



# FISHERMAN BAY LAND DIVISION

## Comments in the Media

### Tuesday 4th July 2017

There have been statements made in the media recently concerning the Fisherman Bay Land Division, a development project initiated by the corporate entity, Fisherman's Bay Management Pty Ltd (FBM).

The following comments are provided as a response to some of these questions raised in the media.

***QUESTION: FBM says the development application can now be approved; however, is at an impasse. They say Council "has asked the DAC to not determine the application". Does Council have the power to ask DAC not to consider an application? Has Council asked it not to be consider and, if so, why?***

The Council's position has remained consistent since it gave its in-principle support for this project in October 2012.

This position, supported by the Development Assessment Commission (DAC), is that the proposed land division should not proceed without a documented infrastructure agreement covering the construction of a seawall to protect the land and its future development from coastal processes and impacts.

FBM wishes to progress the land division approval prior to the construction of the seawall. The Council does not object to this in principle, but wishes to ensure that any coast protection infrastructure is constructed in circumstances that do not compromise the financial interests of all of its ratepayers.

The Council has maintained its position that the land division application should not proceed to be determined by the DAC until FBM has committed to an infrastructure agreement upon terms that protect the broader ratepayer base from potential future financial risk.

**QUESTION:** *They also say council wants FBM to enter into an infrastructure agreement for the seawall and other works but believe Council's terms are "oppressive". What are the terms? How has the Council come up with them? Does Council consider them fair?*

The Council remains open to negotiation on the precise terms of the infrastructure agreement and has consistently made this clear to FBM. The terms proposed to date are not "oppressive" and are in fact more than fair given the Council's agreement to assume ownership and responsibility for future maintenance of the coast protection infrastructure.

The proposed terms would obligate FBM to construct the coast protection infrastructure in support of its application for land division and enable the Council to step in were FBM not to construct or complete the work. The requested security would enable the Council to do so without this significant cost being imposed on its rate payers.

**QUESTION:** *What is Council's response to FBM's claim the project is under threat if the process isn't sped up?*

The Council is not privy to the financial position of FBM and therefore cannot provide any specific comment on this aspect of the project.

**QUESTION:** *What is the next step for Council?*

Council has offered FBM and its representatives the opportunity to attend a workshop with Council to discuss the outstanding issues and hopes to continue negotiations with FBM with a view to agreeing the terms of an infrastructure agreement so that its land division application can be progressed and determined.

**QUESTION:** *Are you able to address these statements...*

- *"The Council wants a bank guarantee for many millions of dollars to cover the cost of the infrastructure works before it has development approval. FBM says that its bank simply will not make those funds available until development approval is obtained." Is this true?*

Council cannot comment on FBM's financial position. No disclosure of FBM's financial records or any correspondence from FBM's financiers has been made to Council.

Council is requiring a bank guarantee (or equivalent security) to be provided to secure the completion of coastal protection infrastructure necessary for the land division and to protect the settlement of Fisherman Bay. In the event that FBM did not or could not complete the coastal protection infrastructure (which may be for a reason outside its control), this security would give Council the financial means to quickly step in and complete that infrastructure, without Council and the ratepayers of the District Council of Barunga West bearing this significant financial cost.

The way our planning system operates, a planning authority's ability to validly condition and enforce the provision of infrastructure as part of a land division is limited. Funding and delivery of external infrastructure such as this coastal protection infrastructure is commonly dealt with by way of an infrastructure agreement with the developer, supported by adequate security. This is typically entered into as part of that developer's application and before a land division approval is issued.

***QUESTION: The Council also wants FBM to look after the works for 3 years after completion and to indemnify the Council for liability over the works for at least 9 years. FBM believes that the industry standard is 12 months at most."***

Council is requesting a defects liability period of three years from practical completion of the works, requiring FBM to make good any defects in the materials or construction of the seawall that become evident during that period. Council will otherwise be responsible for general maintenance of the coastal protection infrastructure from practical completion.

While it is common for standard infrastructure works associated with a land division (such as roads, footpaths and stormwater infrastructure) to be subject to a defects liability period of 12 months, the coastal protection works such as seawalls are not standard infrastructure works. Given the nature of the works and the potential impact of the coastal elements on them, Council considers that an extended defects liability period is warranted, to ensure that this significant infrastructure performs as required.

Council is seeking indemnities from FBM for claims that may arise out of FBM's completion or rectification of defects in the coastal protection works. The length of these indemnities is consistent with relevant statutes of limitations on claims for property damage and personal injury and reflects accepted industry standards.

Council will continue to work with Fisherman's Bay Management Pty Ltd in progressing the Land Division Project at Fisherman Bay.



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