

CANAL ROCKS V SHIRE OF BUSSELTON, CONSULTATION

979. Hon Murray Criddle to the parliamentary secretary representing the Minister for Planning and Infrastructure
- (1) Is the minister aware that in the matter of Canal Rocks Pty Ltd versus the Shire of Busselton, His Honour, Justice Parker said ‘A number of arguments forwarded by the Canal Rocks had merit and that His Honour expected the parties would consult’ and ‘Canal Rocks could certainly get relief if the Council ignored its efforts to consult?
 - (2) Is the minister aware that there has been no consultation?
 - (3) Is the minister aware that this lack of consultation results from the failure of the council to do so?
 - (4) Is the minister aware of the detail of the Proposed Amendment 56 to the Shire of Busselton’s Town Planning Scheme No. 20, in particular that this amendment as proposed by the Shire is fundamentally different from the direction of the Minister to the Council?
 - (5) Specifically, is the minister aware that the proposed amendment incorporates not just the Development Guide Plan, but the methodologies too and this predicts an over prescriptive outcome that severely restricts the developer in negotiating a positive outcome?
 - (6) Is the minister aware that her office has expressed to the Shire of Busselton serious concerns about the proposed Amendment 56 to the Shire of Busselton’s Town Planning Scheme No. 20?
 - (7) In particular, is the minister aware these concerns relate to the -
 - (a) process for the adoption of the methodologies;
 - (b) binding nature of the Development Guide Plan;
 - (c) provision for land to be ceded free of cost in the Development Guide Plan; and
 - (d) provision that any person can apply for adoption of a development Guide Plan?
 - (8) As the concerns expressed by your office result from the council either ignoring the minister’s directions in respect of the amendment; or including matters not referred to in that direction, is the minister prepared to seek advice about how these concerns can be addressed?

Hon KEN TRAVERS replied:

- (1)-(8) The Minister for Planning and Infrastructure is aware that the Shire Council is considering proposed Amendment 56 to Shire of Busselton District Town Planning Scheme No 20 but a formal request to the Western Australian Planning Commission to advertise has not been made. The minister is informed that the proponent sought an injunction from the Supreme Court to injunct the Council from further progressing the proposed amendment - that is referring the amendment to the Environmental Protection Authority or advertising the proposed amendment for public comment. The proponent raised a number of issues with the Amendment.

His Honour Justice Parker was not persuaded that it would be appropriate to grant an injunction. His Honour observed that the proponent was “in essence asking the court to issue an injunction requiring a Shire not to follow a statutory obligation that exists on it”. His Honour further noted that, “A process of public consultation and potential amendment to the scheme is to be gone through”, and made a point of encouraging parties to continue to consult on the relevant matters.

This is now occurring and officers from the Department for Planning and Infrastructure are having ongoing discussions with the proponent and Council representatives on a number of issues, including addressing those outlined in your question. Of note, the minister is advised that Council intends to consult extensively with the landowner and other stakeholders.

The department has also provided the Council with officer level advice to ensure the amendment is consistent with the Leeuwin Naturaliste Ridge Statement of Planning Policy, Statement of Planning Policy No. 2.6: State Coastal Planning Policy, the Model Scheme Text and Commission Policy. The minister understands that on 9 July 2003, Council made modifications to the draft amendment to address some of the matters raised by the proponent and the department.

Provided the draft amendment meets the test set out in regulation 25(2) of the Town Planning Regulations 1967, such as complying with Statements of Planning Policy, the Shire may advertise the proposed amendment without the approval of the Planning Commission. There will be opportunities

for submissions on the proposed amendment and for the Shire to modify the amendment, in the process of public consultation and consideration by the Shire following advertising.
