

## Dennis Gee

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**Subject:** FW: PGLOA Enquiries

From: Grant Henley [mailto:Grant.Henley@busselton.wa.gov.au]  
Sent: Friday, 10 March 2017 12:34 PM  
To: kjstrapp@bigpond.com; ian.stubbs@westnet.com.au  
Subject: PGLOA Enquiries

Dear Kevin

PORT GEOGRAPHE SPECIFIED AREA RATES, PORT GEOGRAPHE DEVELOPMENT RESERVE AND PORT  
GEORGRAPHE WATERWAY MANAGEMENT RESERVE

I write further to our recent meeting attended by you, me, Dennis Gee and Ian Stubbs concerning the above.

Having relayed the topics of our conversation with City staff I am in a position to provide you with confirmation and/or further supplemental information in relation to the matters we discussed.

### 1. Developer Bonds

The bank guarantees released to the City as part of an agreement with the administrators of Tallwood Nominees Pty Ltd related to a range of outstanding works in earlier stages of the Port Geographe development. Some of these works involved public open space, drainage and streetscape works that remained incomplete at the time of subdivision clearance. The agreement provided that out of this amount the administrators would be paid their costs. Transfer of the balance the funds to the City was otherwise unconditional, meaning that Council has discretion as to how the funds are used.

Prior to entering into the agreement for the release of these funds, the City expended considerable resources from general rate revenue on a number of Port Geographe legal and other related matters. Such resources were justifiably allocated in the interest of avoiding future issues arising from problems with the development. Council therefore allocated a portion of the funds to legal reserves with the remainder (approximately two thirds of the recovered bond monies) going into the Port Geographe Development Reserve.

Placement of these funds into the Development Reserve resources the works left incomplete or inadequately provided by the developer and enables the City to address some of the suggestions made by the PGLOA in relation to matters such as footpath upgrades and public open space enhancement and maintenance. Details of recent and proposed expenditure is outlined below.

### 2. Expenditure from Port Geographe Development Reserve

Prior to the injection of funds from the liquidated bank guarantees the Port Geographe Development Reserve was funded purely from general rate revenue. Approximately \$250,000 of the Port Geographe Development Reserve has already been spent on a variety of Port Geographe amenities in particular, new cyclepaths, footpaths and landscaping enhancements. A nominal sum taken from the Port Geographe Development Reserve of \$57,250 has been added to grant funding for upgrades to the public boat ramp.

Further expenditure from this Reserve has been identified for the installation of reticulation and the development and landscaping of public open space in the Port

Geographe area; the detail of which will be proposed in subsequent budgets and ratified by Council as part of the usual budget and financial planning process.

### 3. Sunset Clauses for the SAR

You enquired whether the original and subsequent SAR payments have a sunset clause or whether payments were linked to developer handover. To fully explain this it is necessary to revisit the history of the development and the provisions of the Development Deed and its subsequent variations.

From the outset, the Port Geographe development was based on the principle that the City would take over the responsibility for coastal and waterway management following completion (or handover) of the development. The original Development Deed for the Port Geographe development (as varied) therefore linked handover of the development to the creation of sufficient lots from which to derive 'differentiating general rates' income to cover the cost of waterway management. The differential rate now takes the form of a specified area rate which has been imposed on all lots within the Port Geographe development area from the time at which those lots were first subdivided and created.

Details of the actual responsibilities on the City in relation to coastal and waterways maintenance were embodied in the original Management Deed attached to the Port Geographe Development Deed. Whilst the date of handover changed when the Development Deed was varied and various inducements were made to the developer to try and reduce the annual cost of the obligations that were due to fall to City, the ultimate transfer of obligations to the City for coastal and waterway management following handover of the development and the imposition of a differential or specified area rate to fund the cost of those obligations did not change.

There was, and is, no time limit in the previous and current Management Deed so far as the obligations for coastal and waterway management are concerned. The annual cost of coastal management works just prior to Tallwood going into administration approached as much as \$2million per year. Based on these costs the funds in the Waterways Management Reserve at the time would at best have covered the cost of potentially 2 years' worth of coastal management and waterway management responsibilities on handover to the City. At the level the specified area rate was set at the time the principal sum would have been exhausted in all likelihood in less than two years. A substantial increase in the level of the specified area rate would have been required to cover the cost of coastal and waterway management into the future.

Given the slow and intermittent progress of the development overall the Reserve accumulated a relatively large sum of money over the years. As it transpired, this became an important consideration for the State in its deliberations, and ultimately its commitment, to funding the reconfiguration of the groynes and assuming responsibility for waterway and coastal management as agent for the City.

Negotiations with the State in relation to the new Management Deed were therefore based on the principle that that State would take full responsibility for all costs associated with coastal and waterway management at Port Geographe in return for the City making available all of the funds held in the Waterways Management Reserve and continuing to raise and make available the Port Geographe SAR. The respective commitments of the State and the City will remain binding on both until the new Management Deed is either varied or terminated.

You mentioned during our meeting that you believed the City of Mandurah's SAR has a sunset clause associated with it. While it is important to note that the City of Mandurah's SAR is determined by the City of Mandurah and their Council and does not have any direct influence or bearing on the City of Busselton's determination of a SAR, City staff have sought information from the City of Mandurah in relation to their situation. Officers at the City of Mandurah have confirmed that there is no sunset clause for the collection of their Specified Area Rates for waterway management. They indicated that whilst they have been able to suspend the collection of a SAR for one of their canal developments for a

short time, the SAR will, or already has been reinstated to recover the amounts required for future planned maintenance works.

4. In answer to your queries concerning the ability for the State to draw down the entire Waterways Management Reserve, whilst the Management Deed does not prohibit this, in the interests of sustainability the State has elected to date not to do this. The Management Deed meets the requirements of the Local Government Act so far as the use of Reserve funds are concerned. Any funds drawn from the Waterways Management Reserve may only be used for the purposes for which the specified area rate is imposed, namely coastal and waterway management. In addition the State must provide to the City evidence of how that money has been spent. Any funds drawn but not used must be returned to the City to be placed back into the Waterways Management Reserve within specified time limits.

The Management Deed commits the City to raising the Port Geographe SAR each year to a level that reflects the previous year's collected amount, plus the SAR from additional lots created to which the SAR applies, multiplied by the CPI rate for the year.

In answer to your question about exhausting the principal held in the Waterways Management Reserve; regardless of whether the State chooses to take the Waterways Management Reserve and expend it all (in accordance with the provisions of the Management Deed), their obligations in relation to coastal and waterways management are ongoing and binding on them. If, for example they were to exhaust the Waterways Management Reserve in one year then, assuming there are no funds held in that Reserve other than the annual Port Geographe SAR, this is all the City would be required to contribute year on year.

In practice however, whilst the State can draw on the Waterways Management Reserve in its entirety at any time, the State has elected to take approximately \$300,000 per annum (an approximation of the current annual SAR revenue and interest earned on the monies held in the Waterways Management Reserve) leaving the principal intact and increasing in line with the annual SAR revenue.

#### 5. Area of responsibility under the Management Deed

The plan attached to the Management Deed reflects the project area covered by the environmental conditions linked to the Port Geographe groyne reconfiguration. This area is different to the area defined in the original Management Deed attached to the 1991 Development Deed. However, the whole development has changed, as did the environmental conditions that are an inherent part of it. In recognition of those changes, later iterations of the Development Deed extended the obligations in relation to coastal management and sand bypassing to any relevant area of Geographe Bay impacted by the Port Geographe development.

You have made reference to some of the matters addressed above on your website. I trust that you now possess sufficient information to correct some of the statements made on your site which are misleading and could be misconstrued, particularly where you refer to 'iniquities'. As has been explained above, it was always the intention that the Port Geographe SAR would be raised to cover the cost of future coastal and waterway management obligations. The extent of those obligations has not materially changed. What has changed is the fact that, provided the City continues to levy and make available to the State the Port Geographe SAR revenue, it no longer has to fully fund those obligations as the State has committed to doing so.

City staff have confirmed that the City of Mandurah levy a SAR on the owners of the properties within their canal subdivisions and that the public have access to those waterways. We must therefore query your contention that you are the only ratepayers in WA paying a SAR to maintain a public facility.

The reason for the build up of funds in the Waterways Management Reserve has been explained above. The positive impact that this had on the City's ability to negotiate an outcome with the State in relation to future coastal and waterway management obligations should not be understated. The provisions of the new Management Deed also enable the City to cap the level of SAR collected to CPI increases only.

The Port Geographe SAR is not used for boat ramps. Whilst part of the Port Geographe Development Reserve has been used to top up government funding for upgrades to the boat ramp, none of the Port Geographe SAR monies will be placed in the Port Geographe Development Reserve which now consists of a mixture of general rate revenue and recovered bond money from the previous developers. The Port Geographe SAR is wholly credited to the Waterways Management Reserve and can only be used for coastal and waterway maintenance.

As well as greatly improving the outlook and sentiment attached to the Port Geographe development, the State funding for the reconfiguration of the groynes included a much improved foreshore area with additional amenities and facilities. The cost of maintaining the new foreshore area and facilities is met from general rate revenue, and not from the Port Geographe SAR. It should be noted that other subdivisions in the district, (Provence and Vasse for example) pay a SAR for higher level public open space such as that now being provided in Port Geographe.

I hope that this has addressed your queries and concerns in relation to the use of the Port Geographe specified area rate. Your organisation has been provided with a copy of the latest version of the Management Deed between the State and the City. If you require any further information please feel free to contact me or in relation to operational matters can you please contact either Sharon Woodford-Jones or Oliver Darby

Regards,  
Councillor Grant Henley  
Mayor  
City of Busselton