

MIN 50853.04, 49482.03 – LEG417

27 MAY 2004

[Redacted]

Chairman
Sanctuary Cove Principal Body Corporate
PO Box 15
SANCTUARY COVE QLD 4212

Dear [Redacted]

I refer to a letter from Mr Geoff Grady, Chief Executive Officer of Mulpha Sanctuary Cove (Developments) Pty Ltd of 29 December 2003 regarding proposed amendments to the Sanctuary Cove Principal Body Corporate Development Control By-laws.

The Department of Local Government, Planning, Sport and Recreation has now completed a detailed review of the proposed by-law amendments as well as the information supplied by both Mr Geoff Grady and the Sanctuary Cove Owners & Members Council Inc (the OMC).

After consideration of the requirements of the *Sanctuary Cove Resort Act 1985* (the SCRA), I have requested that the PBC make the following changes:

1. Delete by-law 3.8.4: This relates to arbitration by the Royal Institute of Architects (or any other person/body other than the referee under the *Building Units and Group Titles Act 1980* (BUGTA)).

The Principal Body Corporate (the PBC) is created by the SCRA and its powers must be found in and authorised by the SCRA. There is nothing in the SCRA which authorises a separate dispute resolution process for by-laws made by the PBC under SCRA.

Part 6 of the SCRA, in particular section 95, sets out the permissible subject matter for development control by-laws. There is nothing in that Part which specifically gives the PBC power to make by-laws for the resolution of disputes (and consequently, the payment of costs) under the by-laws.

SCRA itself in section 104A sets out the process for the resolution of disputes under the Act. An appeal to the referee under the BUGTA is considered sufficient for a matter dealt with by an in-house committee.

The Development Control by-laws should be sufficiently clear to allow a referee to make a common sense decision, rather than require the services of an 'expert'.

2. Proposed by-law 2.12.2 should be the subject of further and wider consultation with the Sanctuary Cove Resort community. The proposed colour scheme for the Sanctuary Cove Resort may fundamentally affect the perception of the Sanctuary Cove Resort as a distinct entity and therefore I consider this issue should be more widely consulted on in the interests of contemporary administration "best practice".
3. Delete proposed by-law 2.1: This relates to applications for "development".

The concepts in this by-law appear to have been modified from the *Integrated Planning Act 1997*. The subject matter of by-law 2.1 is not authorised by the powers conferred on the PBC by the SCRA. Furthermore, reconfiguring a lot is dealt with in the SCRA and should not be included in these by-laws.

4. Delete by-law 2.18.2: This relates to minimum residential lot sizes.

This by-law is beyond the power of the PBC. Under sections 10 and 12D of the SCRA, the proprietor of the land is required to submit an initial plan of survey to the Council that establishes the maximum number of group title lots or building unit lots into which the site and adjacent site may be subdivided for residential purposes. Accordingly, it is not necessary for the PBC to specify lot sizes for residential lots in the by-laws.

5. Delete by-law 3.3(c): This relates to the payment of security bonds for the performance of works and the repair of the primary and secondary thoroughfare.

There is nothing in the SCRA that authorises the PBC to require the payment of bonds. In addition, the PBC has no jurisdiction in relation to the primary thoroughfare. It follows that the PBC has no power to make this by-law.

6. Delete by-law 3.9: This relates to the powers of entry of the PBC.

The SCRA does not authorise the PBC to make by-laws for entry onto land. It follows that the proposed by-law is beyond the power of the PBC.

7. The proposed amendment to the definition of "company" under clause 1.2 of the Development Control by-laws is in contravention of the SCRA. Please delete this definition.

As the changes requested will involve a new resolution to be prepared by the PBC, it is expected that the residential body corporates will be provided with adequate opportunity to review and discuss any proposed amendments with the residents of the Sanctuary Cove Resort prior to those amendments being forwarded to the Department of Local Government, Planning, Sport and Recreation for further consideration and adoption.

Whilst such consultation is not considered to be a legislative requirement, contemporary administrative 'best practice' promotes openness and accountability in governance. As such, I expect the PBC / Mulpha to undertake appropriate consultation with all residents in regard to any future amendments to the development control by-laws for the Sanctuary Cove Resort.

Further, the Department has also reviewed the existing development control by-laws as a result of the representations made by the OMC. I consider that the following by-laws are not authorised to be made by the PBC under the SCRA:

- by-law 2.13.2 – approval for tennis courts;
- by-law 3.3(b) – scale of fees for applications made to the PBC;
- by-law 3.10.1 – non-liability of the PBC, the Architectural Review Committee (ARC) and its members; and
- by-law 4.2 – recovery of the PBC's costs, including legal costs.

These by-laws are beyond the power of the PBC. It follows that they cannot be relied on or enforced by the PBC. Accordingly, I request that you repeal the above by-laws and submit the changes for my consideration in the context of your other proposed amendments.

I hope this information is helpful to you. If any further information is required, please do not hesitate to contact Bruce A-Izzeddin, Planning Officer, South East Queensland – Wide Bay Burnett Planning Division in the Department of Local Government, Planning, Sport and Recreation on telephone number (07) 3237 1750.

Yours sincerely


Desley Boyle MP
Minister for Local Government and Planning
Minister for Women

Pages 4 through 17 redacted for the following reasons:

Sch. 3(7) - Legal professional privilege

RTI RELEASE - DILGP