

PORT CATHERINE DEVELOPMENT, LEGAL ENTITLEMENTS

1228. Hon Jim Scott to the Parliamentary Secretary representing the Minister for Planning and Infrastructure

- (1) Can the Minister confirm whether extensive areas of residential development or canal style residential estates, such as those proposed in the Port Catherine development, fall within the category of development that can be considered as exceptions to the setback requirements for proposed developments as required by the State Coastal Planning Policy?
- (2) What are Port Catherine Developments' legal entitlements in relation to the Port Catherine Agreement Number 2 in the event that the 'Initial Approvals' for the sea bed area and/or the foreshore area west of Cockburn Road are not obtained?
- (3) What are Port Catherine Developments' legal entitlements should approvals be granted that preclude a residential canal estate west of Cockburn Road?
- (4) What are Port Catherine Developments' legal entitlements should approvals be granted that preclude any residential development that is not considered to be ancillary to an approved coastal dependent land use?

Hon KEN TRAVERS replied:

- (1) The marina and the land directly abutting the marina to the south, which is considered to have an approved coastal protection system as defined in the Policy, are subject to exemptions and variations allowed by the Policy.
- (2) Clause 5.7 of the Project Agreement states that
"PCD may give WAPC notice requesting an extension of the Initial Approvals Date specifying the reasons for such request, and provided such request is made not less than 60 days prior to the Initial Approvals Date, WAPC agrees to grant such an extension if WAPC considers that:
 - (a) PCD has used its best endeavours to obtain the Initial Approvals; or
 - (b) PCD is not otherwise in default hereunder; or
 - (c) the additional time is required for reasons beyond the control of PCD and there is reason to believe PCD will be able to overcome the reasons for delay specified; or
 - (d) the delay in obtaining the Initial Approvals has been caused by WAPC not complying with its obligations under this Agreement".

Clause 5.8 goes on to state that:

"If PCD is unable to obtain any Initial Approvals or obtains an Initial Approval on conditions unacceptable to it prior to the Initial Approvals Date, PCD shall forthwith give written notice of such fact to WAPC and if PCD informs WAPC that as a result of such Initial Approval not being obtained or being obtained on conditions unacceptable to PCD that:

- (a) it would be unable to complete the Project; or
- (b) the Project would be materially different from that set out in the Development Plan; or
- (c) the Project would no longer be Commercially Viable; or
- (d) there are scientific, environmental, planning or engineering grounds for not undertaking the Project;

and PCD wishes to terminate this Agreement, then PCD will give notice to WAPC of its decision and this Agreement will be terminated without prejudice to the rights of the Parties in relation to any antecedent breach of the provisions of this Agreement".

(3)-(4) Clause 28.1 states:

"The Parties agree that there are a considerable number of factors which could materially change the obligations of the Parties under this Agreement and the implementation and completion of the Project. Each party agrees to confer in good faith as and when reasonably required by the other party with a view to agreeing on variations to this Agreement to ensure the completion of the Project to the reasonable satisfaction of PCD and WAPC".

Clause 28.2 goes on to state that

“Without limiting the generality of clause 28.1 if PCD is unable to obtain all the Approvals and the Land Administration Act Approvals necessary to carry out the development within the Sea Bed in accordance with this Agreement and the Parties agree that the Project may not proceed PCD shall be given the opportunity to submit a revised Development Plan for a project deleting the Sea Bed Land for consideration by WAPC and WAPC shall extend the date for submission of such revised plan for such period as shall be agreed between WAPC and PCD. PCD and WAPC agree to renegotiate all the terms and conditions of a development excluding the Sea Bed”.