

20 January 2006

To Members of the Consultative Committee

The Association now has a substantial membership and represents over 90 properties. We are becoming increasingly concerned about the way the directors are running the public company PHS and appear to be ignoring their contractual obligations. As shareholders we are also concerned that our correspondence is ignored including specific requests for information promised at the 2005 AGM.

We would like to draw your attention to the following matters:

**1. 2005 AGM**

At the 2005 AGM which was attended by several shareholders with over 45 proxies a number of matters were identified and actions were promised. The matters we refer to were confirmed in writing to Mr Williams immediately following the AGM but none of these have been actioned (see letter attached).

**2. Breakwaters**

In the court action on the issue of the building of the breakwaters we understand that on 3<sup>rd</sup> October 2005 Keith successfully made application for Port Hinchinbrook Services to be joined in the action. On 7th November 2005 Justice Jones heard an application by ASH that each party bear their own costs in the proceedings. The EPA agreed to the application but Cardwell Properties and Port Hinchinbrook Services opposed the application and disputed that ASH had a case. At the Supreme Court Cairns on 1<sup>st</sup> Dec the judge ruled that the parties could not sue ASH for costs if they win because it could be deemed to be in the public interest.

The case is due to be before the Supreme Court in Cairns on 6 February.

The building of the breakwaters is a capital cost item in this development and we believe PHS, which as the company responsible for maintenance only, should not be involved in either building the breakwaters or this court case.

Further we understand that substantial costs are to be transferred to PHS when the breakwaters project goes ahead (court action, engineering and building costs) and that PHS will be borrowing all the money for this project from Mr. Williams' company - at interest rates that he will determine. The Directors of PHS should be required to take an arms length approach to ensure that the best outcome is obtained for the shareholders.

### **3. Sewerage and Pontoon levies.**

The payments made by owners for sewerage and marina berths is very confused and the transfers of levies to Cardwell Properties Unit Trust is unclear and does not conform to the contractual obligations of the Developer. These obligations are contained in the original Deed for the development and the levies in our contracts of purchase. Some of our members have taken independent legal advice, which confirms these breaches of contract.

Some of our members have also received correspondence from Keith where he seems to have decided that the owners rather than the developer are responsible for sewerage and thus PHS must take on the responsibility for building, supply and maintenance of all sewerage plant and services. This contravenes the DEED of agreement that the "DC" (Cardwell Properties P/L) signed with the State and Federal Ministers and the Shire of Cardwell. In this, the developer is entirely responsible for sewerage until Cardwell Shire Council constructs a main sewer system for Cardwell.

At the 2005 AGM it was pointed out that in our purchase contracts, the 'Port Hinchinbrook Services Ltd and Benefited Area Maintenance Levy' stipulates that the sewerage component of our BAML account would be 'approximately parallel to the charge currently being applied to other ratepayers of the Shire of Cardwell'. The highest rates in the Cardwell Shire are Mission Beach, \$270 per annum for unimproved lots and \$450 per annum for residences (rates were raised there after connection to a sewerage plant). On the June 30, 2004 invoices, sewerage charges at Port Hinchinbrook were raised to \$800 per annum for unimproved lots and \$560 per annum PER PEDESTAL for residences.

We attach a copy of Keith Williams' June 2002 newsletter to PHS members in which he confirms that Cardwell Shire only charges "per pedestal" rates for commercial enterprises, NOT for residences.

On page 29 of our contracts it states if BAML charges on private berths increase or decrease after 30th June 2004 then such increases or decrease will be proportional to increases or decreases applied to berths within the Port Hinchinbrook marina. For the current term levies have increased 127% over the previous period. The rate should be 10%. One of our members has recently received a letter from Keith where he states new amounts and arrangements are being made however we can find NO CONTRACTUAL OBLIGATION for any monies to be paid to joint venture partners as has been stated. Monies should be paid to PHS who should ensure fair, equitable and competitive payments are made to any contractors who take over any of the maintenance responsibilities for PHS.

### **4. 'Backdated' Annual General Meetings**

We understand that the 'backdated' AGMs of the company took place on the 1 December at Southport. We have had no official confirmation of this and understand that there may not have been a required quorum. At the 2005 AGM it was stated that there was an arrangement with ASIC with regard to the meetings as company law may have been contravened. We have had no confirmation that the authorities are satisfied that the requirements have been met.

## **5. Budgets**

It was understood that budgets would be prepared for all projects. To date there have been none yet increases in BAML continue despite PHS having a considerable surplus. What is the basis of these increases?

## **6. Breakwaters - Costs**

We were also to be supplied with an estimation of costs for the breakwaters so that their viability could be properly determined.

## **7. BAML Income**

It is important that a list of contributors with amounts payable for BAML is made available to ensure there is a fair and equitable distribution of costs. The basis for any 'special considerations' needs to be transparent. Any special reductions need to be made up by Keith NOT covered by BAML payers.

## **8. Roads**

We attach correspondence from the Cardwell Shire Council, which is counter to the understanding of the issue we have received from Keith.

## **9. Handover at July 2004**

**Provision for Dredging Costs** – the Association demonstrated, with the photos taken just after the 1 July 2004 that Cardwell Properties turned the marina over to PHS in an unsatisfactory condition leaving residents responsible for a potentially very large contingent liability, which is not mentioned in the accounts of PHS.

## **10. Planning Issues**

We are concerned that all parties are not adhering to planning regulations. In the DEED of agreement it states:

*"The Company must not construct any accommodation building on the Development Site with more than 2 level of accommodation and one level of car park."*

In Council's Conditions of Approval (attached to contracts) it states:

*No more than 50% of the lots created by this approval shall be available for multi-unit development. These lots shall be dispersed so that they are two (2) lots apart. Those multi-unit lots must be shown on a Plan of Development lodged with the Council and approved by the Director, Engineering Services. No Building Approvals shall be given until the plan has been approved.*

We would also like to ensure that the open spaces and recreation areas are fully protected. We would like to see the plans for these. Again In Council's Conditions of Approval (attached to contracts) it states:

*Prior to submitting the plan of survey, the applicant will identify on plans for the Port Hinchinbrook development site areas which in size will be not less than 10% of the area of the land subject to this and prior approvals, which will be set aside as open space and recreation areas for residents and guests. Those open space and recreation areas must be available for the free use and enjoyment of residents of the allotments created by the subdivision*

#### **10. Minutes of Meetings**

No minutes have been produced for any AGM.

We would also like see the official minutes of consultative committee meetings made freely available.

Finally, it must be remembered that the consultative committee is not a democratically elected committee and has been chosen by Keith.

Most of you are our friends, we assume that you will try to represent the wishes of the majority and will hold Keith to his contractual obligations. These contractual obligations are passed on to any new owner without change. The deed of agreement is also a binding contract between the developer, the State, Local and Federal government that must be adhered to.

Yours sincerely



Secretary

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PHC BAML Payers Association Inc  
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11 November 2005

Keith Williams  
Cardwell Properties Pty Ltd  
PO Box 444  
Main Beach 4217

Dear Mr. Williams

Re: *Port Hinchinbrook Services Annual General Meeting*

The purpose of this letter is to ensure that we continue to move forward on the issues discussed at the AGM. There was agreement that Cardwell Properties or its representatives needed to follow up in some important areas. So far these issues have not been resolved and we believe it is critical to make progress on them BEFORE the prior-year AGMs are held at the beginning of December and the issuance of BAML invoices. Among the unresolved issues are:

1. **Sewerage** – it was agreed that the sales contracts state that the cost of sewerage provided to Port Hinchinbrook will be in parallel with the rest of Cardwell Shire. In practise residents are being charged at much higher rates and in addition are being charge at COMMERCIAL i.e. per-pedestal rates.
2. **PHS Budget** – it was agreed that a budget for the 2005/2006 financial year be provided. We do not understand how, with the company in considerable surplus, a BAML increase can be implemented BEFORE a budget has been produced.
3. **Rock Wall Budget** – it was agreed to produce a budget for this project so that its viability can be determined before going ahead.
4. **List of BAML contributors** – in order to determine whether costs are being distributed equitably a list of contributors is required.
5. **Provision for Dredging Costs** – the Association demonstrated, with the photos taken just after the 1 July 2004, that Cardwell Properties turned the marina over to PHS in an unsatisfactory condition. Qualified persons have estimated the liability to Cardwell Properties at well in excess of one and half million (depending on the method of disposal of the material). This should be shown in the 2004 financial reports which will be presented at the forthcoming AGM. This should be resolved before the meeting.

These issues need to be followed up urgently so that the prior year AGMs can proceed and be concluded in an efficient manner. We also would appreciate given the importance of the post 2003 AGMs that these meetings be held at Port Hinchinbrook.

In addition, we are still waiting for the promised Memorandum of Association for PHS and the minutes of the AGM.

Yours sincerely

Clarke Espie



PHC BAML Payers Association Inc

cc Joe Ganim, Messrs Hopgood and Ganim, Warwick Butler, PKF; Barry Dinneen, Rochester White & Malone; Ben Williams

## **PORT HINCHINBROOK SERVICES LIMITED**

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KW:ss

4 July 2002

Dear Member of Port Hinchinbrook Services Limited,

Regrettably from a source unknown at this time we were given incorrect information in respect to sewerage charges levied by the Cardwell Shire Council.

In view of this fact we now find that the additional charges for more than one pedestal per building only applies in commercial situations and it does not apply to residences, duplexes or apartments.

In the case of any of the buildings referred to above the charge is based on one pedestal per residence, duplex or apartment.

**RE: GST on sewerage**

Prior to the 30/6/2000 we were also given incorrect information in respect to GST applying to sewerage when in fact we have now been advised by the tax office, via our chartered accountants that this is not so.

In accordance with the above we are forwarding to you a credit note where we have credited the sewerage charges for extra pedestals where applicable and credited the GST on sewerage since GST was first initiated.

The difference between what you have been charged as compared to the enclosed credit note is based on the Nett figure (after deduction of 20% discount). This amount will be deducted from your next BAML and we trust that this has not caused you any inconvenience.

As a final note we are taking this opportunity of enclosing herewith a copy of the BAML document and other literature, which forms annexures to our residential land and marina berth contracts. These annexures will replace the present copies and will be applicable from the 1<sup>st</sup> July 2002.

Yours faithfully,



**KEITH WILLIAMS and BEN WILLIAMS**

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Monday, 13 September, 2004

KW/s

c.c. The Hon. Desley Boyie MP - Minister for  
Environment, Local Government and Planning  
& Women

VIA FACSIMILE NO.: 40681772

The Chief Executive Officer,  
Council of the Shire of Cardwell,  
Post Office Box 401,  
TULLY, QLD, 4854.

Attention: Mr. Mal Mallon

RE: **COUNCIL TAKING OVER MAINTENANCE OF PORT HINCHINBROOK'S  
PUBLIC AREAS EXCLUDING DREDGING AND REVETMENT ROCK  
WALLS**

Dear Sir,

I apologise for not forwarding this letter to you by the 9<sup>th</sup> September 2004 as stated in my most recent letter of the 2<sup>nd</sup> August, 2004.

Regrettably I am experiencing difficulties in getting a consensus of opinions from the members of Port Hinchinbrook Services Limited (PHS) in respect to the above subject but it does appear that they would prefer to have from your Council an annual contribution to dredging in lieu of the maintenance of roads, landscaping etc as they have been seeking. I feel that this has come about because of your Council's advice that there was some concern as to whether or not the Council could maintain Port Hinchinbrook to the standard required by the members of PHS.

Before proceeding with the maintenance issue re roads, landscaping etc, we respectfully suggest that your Council should re-examine this request in respect to subsidising dredging which may eliminate the need for your Council to further consider the initial subject of this letter (the heading).

Yours faithfully,

**KEITH WILLIAMS**  
(on behalf of Port Hinchinbrook Services Limited and  
Cardwell Properties Pty. Ltd. which is a member)