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IN THE ADMINISTRATIVE APPEALS TRIBUNAL

Appeal No. P87/2206

PLANNING DIVISION

B E T W E E N:

WOODLEIGH HEIGHTS RESORT DEVELOPMENTS PTY. LTD. — Appellant/ Applicant

- v -

SHIRE OF KYNETON — Responsible Authority

WRITTEN SUBMISSIONS ON BEHALF OF APPELLANT

1.0 THE SUBJECT LAND IS SUITABLE FOR RESIDENTIAL USE

1.1 The fact of the matter is that the subject allotments brought into existence by a plan of cluster resubdivision approved by the Shire are suitable for residential use.

1.2 This is simply demonstrated by the fact that 42 houses have been built on the estate and put to a residential use.

1.3 The estate is laid out, and subdivisional works have been partially completed at very considerable expense.

1.4 Numerous subdivision and resubdivision plans have been approved by the Shire and subsequently registered with schedules describing the allotments as residential. These approved plans result in the current titles for the allotments.

1.5 The estate is closely located to the township of Kyneton being only one km to its north. Shops and other commercial services, and the range of human services provided by the Shire are closely available.

1.6 The density of development is reasonable and appropriate, and is consistent with the density created by past development.

2.0 USE OF THE BALANCE OF THE ESTATE FOR TIME-SHARE DEVELOPMENT

2.1 The time-share concept is the sale of a 51st share of each property to purchasers as tenants in common. The time-share resort developers have sold approximately 80% of the time-share development. About 20% remains unsold.

2.2 The sales which were achieved were not high enough to make the development viable. Losses have exceeded $1 million.

2.3 In 1984, Supreme Court proceedings erupted between the 3 developers (viz Glenn and Cheryl Thompson, the Appellant and Woodleigh Heights Marketing Pty. Ltd., the last of these companies is under the control of a mortgagee).

2.4 There is no prospect of the further extension of the time-share resort development.

2.5 If the allotments the subject to the application are not used for time-share, they are only

suitable for residential use, or some other higher density use eg. units or motel.

3.0 THE SHIRE HAS ITSELF COMMITTED THESE ALLOTMENTS FOR RESIDENTIAL USE

3.1 The tribunal is referred to permit no. PP4692.

3.2 This permit gave permission for the erection of dwellings on each allotment. The permit went further and granted permission to erect units. The permit was acted on with 42 houses progressively erected.

3.3 There is uncertainty as to whether the appellant can still act on this permit.

3.4 The Shire by this permit committed the estate for residential use. That commitment has extended over a number of years, and may even now exist. It is absurd to contemplate that the estate is not now to be used for residential living.

3.5 The tribunal is also referred to planning permit PP4792. Five residential units were approved by the Shire under this permit.

3.6 The Shire has also approved very numerous subdivisional plans under both its planning and local government powers. The clock cannot be turned back.

4.0 THE APPLICANT HAS THE BENEFIT OF ENFORCEABLE LEGAL AGREEMENTS WITH THE WATERWORKS TRUST FOR THE PROVISION OF WATER, AND THE SEWERAGE AUTHORITY FOR THE PROVISION OF SEWERAGE

4.1 The evidence of the appellants' consulting engineer is relied on.

4.2 The Waterworks Trust is legally obliged under its agreement to provide water to the estate. This agreement is not restricted to a time-share use, but extends to residential use.

4.3 Clause 1 of the agreement refers to the supply of water "for domestic purposes".

4.4 The sewerage authority entered into a similar agreement with the appellant.

4.5 The appellant has acted on these agreements incurring substantial cost and it is not now possible for the authorities to withdraw from the agreement. Not only is it not legally possible, that it would be a most surprising exercise of statutory powers for public authorities to decline to supply services to persons now being provided with those services, or entitled to expect the provision of services.

5.0 THE PROPOSED USE AND DEVELOPMENT IS ENTIRELY CONSISTENT WITH AN ONGOING TIME-SHARE USE

5.1 There is no inconsistency between residential use by time-share owners, and other types of residential use. Other types of use include use as weekenders, or as permanent residences.

5.2 Experience demonstrates that there is no clash or inconsistency between these various types of residential occupancy.

5.3 This is demonstrated by the fact that 1260 time-share owners were specifically notified of this application by direction of the Shire. There are very few objectors, many of whom are from the one time-share family. There was one local objector.

6.0 THE SHIRE'S REFUSAL IS UNFAIR AND UNJUST

6.1 The appellant has acted on its 1984 permit committing itself to residential development or use.

6.2 Since 1984, it has incurred very great holding costs, development costs, and selling costs.

6.3 The refusal does not make planning sense.

6.4 It is submitted that the tribunal should direct a permit to issue as sought in the application.

G.H. GARDE

Owen Dixon Chambers,

7th March, 1988