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Our Ref: JBH:PC:17010

19 January 2017

NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Via Online Submission

ATT: Director Environment and Building Policy

Dear Director

Submission on the draft *State Environmental Planning Policy (Coastal Management) 2016*

We represent Tweed River Canegrowers, an affiliated group of sugar cane growers operating commercial sugar cane businesses from a number of properties in the Tweed and Byron Shires in far northern New South Wales (**TRC**).

1 Introduction

- 1.1 Our client welcomes the opportunity to comment on the draft *State Environmental Planning Policy (Coastal Management) 2016* (the **draft SEPP**). Our client wants to ensure that all potential impacts upon the sugar cane industry are appropriately managed and taken into account in the adoption of the draft SEPP.
- 1.2 We note that many TRC members have decades of experience in sugar cane agriculture which includes the management of the drainage of run-off from the sugar cane fields, and in the management of acid sulfate soils present in the floodplains of the Tweed and Byron Shires.
- 1.3 TRC is concerned that the draft SEPP and the concomitant mapping system proposed will unreasonably and unnecessarily constrain the carrying out of agricultural development. Further, TRC is concerned with the inconsistency in the mapping of man-made watercourses that appear to be classified as tributaries formed by natural processes, which will further restrict current commercial operations and future agricultural opportunities in a manner inconsistent with the purposes of the overarching *Coastal Management Act 2016* (NSW) (the **CM Act**).

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- 1.4 Accordingly, our client requests that the Environment and Building Policy division of the NSW Department of Planning & Environment considers the recommendations set out in this submission.

2 Consideration of the objectives of the *Coastal Management Act 2016* (NSW)

- 2.1 The information publicly available in respect of the draft SEPP includes a statement that: 'The draft [SEPP] seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the [CM Act].'¹
- 2.2 The objects of the CM Act are listed at section 3, and cover the protection of coastal processes, public access to waterways, and recognition of the dynamic nature of the shoreline, amongst other goals across a broad spectrum of social, environmental and economic considerations.
- 2.3 Relevantly to this submission, we specifically highlight the following objects of the CM Act:
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies... and
 - (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and
 - ...
 - (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and
 - (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions...
- 2.4 Accordingly, the sustainable future of the agricultural industry, specifically including the sugar cane industry, is a matter which arises for consideration pursuant to the objects of the CM Act.
- 2.5 We further note that object (e)² focuses on strategic land use in accordance with the general principles of ecologically sustainable development (**ESD**) and identifies the facilitation of ESD in the coastal zone and the promotion of sustainable land use planning as specific objectives.

¹ Draft Coastal Management State Environmental Planning Policy Community Factsheet, <http://www.planning.nsw.gov.au/Policy-and-Legislation/~/_media/FACC4AE6312E4707A533DD20A59413F1.ashx> accessed 17 January 2017

² CM Act s3

- 2.6 However, as presently drafted, the sugar cane industry is likely to be detrimentally impacted as a consequence of the proposed changes as indicated in the Explanation of Intended Effects for the draft SEPP (**draft SEPP EIE**).
- 2.7 We submit that ESD requires the consideration of the triple bottom line (social, environmental and economic concerns) as an overarching goal, and note that there is no exact degree of specificity in which this principle ought to be considered in the decision making process to which it is applied.³ This ought to result in the economic impacts of any additional level of environmental impact statement being considered when creating a framework by which development will be assessed in the coastal management zones.
- 2.8 We are instructed that many of the growers who constitute the body of TRC are certified sustainable sugar manufacturers.
- 2.9 Additionally, we note that objects (j) and (k) call for greater coordination between public authorities and State and local governments, and for greater public participation in the preparation of coastal management plans. However, at this stage there is insufficient information available in the public sphere that indicates how stakeholders can effectively participate in the discussions relevant to the new coastal management zones that potentially apply to their properties.
- 2.10 Accordingly, we recommend that all landholders whose lands are affected by one of the four coastal management zones be given an opportunity to respond to the inclusion of their land on the draft SEPP maps, and to apply to their local Council to have the extent of coverage added, modified or removed with sufficient evidence in support.

RECOMMENDATION #1

That each owner of land covered wholly or partially by one of the newly defined coastal management areas (**CMAs**) be given the opportunity to apply to Council to vary the extent of coverage prior to the new development controls coming into effect.

- 2.11 We submit that the objects of the CM Act are aimed at both preserving the economic importance of the coastal use zone and protecting what appears to be predominantly the coastal waterways that are designated as being affected by tidal flow. However, we are instructed that many sugar cane farms are located within areas that do not directly relate to waterways with tidal flow. Notwithstanding, the provisions of the Draft SEPP extend to these non-tidal waters with potentially severe consequences in terms of the day-to-day operations of the affected sugar cane farms.
- 2.12 Further, there are man-made channels in existence which service the sugar cane industry which are essential to its sustainable operation. It does not appear to be the intention of

³ Minister for Planning v Walker (2008) 161 LGERA 423 at [44]

the Draft SEPP to include such channels within its operation. However, given the serious consequences for stakeholders, this should be made clear.

- 2.13 Accordingly, we recommend that waterways that have been deemed to be within the CMA but are not affected by tidal flow or have a limited impact from the same, such as man-made drainage canals constructed in connection with the sugar cane industry, be exempt from the additional level of development control imposed upon the surrounding properties and cane farms.

RECOMMENDATION #2

That man-made drainage canals constructed in connection with the sugar cane industry, and the surrounding land, be exempt from the requirement for development consent in accordance with the new coastal management areas as proposed.

3 Concerns regarding implementation by local Councils, and concurrence with existing Local Environmental Plan

- 3.1 TRC is concerned that the ability of local Councils to fully discharge obligations under the draft SEPP will be limited, due to the \$83.6 million grant from the State government being allocated 'to help achieve fair and cost effective solutions to reduce exposure to coastal hazards, and to improve planning for future risks'.⁴
- 3.2 In order for Coastal Management Programs (CMPs) to be prepared by Council that effectively control development and management of coastal land, and more accurately map coastal waterways, additional resources need to be granted to the relevant division within Council.
- 3.3 Further, the responsibility for creating the CMPs and for overseeing the necessary amendments to the mapping of the CMAs ought to be shared between the relevant business development, environmental protection and planning and development divisions within Council, in order to better reflect the triple bottom line nature of the underlying goal of ESD. This means that the economic impact of the draft SEPP can be more accurately assessed and responded to by each Council's relevant economic development division.

RECOMMENDATION #3

That each coastal Council be afforded an additional or apportioned grant to implement CMP, with the responsibility to be shared between planning, environmental and economic divisions.

⁴ Draft Coastal Management State Environmental Planning Policy – What happens next?
<<http://www.planning.nsw.gov.au/Policy-and-Legislation/~media/E18CE756639548ECAAF3A96157AB8C633.ashx>> accessed 17 January 2017

3.4 We note that the draft SEPP provides, at clause 7, the following:

7 Relationship with other environmental planning instruments

(1) Subject to section 74 (1) of the Act and this clause, in the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

- 3.5 We further note that Part 7 of the *Tweed Local Environment Plan 2014* (**Tweed LEP**) and Part 6 of the *Byron Local Environment Plan 2014* (**Byron LEP**) includes a series of local provisions that permit local landowners to, amongst other things, carry out works for the purpose of agriculture without requiring development consent if the works are carried out in accordance with a drainage management plan.⁵
- 3.6 We are instructed that, to date, these provisions have provided an appropriate process whereby all relevant issues both from the perspective of the consent authority and the sugar cane growers have been addressed. The procedures set out in Part 7 are an essential element for the carrying out of the day-to-day operations of the sugar cane growers on a sustainable basis. However, because of the manner in which the Draft SEPP has presently been drafted, there is uncertainty surrounding the ongoing ability for sugar cane growers in regions affected by the new CMAs to be able to proceed with this process.
- 3.7 Accordingly, we request that an exemption be inserted as a clause or additional schedule to the draft SEPP making explicit mention of the above works not being subject to any additional form of environmental impact statement and/or development application.

RECOMMENDATION #4

That the draft SEPP provide reference to additional local provisions as is appropriate or required, particularly those listed in Part 7 of the Tweed LEP and Part 6 of the Byron LEP.

- 3.8 Further to the above, we note that the draft SEPP does not include any specific transitional provisions to ensure that the status quo is maintained in relation to the operation of Part 7 of the Tweed LEP and Part 6 of the Byron LEP. These should be incorporated into the Draft SEPP in order to ensure that our client's members can continue to lawfully undertake sugar cane agricultural operations consistent with the current provisions, including works that are permitted without consent under the current Tweed and Byron LEPs, without being put at risk of being in breach of the amended provisions.
- 3.9 We therefore recommend that, for the purposes of the operation of Part 7 of the Tweed LEP and Part 6 of the Byron LEP, the definition of coastal wetlands and zoning as set out in the Coastal Wetlands SEPP are preserved in order to allow for ongoing exemptions from

⁵ *Tweed Local Environment Plan 2014* cl. 7.1.7(b)

obtaining development consent for routine agricultural works. Alternatively, appropriate exemptions could be clearly added as a clause or schedule to the draft SEPP. We also recommend that the Tweed and Byron LEPs be amended to provide concurrent reference to the draft SEPP, with a s 117 order from the Minister to vary the Tweed and Byron LEPs if the requested modification is not forthcoming.

RECOMMENDATION #5

That land in close proximity to coastal wetlands and littoral rainforest, as are defined under the current SEPPs and mapping, not be subject to any additional development controls beyond those currently in place, provided that the mapping for said CMAs will not be subject to change.

- 3.10 On a related issue, in order to ensure an appropriate level of clarity and certainty, the draft SEPP should also make clear that agricultural operations which are already being lawfully carried out under the Tweed and Bryon LEPs on the basis of being permitted without consent, pursuant to existing development consents or existing/continuing use rights, are not affected by the draft SEPP.

RECOMMENDATION #6

The draft SEPP should include a clear statement that agricultural operations which are already being lawfully carried out under the current Tweed and Byron LEPs on the basis of being permitted without consent, pursuant to existing development consents or existing/continuing use rights, are not affected by the draft SEPP.

4 Effect of partial classification of CMA over large parcels of land

- 4.1 We note that a planning circular has been distributed to indicate how s 149(2) planning certificates should show how a parcel of land partly within a CMA must be treated as if the whole of the parcel were covered by the particular CMA.⁶
- 4.2 We note that in Recommendation #1 above, it is submitted that all landowners are given the opportunity to apply to have their locally mapped coastal use area varied as required and on the basis of sufficient proof.
- 4.3 Further to this recommendation, however, we note that large lots may be unreasonably impacted in a manner which was not anticipated or intended by the SEPP. As currently drafted, even a minor incursion would have the effect of unreasonably constraining the carrying out of agricultural development upon the whole of the lot. This should be amended

⁶ NSW Department of Planning and Environment - Planning Circular PS 16-003
<<http://www.planning.nsw.gov.au/~media/245E6B6F7EB44B0C98AA90F2ACA56C8F.ashx>> accessed 17 January 2017

to ensure that only that part of the land which is affected by the mapping is subject to the provisions of the draft SEPP.

RECOMMENDATION #7

That the draft SEPP make provision for land which is 'partially' subject to a mapped CMA to be subject to the provisions of the draft SEPP only to the extent of the mapped part of the land.

5 Limitation of works constituting development on land in close proximity to CMAs

- 5.1 TRC is concerned that the inclusion of non-tidal waterways that are not in proximity to coastal zones will result in additional development controls that will be an unnecessary regulatory burden without any substantive benefit in terms of environmental outcomes.
- 5.2 We note that the NSW Department of Natural Resources publication "Survey of Tidal Limits and Mangrove Limits in NSW estuaries 1996 to 2005"⁷ has not been updated in over ten years, but that a number of the watercourses listed therein have been included on the maps released with the draft SEPP. This is of concern to TRC in that it appears that a thorough analysis of coastal waterways to determine the extent of tidal flow and to determine whether each waterway has been constructed by private landholders or formed by natural processes has not been undertaken.
- 5.3 Further, the current mapping for the coastal environment area and the coastal use area stretches inland to an extent that TRC considers unnecessary to achieve the goals of the new coastal management regime. We submit that even taking into consideration the information released concurrent to the draft SEPP that relates to the mechanism by which these two CMAs can be varied, there is still substantial ambiguity and an unreasonable and unnecessary degree of regulation. This is primarily due to the fact that the draft SEPP in its current form could result in the regulation of the carrying out of development upon land or associated drainage discharge channels that are not located within the proximity area of mapped coastal wetland or littoral rainforest.

RECOMMENDATION #8

The Department undertake a reassessment or resurvey of tidal limits and coastal creeks prior to each coastal Council having to take responsibility for doing so as part of the preparation of CMPs.

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<<http://www.environment.nsw.gov.au/resources/estuaries/20060118DNRSurveyTidalMangroveLimits.pdf>> accessed 17 January 2017

6 Impact on property prices due to additional environmental impact assessment requirements

- 6.1 The members of TRC are concerned that the draft SEPP will be rigidly applied and inflexibly managed, so as to put those sugar cane growers operating within the zones designated as CMAs at a financial disadvantage to those growers further inland.
- 6.2 In order to achieve the social and environmental goals of the new coastal management regime without compromising the economic viability of the agricultural industry, we submit that the draft SEPP be amended to include a schedule of exempt and complying development relating to the drainage works, earthworks, construction and other operational works relating to sugar cane farming activities.

RECOMMENDATION #9

That the draft SEPP have a new Schedule 4 inserted which identifies a range of agricultural farming as exempt or complying development.

7 Inconsistency in mapping of local man-made drainage canals

- 7.1 As indicated in paras. [5.2] – [5.3], TRC is concerned that the basis for the mapping of coastal waterways is inaccurate and based on outdated data. Further to this, it is submitted that there is inconsistency in the types of waterways that are included on the maps as part of the coastal environment area and the coastal use area.
- 7.2 We are instructed that, an example of this is the man-made drainage canal known to the residents of Stotts Creek and surrounds as 'McLeods Creek'. This 'creek' is in fact a drainage canal constructed by farmers circa. 1930. It is shown on the map **below (Figure 1.1)** as being part of the coastal environment area.



Figure 1.1 – Coastal Environment Area Map – Stotts Creek and surrounds

7.3 Figure 1.2 **below** shows the concomitant coverage of the surrounding land as being part of the coastal use area.

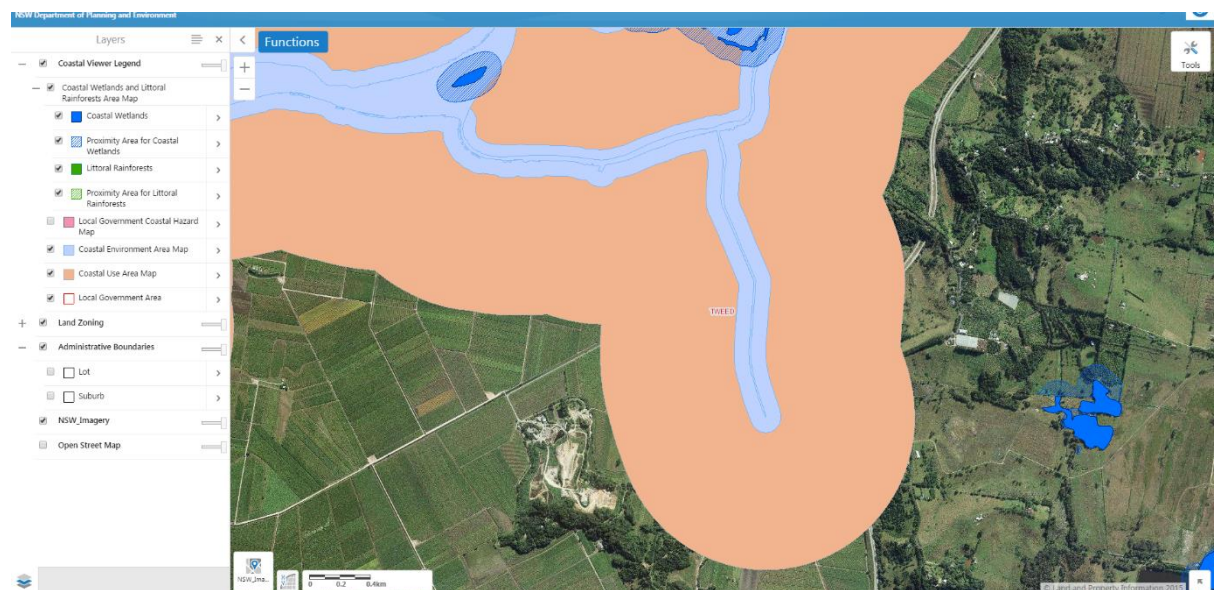


Figure 1.2 – Coastal Use Area Map – Stotts Creek and surrounds

- 7.4 We note at this point the immediate inconsistency in the mapping of this man-made drainage channel as being part of the coastal environment area/coastal use area when many other similar creeks, canals and cane farm drains are not mapped in the same manner.
- 7.5 Further, we note that the waterways mapped as being part of the above two CMAs are intended to be affected by tidal flows in accordance with the draft SEPP EIE. In this instance, we are instructed that McLeods Creek is a flood gated drainage canal which is subject to very limited tidal flow. Figure 1.3 on the following page shows the presence and location of the floodgates on McLeods Creek.

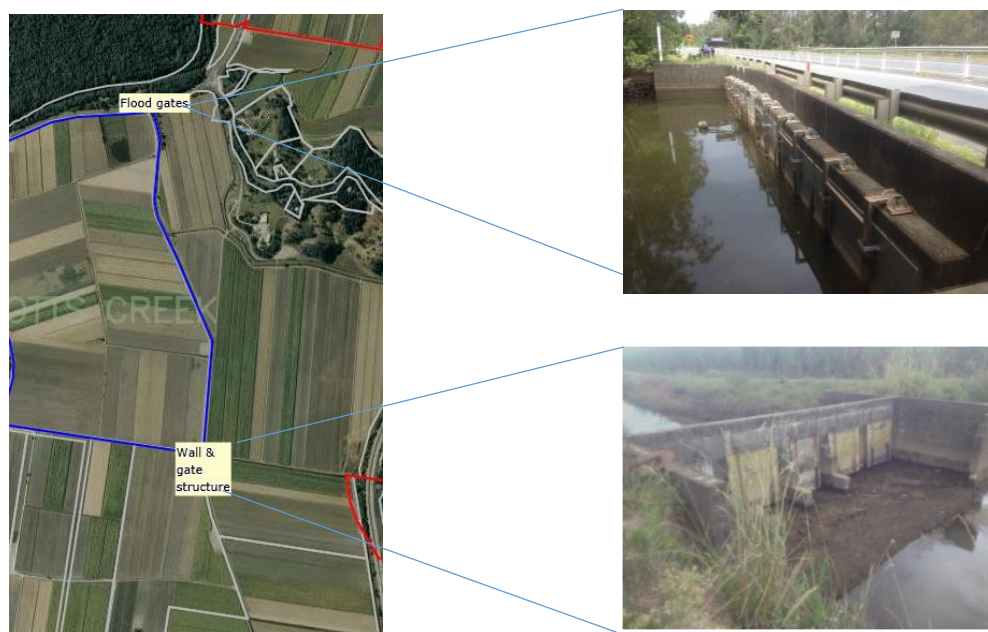


Figure 1.3 – Relative location of floodgates on drainage channel

7.6 The NSW Department of Natural Resources publication *Survey of Tidal Limits and Mangrove Limits in NSW Estuaries 1996 to 2005*, referenced in para. [5.2] above, includes at Table 4.1 a list of creeks that are tributaries to the Tweed River. See Figure 1.4 below.

Table 4.1 NSW Tidal Limits - North to South Listing

Estuary	Creek/River	Date	Map	Zone	Easting MGA	Northing MGA	Distance from Ocean (km)	Comment
Tweed River	Piggabeen Creek	20-22/6/97	Currumbin	56	544890	6882136	16.0	At rock pile in creek, 0.5km WNW of road bridge
	Cobaki Creek	20-21/6/97	Currumbin	56	545615	6880761	14.3	75m downstream from road bridge
	Bilambil Creek	19-20/6/97	Currumbin	56	545540	6877511	14.3	At Hogans Bridge on road to Upper Duroby
	Duroby Creek	19-21/6/97	Currumbin	56	547765	6876816	11.9	Downstream side of rock dam, 100m from Benevis Place on Naponyah Road
	Dulguigan Creek	1/6/00	Murwillumbah	56	-	-	-	Fully tidal as creek now joined to Rous River by flood channels
	Pipeclay Creek	1-2/6/00	Murwillumbah	56	537935	6871196	31.6	Constriction in creek at rear of first house on left in Braemar Place 780m upstream from Dungay Creek
	Dungay Creek	1-2/6/00	Murwillumbah	56	537380	6871231	32.1	Upstream side of right bend in creek, 760m NW from Pipeclay Creek junction
	Rous River	19-20/6/97	Murwillumbah	56	533345	6867977	42.0	Ford 1.7km upstream from Boat Harbour Bridge
	Mayal Creek	13/11/01	Murwillumbah	56	-	-	-	Fully tidal creek connected to Rous and Tweed Rivers
	Tweed River	19-20/6/97	Murwillumbah	56	536755	6864577	35.5	Tide gets to weir, 5.3km upstream from bridge at Murwillumbah
	Dunbible Creek	19-22/6/97	Murwillumbah	56	538945	6861422	32.6	May get a short way upstream from this vicinity
	Condong Creek	14/11/01	Murwillumbah	56	-	-	-	Fully tidal creek connected back to Tweed River via Johnsons Creek
	Bartlets Creek	25/6/02	Murwillumbah	56	-	-	-	Fully tidal creek connected to Main Trust Canal
	Main Trust Canal (South)	25/6/02	Murwillumbah	56	547980	6868756	27.0 ¹	Tide would get 20m upstream from culvert under Hawkens Lane
	Main Trust Canal	25/6/02	Murwillumbah	56	-	-	-	Fully tidal canal connected to Bartlets Creek and Leddays Creek
Cudgen Creek	Leddys Creek	25/6/02	Murwillumbah	56	548780	6872086	16.8	No apparent leakage through floodgates at Pacific Highway
	Cudgen Creek	21/6/97	Cudgen	56	-	-	-	Fully tidal all the way to Cudgen Lake
	Cudgen Lake	21/6/97	Cudgen	56	-	-	-	Fully tidal lake
	Clothiers Creek	14/11/01	Cudgen	56	551605	6866811	13.7	Heavy reed growth starts at this point, 2.2km upstream from Cudgen Lake
	Reserve Creek	14/11/01	Cudgen	56	551755	6865686	13.9	Creek would be tidal all the way to Clothiers Creek Road
Cudgera Creek	Christies Creek	1-2/6/00	Cudgen	56	551980	6862356	5.8	200m upstream from Kanes Road
	Cudgera Creek (West)	1-2/6/00	Pottsville	56	553700	6860267	5.3	Rock barrage 10m downstream of old ford, 1.2km downstream from Cudgera Creek Road
	Cudgera Creek (South)	21-22/6/97	Pottsville	56	554614	6859432	5.0	200m upstream from Cudgera Creek Road, heavy reed growth
Mooball Creek	Burringbar Creek	1-2/6/00	Pottsville	56	550555	6853872	11.1	Large rise in creek near old fig tree, 500m downstream from <i>Cowell Park</i> farm
	Mooball Creek	25/4/02	Pottsville	56	551035	6852277	10.6	Tide stopped by thick reed growth just upstream from old timber bridge which is 1.8km upstream from Burringbar Creek
	Crabbes Creek (West)	1-2/6/00	Pottsville	56	552029	6852027	9.8	470m downstream from upstream bridge on Wooyung Road
Brunswick River	Crabbes Creek (South)	21-23/6/97	Pottsville	56	554029	6852047	8.5	Reed growth would stop tide at Wooyung Road
	Billmudgel Creek	1-2/6/00	Pottsville	56	552704	6848677	2.5	Disperses into wetland at least 800m upstream from Kallararo Circuit culvert
	Marshalls Creek	22-23/6/97	Brunswick Heads	56	551629	6847112	9.0	120m upstream from Pacific Highway bridge
	Ocean Shores (West)	25/6/02	Brunswick Heads	56	552514	6846002	6.4	Small weir 6m upstream from culverts near end of Terrara Circuit

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Figure 1.4 – Table 4.1 from NSW Department of Natural Resources publication *Survey of Tidal Limits and Mangrove Limits in NSW Estuaries 1996 to 2005*

- 7.7 We are instructed that there may be errors in the comments section of Table 4.1 (Fig. 1.4 above), as the Main Trust Canal, Main Trust Canal (South), Bartletts Creek, Condong Creek, Johnsons Creek and Dulguigan Creek are not tidal waterways, as they are flood gated. We refer to Recommendation #8 above in relation to these errors.
- 7.8 It is apparent from this list that the man-made drainage canal known as McLeods Creek is not a watercourse identified within the tidal limits, and ought not be included on the map as being part of the coastal environment area or coastal use area. We submit that the mapping of McLeods Creek as part of these CMAs is inconsistent with the treatment of other creeks and cane drains on the NSW North Coast that have similar flood gate structures.
- 7.9 In this regard, our client understands that a request will be made by Tweed Shire Council for the removal of the man-made surface drain known in the locality as 'McLeods Creek' from the coastal waterway mapping. We submit that this request ought to be considered by the Department prior to the finalisation of the draft SEPP in accordance with the reasons set out in paras. [7.1] – [7.8].

RECOMMENDATION #10

That the man-made drainage channel known as McLeods Creek, as indicated in the above maps, be removed from being mapped as part of the coastal environment area and coastal use area.

8 Conclusion

- 8.1 We request the Department of Planning and Environment to consider the above recommendations, all of which are necessary to ensure that the needs of the established sustainable sugar cane industry in the Tweed region are properly taken into account.
- 8.2 The potential impacts of the draft SEPP upon sugar cane farmers with landholdings located in close proximity to the new CMAs will result in unreasonable constraints upon the orderly and economic use of their land for agricultural purposes.
- 8.3 In addition to the adverse impacts upon the carrying out of the day-to-day operations of the sugar cane farms, the draft SEPP would result in lower land valuation, higher overheads for development relating to sugar cane agriculture and greater uncertainty in the industry.
- 8.4 The draft SEPP in its current form fails to provide certainty, clarity and fairness in respect of matters which are of fundamental importance to those who will be most directly affected by its operation. In order for the draft SEPP to operate in a manner which properly takes into account the legitimate interests and expectations of an important segment of the community, it is essential that the provisions of the draft SEPP operate in a manner which allows sugar cane farming to continue to be carried out in a reasonable and sustainable manner.

- 8.5 TRC welcomes the opportunity to provide this submission in response to the exhibition of the draft SEPP as part of the NSW State Government Coastal Management reforms. Should the opportunity arise for ongoing community consultation regarding the implementation of this SEPP and the concomitant mapping process, TRC would appreciate the ability to participate further.

Yours faithfully

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