

CRAIG STEVENS

BARRISTER

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22 February 2020

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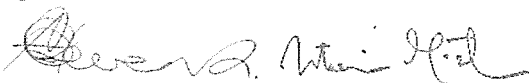
Cc Elected members

Kia ora Ms McKerrow

Re: Shelly Bay

1. We are instructed by Dame Fran Walsh and Sir Peter Jackson. We refer to your email of 14 February 2020 and yesterday's posting on the Council's website regarding Shelly Bay.
2. From this material it appears that Councillors have been advised of the Council's purported decision that:
 - a. "Despite speculation, there are no critical decisions about the Council's involvement in the project being made over the next few weeks";
 - b. Work will progress "as agreed" or "in line with" the Council's 27 September 2017 resolution; and
 - c. "Officers are progressing work on the negotiation of commercial terms (as approved by Councillors in September 2017) ...".
3. The Council has already exercised its statutory power of decision in respect of these matters. On 11 July and 28 August 2019 the Chief Executive, acting under his delegation, committed the Council to (1) refer the matters that were the subject of the September 2017 resolution back to Council and (2) not to act on the delegation given to him in September 2017. These decisions were made in response to a notice of motion seeking information on the development. This exercise of the Chief Executive's power was critical to the vote on that motion.
4. Until these matters are referred back for the re-vote, the Council's decision not to act on the September 2017 resolution stands. This is appropriate, as any action to progress any further work now risks the Council acting based upon information which it knows to be false. This includes the fact that the basis of the commercial arrangement upon which Councillors voted in September 2017 no longer holds true (even if it did at the time, which we do not accept). The "joint venture" that was represented as being the vehicle for development between The Wellington Company and PNBST, is at an end. The deal has changed. It is also apparent that Council officers' free and frank advice was suppressed.
5. Please therefore urgently confirm, by 5 pm on Friday 28 February 2020 that:
 - a. The 27 September 2017 proposal will be promptly referred back to Council for reconsideration of those matters; and
 - b. Council has not progressed and/or will not progress any further work until that re-vote has taken place (this includes negotiating any agreement for sale and purchase and long term lease, development agreement, infrastructure cost sharing and/or work on Council's legal road and other Council land).
6. In the absence of confirmation, we will recommend applying to the High Court urgently for orders preserving the status quo and that any steps taken after this letter are void.

Ngā mihi



Craig Stevens

Tiho Mijatov

Barristers