carr said well go and see the Premier about it, and we attempted to have Unsworth agree to review his loan and the arrangements there. He didn't agree to do so. He agreed that he would look at it but ultimately he didn't agree to do anything other to change it. I get a bit sketchy about whether that loan was then turned into a grant, but ultimately the NSW Investment Corporation was never repaid for that money, the Investment Corporation was privatised and sold off, to whom I'm not certain ..

*Milo Dunphy  
Director  
of TEC*

C Was that with the new Government, with the Greiner government was privatised?

C It may have been with the new government, yes. I don't know on that and it would probably require some detailed investigation to find out what exact dates those agreements were made, but the point that I'm making here, here is Burrell's continuation talking about Coastal Tourism DEvelopment to being involved in the tourism development strategy to later a particular tourism proposal and later being involved in the same investment corporation who contributed money for a coastal tourism development in a sensitive natural area. I should say just on John Burrell, ....., that between the time that he left ~~Evan~~ springs when he served at the Tourism Commission he was involved in a project out in the west of Sydney called the Islands and ..... ~~John V Windsor~~ and he worked there for a while, in again, a very environmentally sensitive and controversial development, apparently he stuffed things up nicely for the developer there and put all the local community off his side and the developer sacked him as his consultant and he left there with his tail between his legs so I think he's pretty close to three time loser. Where he's gone since he left the Investment Corporation I don't know, if he's smart he could be overseas.

JC You were talking before about South ~~Balama~~ *Ballina* .

C South Ballina was identified in Burrell's early discussions with me as a possible site, ..... ~~springs~~ *he identified* ~~and being~~ ..... close to the airport and would be

*Melbourn  
at Kurrajong  
Heights adjacent*

*274714  
Total Environment  
Centre.  
TEC has  
info on The  
Islands.*

*it a*



an ideal site, <sup>saying</sup> it's only a bit of knocked about scrub. <sup>wetland!</sup> This was not long after Whitman's policy came into effect and I said to him at the time that there's an important area of wetlands there at a place called Mobbs Bay which is adjacent to the South Ballina peninsular. In fact the geographics, the similarities between South Ballina and ..... are very interesting. I basically said to him at that stage, I don't know very much about South Banner but I'm not saying it's OK, there's wetlands there and I certainly want to consult the Ballina people before I make any detailed comments about South Ballina being OK. So that was the first I heard of south Ballina being on the books. Later, it was announced by Unsworth at the Ballina Cabinet meeting that the area would be leased to Mirvac and I had a conversation with a Mr Dick Smyth who was, at that time, Deputy Director of the Department of Planning, no sorry, he was the Director of the Department of Planning and had been for a number of years under Carr.

JC: I think we'll have to stop here and change to another tape.

C: Right we've been talking about Mirvac and South Ballina. I was talking about the sequence of my contacts at the times that people discussed South Ballina with me and I talked about John Burrell first basically. Dick Smyth approached me I would say very early in the new government's time.

J: In the Greiner government's time.

C: At a meeting in Lismore City Council Chambers. Over coffee, Dick approached me and said "Look you know the government has given a lease on South Ballina, what do the environmentalists think about that?" I said "Well look Dick, I've been frank with them up to this point, we are not rolling over and saying anything between, you know, I'm not agreeing to any development over coffee or in private discussions. We reserve our position to formal development applications and rezoning proposal, and we will get stuck into that. But I will tell you right now there are important wetlands there." and he said "Yes I know that". and he would know that because he was with the Department of Planning and between the time that Burrell had talked to me about it, I had talked to the Ballina people and said "Well what do we know about South Ballina?" and it turns out that there are important aboriginal areas there too, but there has been an extremely important area for rare and endangered birds particularly migrating birds. Now those migrating birds are covered by two Commonwealth agreements. One called "the Japan-Australia Migratory Birds Agreement" and one called "the China-Australia Migratory Birds Agreement". I said to Dick Smyth on this occasion "It is definitely an important area for migratory birds, the beach



there is where they roost nest feed etc while they are migrating, and I couldn't see that there use of the site being compatible with tourist use." and he said "Oh. You think that is going to be a significant problem do you?" and I said "Yes. I do." End of conversation at that time, somebody interrupted the discussion, or he turned to somebody else. So there wasn't any further comment on that. It, later, was revealed to me that only a week or two after that conversation, Dick had resigned as the Director of the Dept of Planning and that he was now working as a consultant for Mirvac. He was specifically interested in South Ballina, or was specifically engaged to look at South Ballina. I don't know what work he did on South Ballina, or what involvement he had with Mirvac before he formally resigned. That is something that the Commission, might probably enquire into anyhow. The thread started to come through for me that as the senior staff of the Dept of Planning...

J: Are you talking about Dick Smyth?

C: That's right, I don't think there's an 'e' in his name. As the senior staff member in the Dept of Planning, he would not have been unaware, he would have been aware I would have thought, about a discussion of leasing crown land to a development company and them then doing a development application. So there may be some connection across time there where Dick had several threads running. I don't know. That's about it for South Ballina, except that there has now been a very detailed investigation of the area by my associates on the North Coast who are Ornithologists and Field Naturalists and they've detailed the area and have documented the area in a formal way as having great significance to migratory birds. I am not aware that Mirvac has ever taken up the lease that was given them. Certainly no development application was made. What is currently underway is that the Ballina people are trying to have that area recognised by the National Parks and Wildlife Service and by the Federal Government, on the basis of their professional studies, as being of the significance which we had earlier indicated as likely as being the case.

J: What is the exact area in South Ballina they are looking at?

C: It's immediately South of Breakwall. Crown land immediately south of the Southhead Breakwall on the Richmond River headland. It is adjacent to Mobbs Bay which is a small inlet Bay on the western side of the South Ballina peninsular.

J: Any other comments you would like to raise?

C: No. Provided I can come back if I'm sitting on the toilet one day and something flashes in my mind.



J: You certainly may. We'll end the interview here.