

Philip J Hattersley
U58/1 Millennium Circuit
Pelican Waters, Qld, 4551
30 November, 2017

The Secretary,
OSCAR
PO Box 105 Coolum Beach, Qld, 4573

Dear Sir/ Madam,

I write following your kind invitation to make a presentation to your organisation on Thursday 30 November, 2017.

Firstly, let me thank you on behalf of the affected residents of Pelican Waters for the opportunity afforded to me to present our matter of concern to your meeting. Arising from our presentation your Chairman invited us to submit a letter to your organisation setting out our matters of concern. This letter responds to that invitation and we also ask for your organisation's support and advice as to how you consider the matter might be dealt with to obtain a satisfactory outcome for the affected residents of Pelican Waters.

Let me commence by setting out a summary of the events leading to our concern:

BACKGROUND

- 1) Pelican waters Golf Club was developed as an icon and a significant part of the development of the Pelican Waters precinct around 1990's.
 - a) When I purchased my property in 2002, I was advised that the golf club was intended to be a 27-hole course of which the first 18 holes had been developed.
 - b) The existence of the golf club was a significant factor in my decision to buy into the area because I was a keen golfer.
 - c) Golf course patronage grew slowly at first supported by a number of residents who signed up as members.
 - d) The original owners decided to sell and the course was purchased around 2004 by a private land development company owned by the Late Eddie Kornhauser of Victoria. The Kornhauser reputation was linked to real estate development on the Gold Coast.
- 2) At around that time of 2004 Kornhauser entered into what may have been a Joint Venture (JV) with a local Sunshine Coast developer to form a company called Titanium Enterprises. The JV also had real estate holdings at Kin Kin also with plans to develop that area into an estate with a Greg Norman designed golf course as its centrepiece. Council rejected the application and the development stalled.
- 3) Titanium then submitted a Development Application (DA) to Caloundra City Council to develop portion of the unused land on Pelican Waters Golf. The project was named 'Lakes Edge'.
 - a) It appears that the application was proceeding smoothly as a DA with public consultations and the development appears to have been gaining support from Council subject to certain conditions being imposed.
 - b) However, Titanium (it appears) became impatient and commenced unapproved land clearing contrary to conditions and attempted to deny Council inspectors the right to enter the subject land by use of security guards. Council apparently used a helicopter and photographed the clearing works and issued an injunction to stop work.

- c) A subsequent court case in the Planning and Environment Court brought by Council in 2006 was determined against Titanium and the project was halted.
 - d) The activities of the JV Titanium were then apparently halted at Pelican Waters Golf Club and a Kornhauser-owned company apparently assumed control again.
- 4) In around 2012, the Sunshine Coast Council commenced a process to develop its Draft Planning Scheme, apparently in response to State Government SEQ Regional Plan requirements.
- a) At some stage the Kornhauser's company (Owners) is reported to have submitted to Council its request for the development of part or all of the golf course stating that golf club operations were not financially viable. The Owners sought a Material Change of Use of part of the golf course to allow residential development on what was a recreational space (golf course) in order to enhance the financial state of the club.
 - b) The affected residents would like to know who made the initial suggestion and why Council ultimately agreed to include the change of use of the golf course into the draft planning scheme. Why was Council persuaded to support the financial viability of any business? It didn't consider the adverse impacts upon other businesses such as the adjacent Sebel Hotel.
 - c) It might be noted that the change of use of the golf course does not appear anywhere in the title of the Planning Scheme and was not specifically notified to residents for comment in 2012. Only those residents with a keen understanding of local matters and who were alert to the intended process made submissions. From official documents it appears that 43 submissions were made about the golf course out of a total of over 2000 submissions about the Planning Scheme generally.
 - i) Lack of awareness was clearly one issue in the small response.
 - (1) Residents were expecting that at some time in the future any development proposal would be publicly circulated because the residents did not know nor appreciate that the Planning Scheme would make the process opaque to the public or the outcome almost impossible to overturn legally.
 - (2) It would require a political intervention and the use of Ministerial intervention to stop the process and demand a public consultation process on what is a straightforward DA for Material Change of Use.
 - (3) A belief by local residents that the proposal was not likely to gain approval since a previous application to develop had been rejected by Council was another factor.
 - ii) The use of a draft Planning Scheme (albeit legal) is highly deceptive and must be considered an inappropriate use of the Planning Scheme process by all concerned when a DA process would have been appropriate and transparent to the community. The Planning Scheme process only allows comments at a preliminary stage when details are sketchy and not formally committed to, and stifles resident's comment as changes to the plan emerge. It gags debate and is contrary to the aims of the SEQ Regional Plan, which specifies community consultation.
 - iii) It appears that when the Planning Scheme was submitted to Government for Ministerial approval that many of the facts were not disclosed and others possibly misrepresented in official correspondence submitted in 2014. Matters of public concern were down played and minimised in significance in the final submission to Government.
- 5) In September 2017, The General Manager of Pelican Waters Golf Club (PWGC) announced in a monthly newsletter that the club's Master Plan for redevelopment had been approved. Five years after the initial consultation when the process began.

- i) A review of Council's meeting minutes revealed that the only matter of business at its 27 August meeting was a 'Confidential-Not to be Released to the Public' session, which considered amongst other things the finalisation of an Infrastructure Agreement 2014-Deed of Variation No2. The contents of this agreement are, therefore, not known to public.
 - ii) It raises the question how the GM of PWGC knew of any approvals. Clearly, there must have been private (hitherto undisclosed) discussion between Council's officers and the PWGC.
- 6) A number of local residents whose properties and lifestyles would be adversely impacted by any proposed development decided to submit a Petition to Council. The petition when sent after one week contained 86 signatures calling on Council to stop the process because their rights to be heard under Natural Justice according to Administrative Law had been denied to them. A minimum of 10 signatures was required by Council's own requirements. The petition was submitted by Registered mail on Thursday 21 September, 2017.
 - i) I put my name as Lead Petitioner in an attempt to ensure that the matter would not sit on a Councillor's desk and not be actioned. The petition was sent by Registered Mail. As Lead Petitioner I did not receive any confirmation of receipt until I received a letter dated 4 October, 2017 from Cr Tim Dwyer. However, the letter was received by me on 18 October, 2017. The letter contained advice that the petition would be tabled at Council's meeting of 12 October and so were denied the opportunity to participate. His letter (copy attached) confirmed the process as being a Planning Scheme, and served to confirm that we had in fact been denied the right to be heard.
 - ii) I wrote back pointing out these facts and he replied with a brief note stating that Council's records show his response being posted on 5 October. I suspect that Cr Dwyer sat on the posting of his reply to me until several days after the Council meeting of 12 October had passed.
 - iii) I find his reply to be difficult to believe because on 21 October, 2017, I received a similar letter from the Planning Department, which was dated 18 October. Requiring only 3 days to be delivered.
- 7) Immediately after posting the petition to Council I Issued emails to both Mark McArdle (Caloundra) and Andrew Wallace (Fisher) seeking their support and assistance in having the apparent approval stopped and having the process followed by Council reviewed.
 - a) Mark McArdle responded the next day by phone and we had a meeting with him on the following Tuesday (26 September) at my apartment overlooking the golf course.
 - b) He recommended legal action. I advised that we did not have the money to engage barristers nor the ability to await court action. We had identified the possibility of making a layman's submission to the Planning and Environment Court. He promised to get back to me shortly.
 - c) I also received an invitation to meet with Andrew Wallace at his office on 12 October at 3pm.
 - i) He asked why a local matter was being referred to a Federal Member. I advised that it was about the reputation and trustworthiness of the local area. He accepted this.
 - ii) He asked why we didn't take out an injunction in the Supreme Court. Again, I explained that we didn't have the money to do so. He then offered the names of two local Solicitors who had development law expertise.

- iii) He offered to facilitate a meeting with Cr Dwyer after we told him that we had not met nor discussed the issues with him. At this time the meeting has been set down for 30 minutes from 3pm on 12 December at Cr Dwyer's office.
 - iv) I spoke to each of the Solicitors (lawyers) provided. The first advised against taking legal action because it would not be successful if the Planning Scheme process was used. Instead, he recommended pursuing a political path. He also provided a copy of the transcript of the Judgement of the Planning and Environment Court between Council and Owners of the golf course against the Owners.
 - v) The second Solicitor offered to give me a quote for fees but suggested that we obtain information from Council under Release of Information legislation. This process is underway.
 - d) Finally, prior to the recent state elections we had asked Mark McArdle to make representation on our behalf to the Minister for Local Government for the Minister to rescind approval of the redevelopment of the PWGC and to review the process and to require a transparent process of community consultation. We then subsequently asked if it might be possible for the Minister to meet a deputation to meet and present our case face to face. This action was interrupted by recent elections and needs to be followed up.
 - e) Emails were sent to Premier Palaszczuk and Tim Nichols asking for their support when returned to office. No effective responses have been received.
- 8) Our objective is to have the matter stopped, approvals rescinded and a new transparent process instructed by the Minister for Local Government. We are also keen to explore other avenues to support this objective such as an investigation by the Crime and Corruption Commission because of unexplained departures from transparent procedures.

SUMMARY

In summary, the proposed Change of Use and redevelopment of Pelican Waters Golf Club is not in the interests of Queensland, it is not in the interests of SEQ and it is not in the interests of the Sunshine Coast and it certainly not in the interests of the residents of Pelican Waters. The only beneficiary is the absentee landlord owner of the PWGC. Other nearby businesses (eg. Sebel Hotel and Spa) will be adversely affected if this redevelopment of PWGC is allowed to proceed as currently proposed.

The behaviour of the SCRC (The Council) in this matter is deceptive. Council has agreed to inappropriately use the Planning Scheme process to conceal and manage a Material Change of Use application that would have been more appropriately handled by a transparent Development Application (DA) process. In so doing, Council has not acted in the best interests of local residents and businesses and has stifled comments of affected local residents. The sole beneficiary is the absentee landlord (Owner of the Golf Course).

OUR REQUESTED ACTION

We respectfully request that OSCAR supports the affected residents of Pelican Waters by writing to:

- ❖ the Premier, and
- ❖ the State Minister for Local Government

- Setting out the facts and requesting that the State Government withdraws and rescinds any approval or endorsement of the Sunshine Coast Planning Scheme 2014 relating to the Material Change of Use of all or part of the Pelican Waters Golf Club (PWGC).
 - Requesting the Minister carries out a review of Council's procedures and reasons for including such a change in a wider ranging Planning Scheme in lieu of a DA process.
 - Pointing out that such action by Council clearly damages the integrity of the planning scheme process, and
 - It also denies the rights of local residents to be heard and is, therefore, a denial of Natural Justice under Administrative Law.
- ❖ We also request any advice and supporting action that OSCAR might care to offer in regard to having the above matter referred to the Crime and Corruption Commission for its investigation.

We remain available to clarify any fact/ detail or answer any further questions that you might have in this matter.

For and on behalf of the Affected Residents

Philip Hattersley